

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

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

**OPENING COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES IN RESPONSE TO ADMINISTRATIVE LAW
JUDGE'S SIMON'S RULING REQUESTING
SUPPLEMENTAL COMMENTS ON REPORTING AND
COMPLIANCE REQUIREMENTS FOR THE RENEWABLES
PORTFOLIO STANDARD PROGRAM**

DIANA L. LEE

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-2262
E-mail: diana.lee@cpuc.ca.gov

YULIYA SHMIDT

Analyst for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2719
Fax: (415) 703-2262
E-mail: yuliya.shmidt@cpuc.ca.gov

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I. INTRODUCTION AND BACKGROUND

The Division of Ratepayer Advocates (DRA) offers the following comments in response to the February 1, 2012 Ruling requesting input on reporting and compliance requirements for the Renewables Portfolio Program (RPS).

Currently, the utilities file RPS Compliance Reports twice a year on August 1 and March 1, which include much of the information requested in Section 399.13(a)(3). These include a Compliance Report, in a spreadsheet format, which details the utilities' compliance with the procurement targets, banking rules, and restrictions on product categories. As part of the filing, the utilities also submit the Project Development Status Reports (PDSRs), also in spreadsheet format. These detail each of the utilities' RPS projects – with the exception of Qualifying Facilities (QFs) and other facilities that are RPS-eligible but not directly procured as part of the RPS program. For each project, the utilities provide significant detailed information regarding location, procedural history, interconnection and transmission, viability and milestones, and pricing. These documents, especially the PDSRs, have been invaluable to DRA in its analysis of proposed renewable projects.

DRA strongly supports the continuation of these filings and the addition of all RPS-eligible facilities to the spreadsheets including QFs and other RPS-eligible facilities procured outside of the RPS program. Finally, to minimize the administrative burden for the utilities, DRA recommends that new reporting requirements are, as much as possible, added to the existing filings rather than are created as new ones. For the intervenors, receiving one set of information twice a year would simplify analysis and for the utilities, not creating new reporting deadlines should minimize administrative costs.

II. DISCUSSION

DRA addresses the Judge's questions in the order asked, below:

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.*

DRA recommends that the Commission maintain the current schedule of submittal of compliance reports – each year on March 1 and August 1. Although the legislation specifies that the report needs to only be annual, there is no reason to eliminate the current biannual reports. In fact, of all of the reporting required by Section 399.13(a)(3) only a few items appear to be new. These include: the requirement to report on compliance with the new portfolio content requirements,¹ current status of upgrades to transmission and distribution facilities for renewable energy interconnection,² and recommendations to remove impediments to renewable resource procurement.³ DRA recommends including this information in both the March 1 and August 1 reports.

Should the Commission find that the new information required by Section 399.13(a)(3) needs to only be submitted once a year, DRA strongly urges that the Commission choose either the March 1 or August 1 date to avoid the utilities submitting redundant information at a different time.

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.*

As stated in response to Question 1 above, DRA recommends as much continuity as possible with the current reporting requirements. The most consistent approach would be to mandate that the progress report mandated by the legislation be incorporated into the reports the utilities already submit twice a year, on March 1 and August 1. Then, the biannual filing would contain

¹ Section 399.13(a)(3)(A).

² Section 399.13(a)(3)(B).

³ Section 399.13(a)(3)(C).

all of the information required in Section 399.13(a)(3) in addition to all of the information currently required of the utilities in their biannual compliance filings.

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?*

To minimize the administrative burden for the utilities, DRA recommends that the March 1 compliance report following the end of a compliance period contain the necessary information to assure that compliance with a period's requirements has been achieved. The current compliance filing already includes the percentage of annual sales procured as RPS-eligible energy and the new format, mailed on February 1, 2011, also requests that the utilities specify procurement in each product content category. It also requests a forecast of the total procurement for each compliance period in sum. The only additional information needed appears to be a request that the utilities detail actual procurement in the past – not just a forecast – as compliance periods are completed.

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?*

DRA's reading of the legislation suggests that the product content category restrictions are intended to be applied for each compliance period as a whole. Section 399.16(c)(1), for example, states explicitly:

Not less than 50 percent for the compliance period ending December 31, 2013, 65 percent for the compliance period ending December 31, 2016, and 75 percent thereafter of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (1) of subdivision (b).

Thus, it appears that the requirements – of 50 percent, 65 percent, and 75 percent – are applied for the entirety of each compliance period.

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).*

DRA does not have comments on this question, but reserves the right to respond in reply comments.

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).

DRA interprets the provisions of both Section 399.16(c) and those of Section 399.30(c) – which establish the RPS percentages for the compliance periods – as being mandatory. In short, retail sellers must comply with the limitations on product categories as well as the minimum RPS procurement percentages required. In the example above, the retail seller failed to meet one of those two requirements and, subsequently, did not comply with the RPS.

One difficulty may arise if a retail seller procures more than sufficient for a compliance period – for example procures an average of 22% of each year of Compliance Period 1 – but then does not meet the product category restrictions. Perhaps that seller could have met those restrictions if only 20 percentage points of its RPS procurement were “counted” for that Compliance Period. Unfortunately, it seems that all procurement credited towards a compliance period must be considered when evaluating compliance with product content categories. Section 399.16(c) clearly states, “In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for *all* procurement credited towards each compliance period...[emphasis added]”

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?*

DRA does not have comments on this question, but reserves the right to respond in reply comments.

III. CONCLUSION

DRA encourages the Commission to keep RPS reporting as simple as possible by assuring continuity with current reporting requirements.

Respectfully submitted,

/s/ DIANA L. LEE

Diana L. Lee

Attorney for the Division
of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-2262
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