

11/22/2011 L. Jan Reid

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of the California Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**REPLY COMMENTS OF L. JAN REID
ON PROPOSED DECISION OF ALJ SIMON**

November 22, 2011

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I. Overview

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, L. Jan Reid (Reid) submits these reply comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Anne Simon in Rulemaking 11-05-005 concerning the procurement quantity requirements for retail sellers in the Renewables Portfolio Standard (RPS) program. (Agenda ID #10795) Chief ALJ Karen Clopton mailed the PD on October 28, 2011. Reply comments are due Tuesday, November 22, 2011. I will file this pleading electronically on the due date, intending that it be timely filed.

II. Recommendations

I have relied on state law and past Commission decisions in developing recommendations concerning the implementation of Senate Bill 2(1x) (SB2(1X)). I recommend the following:¹

1. The Commission should find that it may set RPS goals for the intervening years (See footnote 2 on page 3), and require retail sellers to file a progress report with the Commission. (pp. 2-3)
2. The Commission should set the intervening year targets for the second and third compliance periods using a straight-line trend method as recommended in the PD. (pp. 3-4)
3. The Commission should not find that Content and Targets requirements under the SB 2 (1X) program begins with contracts executed after December 10, 2011. (p. 4)

My recommendations are based on the following proposed findings:

1. PUC 399.15(b)(2)(C) prohibits the Commission from establishing a regulatory RPS requirement for any of the intervening years. (pp. 2-3)

¹ Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

2. The Commission may only authorize unlimited forward banking if a contract was executed prior to June 1, 2010. REC-only contracts cannot be banked because the Commission did not authorize the use of REC-only contracts until January 13, 2011. (p. 4)

III. RPS Targets

A. Regulatory Requirements

The Los Angeles Department of Water and Power (LADWP) argues that:
(LADWP Comments, p. 4, footnote omitted)

In the Proposed Decision, the Commission proposes to apply a linear trend for the compliance periods 2014-2016 and 2017-2020. However, SB 2 (1X) does not support this conclusion. Section 399.15(b)(2)(C) expressly states that a “retail seller shall not be required to demonstrate a specific quantity of procurement for any individual year.” Emphasis added.

The Legislature transferred the flexibility from the Commission to the retail sellers when it created a multi-year compliance period and specifically used the words “shall not be required.” Emphasis added. The Commission should give significance to every word or part, and harmonize the parts by considering a particular clause or section in the context of the whole.

The LADWP misinterprets the statute and apparently does not understand the difference between a target and a regulatory requirement. A target is simply a goal which the Commission establishes so that the Commission can evaluate the progress of the retail sellers. The Commission can then work with the retail sellers to assist the retail sellers in meeting their ultimate regulatory requirements. In this case, retail sellers have regulatory requirement for a 25% RPS in 2016 and a 33% RPS in 2020.

PUC 399.15(b)(2)(C) simply means that the Commission cannot establish a regulatory requirement for any of the intervening years.² The Commission may set goals for the intervening years and require retail sellers to file a progress report with the Commission. However, the Commission may not fine retail sellers or impose other sanctions for failure to meet a Commission goal in the intervening years. Retail sellers are not required to explain why they failed to meet an RPS goal in an intervening year, nor are they required to explain why their procurement activities were reasonable in an intervening year.

B. The Intervening Year Targets

Southern California Edison Company (SCE) argues that:

(SCE Comments, p. 2)

In particular, the PD applies a straight-line trend to set the intervening year targets for the second and third compliance periods, concluding the “straight-line trend provides the most sensible approach to setting quantitative targets that represent ‘reasonable progress’ for the ‘intervening years’ of a compliance period.” SCE disagrees, and believes that the investor-owned utilities’ (“IOUs”) recommendation that the intervening year targets increase 1% per year with a jump to the statutory targets in the last year of the compliance periods will ensure reasonable progress toward the State’s renewable energy goals, while also minimizing costs to customers.

SCE does not explain why it believes that the IOUs’ proposal will minimize ratepayer costs. I believe that the use of a straight-line trend is the only reasonable method to minimize ratepayer costs, because of two factors: (1) IOU load is increasing³, so the RPS requirement (in gigawatt hours [GWh]) would

² The intervening years are 2014, 2015, 2017, 2018, and 2019.

³ For example, PG&E has reported that their total retail sales have increased from 71,099,063 MWh in 2004 to 77,485,129 in 2010, an increase of slightly over 1% per annum. (Source: PG&E Compliance Report, August 1, 2011)

increase even if the RPS percentage remained the same; and (2) RPS prices (in \$/MWh) will increase as the regulatory requirement increases.⁴ In my August 30, 2011 comments, I estimated that the RPS price will rise by \$3.63/megawatt hour (MWh) for every 1,000 GWh of incremental RPS energy purchased. Thus, ratepayer costs are minimized by frontloading procurement and not by backloading procurement as suggested by SCE. The straight-line method is a reasonable compromise between frontloading and backloading procurement costs.

IV. When do Content and Targets Requirements Begin?

Noble Solutions (Noble) recommends that: (Noble Comments, p. 4)

In its final decisions, the Commission must make clear that Content and Targets requirements under the SB 2 (1X) program begins with contracts executed after December 10, 2011, and that RPS procurement compliant with the prior program rules will receive appropriate treatment under new compliance program as was expected under the old.

The Commission should not adopt Noble's recommendation because their recommendation is inconsistent with state law.

As explained in my August 30, 2011 comments in this rulemaking (Reid Comments, pp. 15-16), the Commission can only authorize unlimited forward banking if a contract was executed prior to June 1, 2010. REC-only contracts cannot be banked because the Commission did not authorize the use of REC-only contracts until January 13, 2011.

For the reasons given above, the Commission should not adopt Noble's recommendation.

⁴ See "Comments of L. Jan Reid on New Procurement Targets," August 30, 2011, p. 6.

V. Conclusion

The Commission should adopt Reid's recommendations for the reasons given herein.

* * *

Dated November 22, 2011 at Santa Cruz, California.

/s/

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VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated November 22, 2011, at Santa Cruz, California.

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