

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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

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

**COMMENTS OF MARIN ENERGY AUTHORITY ON
ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING SUPPLEMENTAL
COMMENTS ON REPORTING AND COMPLIANCE REQUIREMENTS FOR
THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

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I. INTRODUCTION AND SUMMARY

In accordance with the schedule contained in the Administrative Law Judge’s Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the Renewables Portfolio Standard Program, dated February 1, 2012 (“Ruling”), the Marin Energy Authority (“MEA”) respectfully submits to the California Public Utilities Commission (“Commission”) the following supplemental comments regarding implementation of reporting and compliance requirements for the Renewables Portfolio Standard (“RPS”) directives included in Senate Bill (“SB”) 2 (1x) (2011).¹

MEA is the first community choice aggregator (“CCA”) in California and has an established objective of significantly increasing the use of renewable and greenhouse-gas free electricity in its service territory. In 2010, MEA achieved 26.9% RPS-qualifying energy² in its resource mix and preliminary results for 2011 indicate that it has achieved over 27% RPS-

¹ MEA previously filed comments on this subject on August 30, 2011, pursuant to the Administrative Law Judge’s Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program, dated July 15, 2011 (“July 15 Ruling”).

² See Marin Energy Authority August 2011 Semi-Annual Compliance Report Pursuant to the California Renewables Portfolio Standard, as submitted to the Commission on July 26, 2011.

qualifying energy in its resource mix. As noted in its comments on the July 15 Ruling, MEA has a strong interest in having a reasonable and measured transition to the new SB 2 (1x) rules. Doing so will help to create a regulatory environment which promotes certainty for all load-serving entities (“LSEs”), incentivizes RPS procurement, and recognizes RPS procurement efforts under the pre- SB 2 (1x) rules.

II. RESPONSES TO QUESTIONS POSED IN RULING

As directed in the Ruling, MEA offers its responses to the questions contained therein.

A. QUESTION 1

Section 399.13(a)(3) requires that each retail seller must submit an annual RPS compliance report.

- **When should the annual RPS compliance report be submitted? Please consider at least the following in choosing a date for your proposal:**
 - o **The information identified by Section 399.13(a)(3) as necessary for the compliance report;**
 - o **The RPS reporting and verification requirements of the California Energy Commission;**
 - o **Any other reporting or information requirements that may be relevant to the RPS compliance reporting process. Please be specific.**
- **What information should the annual RPS compliance report contain? Please consider both the requirements set out in Section 399.13(a)(3) and the information provided in compliance reports submitted through 2010.**

MEA notes that the cited statute provides as follows:

(3) The commission shall direct each retail seller to prepare and submit an annual compliance report that includes all of the following:

(A) The current status and progress made during the prior year toward procurement of eligible renewable energy resources as a percentage of retail sales, including, if applicable, the status of any necessary siting and permitting approvals from federal, state, and local agencies for those eligible renewable energy resources procured by the retail seller, and the current status of compliance with the portfolio content requirements of subdivision (c) of Section 399.16, including procurement of eligible renewable energy resources located outside the state and within the WECC and unbundled renewable energy credits.

(B) If the retail seller is an electrical corporation, the current status and progress made during the prior year toward construction of, and upgrades to, transmission and distribution facilities and other electrical system components it

owns to interconnect eligible renewable energy resources and to supply the electricity generated by those resources to load, including the status of planning, siting, and permitting transmission facilities by federal, state, and local agencies.

(C) Recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements established pursuant to this article.

MEA responds to issues implicit in the question with regard to subsections (A) and (C) above, since subsection (B) refers solely to utilities. We note, first, that the statute calls out different reporting obligations for electrical corporations (utilities) as opposed to other load-serving entities (“LSEs”) with regard to the current status and progress made during the prior year with respect to construction of, and upgrades to, transmission and distribution facilities and other electrical system components owned by each utility. As for the reporting mandated in subsection A above, MEA recommends that the annual RPS compliance report should be submitted no sooner than May 1 of each year. Based on timelines associated with the California Independent System Operator’s (“CAISO”) settlement cycle and certain delays that may exist in reading, recording and reporting on customer meter data, a May 1 reporting date should improve the accuracy of reported data, particularly retail sales data, during this reporting process. As the Commission is likely aware, progression of the CAISO settlement cycle results in improved data accuracy. During this process, actual data replaces projections/estimates, which may result in meaningful changes to reported retail sales volumes as well as resultant RPS percentages – because annual retail sales volumes represent the denominator in this equation, it is important to accurately reflect retail sales volumes to promote accuracy when reporting RPS procurement percentages. In particular, the accuracy of retail sales data associated with the latter months of each calendar year (e.g. November and December) will likely improve with some additional time for reconciliation and review of estimated and actual volumes.

With respect to the content of each such report, this information should be as specified in the statute, as cited above. MEA does not see the need to include additional information above and beyond the referenced statutory requirements and encourages the Commission to adopt a “less is more” philosophy when considering RPS reporting obligations. Because the level of resource and rigor associated with report preparation, submittal and review are considerable, MEA believes that every possible effort should be made to streamline these reporting efforts so that the need for effective and accurate compliance demonstration is balanced with cost/resource impacts on reporting entities. With this in mind, to the extent that there is an opportunity to apply certain elements of the RPS compliance report template, including data entry formats and general layout, to related reporting processes, such as the “RPS reporting and verification requirements of the California Energy Commission,” this would further minimize the resource burdens associated with report preparation and would likely expedite report preparation.

Subsection C above also provides that annual compliance reports should contain any “recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements. . .” MEA believes this should be an optional aspect of the report. However, its optionality should not be deemed as indicating any lack of importance. Indeed, information provided by LSEs with regard to such impediments to RPS progress may prove to be extremely valuable information for the Commission’s consideration. It is clear that the RPS program still can be improved and the combined experience of LSEs over the next several years will lead to more data, more experiences (both positive and negative) and the opportunity to further refine the program so that it can both achieve the state’s ambitious renewable goals and facilitate LSE compliance that is cost-effective and not overly burdensome.

Therefore, LSEs should be encouraged, although not mandated to discuss such topics in their annual compliance reports.

B. QUESTION 2

In addition to the annual RPS compliance reporting requirement in Section 399.13(a)(3), should the Commission require an RPS progress report from retail sellers during the same calendar year? Please explain why or why not.

- **If there should be a progress report, should it contain the same information as the annual compliance report?**
- **If the information in the progress report should be different from the information in the annual report, please specify and explain your proposal.**

MEA would recommend against requiring LSEs to expend the time and expense to make two separate reports, with one that addresses compliance and the other that deals with progress towards meeting RPS goals. In our opinion, the two reports would be essentially duplicative. Furthermore, preparing two reports would be costly and might expose the LSE to unnecessary questions about the differences between the “compliance” and “progress” reports, especially if they had due dates that were spread apart in time (e.g. one report due in March and another in September). SB 2 (1x) has created significant complexity in the treatment of RPS, and MEA recommends retaining as much administrative and regulatory simplicity in the rules that have not been proscribed by the legislation.

C. QUESTION 3

In addition to the annual RPS compliance reporting requirement in Section 399.13(a)(3), should the Commission require a separate report on compliance for an entire compliance period?

• If not, please explain why not and identify how the Commission would receive information about the retail seller’s attainment of the procurement requirements for a compliance period, as required by Section 399.15(b), as implemented by D.11-12-020.

• If yes,

o When should such a report be submitted? (For example, March 1 of the year following the end of the compliance period; for the first compliance period, that would be March 1, 2014.)

o How should such a report present the quantities of the retail seller’s RPS procurement for the compliance period?

While MEA is generally not in favor of duplicative reporting obligations, MEA agrees that it would be appropriate for an LSE to provide a separate compliance report addressing an entire compliance period with one key exception – the Commission should “deem compliant” with Section 399.15(b) any LSE that has effectively demonstrated RPS compliance during each calendar year of the compliance period, inclusive of applicable minimum and maximum procurement percentages described in Section 399.16(c). Such a determination should be based on a historical review of annual RPS compliance reports submitted by the LSE under Section 399.13(a)(3) during each year of the compliance period.³ If, after such a review, the LSE was found to have been “RPS compliant” during each year of the compliance period, there should not be a need for the LSE to submit a new report, as all information required to verify compliance with Section 399.15(b) would have been, in effect, provided through previous annual reporting efforts – the Commission would not need any further information from the LSE to make a determination of compliance across the entire compliance period, rather a simple letter from the LSE indicating historical compliance and referencing the requirements of Section 399.15(b)

³ For the compliance period ending December 31, 2013, annual compliance could be determined by an LSE demonstrating a minimum 20% RPS-eligible procurement during each calendar year of the compliance period.

should suffice for this purpose. Such an exception would also provide an incremental incentive for LSEs to achieve RPS compliance during each year of the compliance period.

With respect to this reporting obligation, necessary information could be contained in a single report, submitted no later than June 1 of the year following the prior compliance period, similar to the example embodied in the question and noted above. As for the content of the report, it should contain a summary of the prior years and most current year's RPS-eligible procurement, with the information aggregated to show whether or not the LSE in fact met the compliance period requirements. Furthermore, as with the annual reports, LSEs should be encouraged, although not required, to present recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements

D. QUESTION 4

Section 399.16(c) sets minimum percentages for procurement that meets the criteria of Section 399.16(b)(1) in each compliance period, as well as maximum percentages for procurement that meets the criteria of Section 399.16(b)(3) in each compliance period.

- **Should the percentage requirements for procurement meeting the specified criteria be applied:**
 - o **Annually?**
 - o **For each compliance period as a whole?**
 - o **Over some other time period?**

To promote the balanced achievement of operational and planning flexibility as well as RPS procurement mandates, MEA supports the application of the percentages identified in Section 399.16(c) across “each compliance period as a whole” rather than within individual calendar years. MEA believes that such flexibility promotes efficient resource planning and may benefit ratepayers/customers in the form of reduced procurement costs by allowing LSEs to apply broader RPS-focused planning horizons, which should minimize reactive, potentially high-cost transactions required to meet RPS obligations. In particular, this approach should reduce the likelihood of price spikes that could otherwise occur towards the end of each calendar year when

numerous LSEs may be required to engage in last minute, economically inefficient transactions for the purpose of satisfying the referenced procurement percentages. Applying these requirements across a broader time period should minimize the potential for this sort of scenario. While individual LSEs may choose to engage in annual planning processes focused on each RPS category, imposing this requirement is not necessary to achieve an effective RPS program.

E. QUESTION 5

Should the Commission require a particular format or time at which a “retail seller may apply to the Commission for a reduction of a procurement content requirement of subdivision [399.16](c),” in accordance with Section 399.16(e)?

- **If yes, please explain and provide a justification for the proposal.**
- **If no, please explain how retail sellers would inform the Commission of a request under Section 399.16(e).**

Setting a specific date seems impractical, as LSEs will have differing experiences in the market. One may know midway through a reporting year that it cannot comply, while another may reach that conclusion only late into the fourth quarter. Rather than setting a specific date, LSEs ought to be allowed to request a reduction at any time prior to the end of the procurement year. As for format, the cited statute requires that, “the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15.” Paragraph 5 of subdivision B lists the following as reasons to be excused: inadequate transmission capacity; permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects; and unanticipated curtailment of eligible renewable energy resources necessary to address the needs of a balancing authority. Rather than prescribing a specific format, the LSE requesting a waiver should simply be required to demonstrate why its RPS procurement was incapable of being met due to one or more of the foregoing conditions.

F. QUESTION 6

How should the relationship between the minimum percentage requirement for procurement meeting the criteria of Section 399.16(c)(1) and the procurement quantity requirements for a compliance period be interpreted? Please discuss at least the following example:

A retail seller meets the RPS procurement quantity requirement of an average of 20 percent of its retail sales for the compliance period 2011-2013. During that compliance period, an average of 45 percent of the retail seller's RPS procurement associated with contracts executed after June 1, 2010, is from procurement meeting the criteria of Section 399.16(c)(1).

MEA has no response to Question 6.

G. QUESTION 7

In D.11-12-052, the Commission noted that “some rules for the use of unbundled RECs set forth in D.10-03-021, as modified by D.11-01-025, are not affected by new § 399.16 and continue in force.” (D.11-12-052 at 55). Two of the rules prohibit the unbundling of RECs from contracts that have been “earmarked” to apply to a shortfall in a retail seller’s annual procurement target.

- How, if at all, should the prohibition on unbundling RECs from earmarked contracts now be applied to contracts for RPS procurement:
 - o that were executed prior to June 1, 2010?
 - o that were executed prior to January 1, 2011?
- How should the compliance reports required by Section 399.13(a)(3) account for the unbundling of RECs from previously earmarked contracts?

MEA has no response to Question 7.

III. CONCLUSION

MEA thanks the Commission, Assigned Administrative Law Judge Simon and Assigned Commissioner Ferron for their consideration of these comments.

Respectfully submitted,

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