

**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)

**SUPPLEMENTAL COMMENTS OF CALPINE POWERAMERICA-CA, LLC  
ON REPORTING AND COMPLIANCE REQUIREMENTS FOR  
THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Jeffrey P. Gray  
Olivia Para  
Davis Wright Tremaine LLP  
Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: jeffgray@dwt.com

Attorneys for Calpine Power-America-CA, LLC

February 10, 2012

**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)

**SUPPLEMENTAL COMMENTS OF CALPINE POWERAMERICA-CA, LLC  
ON REPORTING AND COMPLIANCE REQUIREMENTS FOR  
THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Pursuant to the Administrative Law Judge’s Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the Renewables Portfolio Standard Program issued on February 1, 2012 (“*ALJ Ruling*”), Calpine PowerAmerica-CA, LLC (“CPA”)<sup>1</sup> respectfully submits these comments to the questions posed in the *ALJ Ruling*.

CPA supports the purpose and goals of Senate Bill (“SB”) 2(1x) to increase Renewables Portfolio Standard (“RPS”) procurement over the next decade and appreciates the challenges faced by the California Public Utilities Commission (“Commission”) to implement the new law. By the same token, however, it is important for the Commission to appreciate and consider the challenges faced by retail sellers to comply with a law that establishes compliance obligations beginning January 1, 2011 but did not become effective until December 2011 and still has not been fully implemented.

Specifically, it is critical that the Commission expeditiously determine compliance rules related to banking, counting provisions and long-term contracting requirements. Resolving these key issues will create much needed certainty for retail sellers as they continue their efforts to

---

<sup>1</sup> CPA is an Energy Service Provider subject to the Commission’s RPS compliance obligations and is a subsidiary of Calpine Corporation (“Calpine”). Calpine is a party in this proceeding and CPA is a named respondent.

satisfy their RPS compliance obligations. In doing so, however, it is important that the Commission account for the significant steps many retail sellers undertook to comply with the now superseded “20% by 2010” RPS procurement obligation and preserve the value of actions already taken by retail sellers in reliance on current RPS law and rules.

CPA is committed to continuing to work with the Commission to establish rules that will ensure the fairest, most efficient and cost-effective implementation of SB 2(1x) and urges the Commission to move forward expeditiously with its implementation of SB 2(1x).

- 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:**
    - **The information identified by Section 399.13(a)(3) as necessary for the compliance report;**
    - **The RPS reporting and verification requirements of the California Energy Commission;**
    - **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.**

Annual compliance reports should not be due until after the Western Renewable Energy Generation Information System (“WREGIS”) issues all Renewable Energy Credits (“RECs”) associated with the RPS eligible generation procured by retail sellers through December 31 of the previous year. Submitting annual compliance reports after WREGIS has issued all RECs from the previous year should provide the Commission with accurate information regarding a retail seller’s compliance status and reduce the need for additional or supplemental filings later in the year. Generally, WREGIS issues RECs associated with generation from December in April

of the following year. To ensure retail sellers have sufficient time to prepare required compliance reports after WREGIS issues RECs from December, CPA recommends that the annual RPS compliance report be due June 1.

The annual RPS compliance reports required under Section 399.13(a)(3) should contain the same type of information as previously required in the compliance reports submitted through 2010.

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.**

There is no need for an additional RPS progress report during the same calendar year. The annual compliance report required pursuant to Section 399.13(a)(3) should provide sufficient information to allow the Commission to gauge each retail seller's progress towards satisfying its compliance obligations. Given the information that will be provided in the annual reports, additional reporting will serve no useful purpose to the Commission and will impose an unnecessary administrative burden on retail sellers.

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,**

- **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.)**
- **How should such a report present the quantities of the retail seller's RPS procurement for the compliance period?**

No. Annual compliance reports should be structured to provide the Commission with sufficient detail and information regarding a retail seller's RPS procurement during the compliance period to allow the Commission to determine the retail seller's compliance status for an entire compliance period. In Decision 11-12-020, the Commission determined that RPS compliance under Section 399.15(b) would be calculated using a straightforward mathematical formula. Thus, as long as the annual compliance report includes all of the inputs needed for the formula, there is no need for any additional reporting requirement.

**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:**
  - **Annually?**
  - **For each compliance period as a whole?**
  - **Over some other time period?**

An important aspect of SB 2 (1x) is that it provides retail sellers with greater flexibility and options for satisfying RPS procurement obligations than under the Commission's previous RPS program:

SB 2(1X) makes a number of changes in the RPS compliance framework that move away from annual accountability by retail sellers and toward more flexible multi-year RPS procurement obligations.<sup>2</sup>

---

<sup>2</sup> D.11-12-020, mimeo at 17.

Providing compliance flexibility allows retail sellers to more cost-effectively manage their procurement activities according to market conditions by, for example, deferring some procurement when market prices are high. The Commission should preserve the flexibility of SB 2 (1X) by ensuring that the determination of percentage requirements for procurement meeting the portfolio content categories should be made for each compliance period as a whole.

**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).**

CPA has no comment on this question at this time, but reserves the right to provide reply comments on this issue.

**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).**

As noted above, the compliance period for the determination of RPS procurement quantity for a specific content category should be the same as the compliance period for the determination of the overall RPS procurement quantity. Thus, for the first compliance period 2011-2013, an average of 50 percent of a retail seller's RPS procurement associated with

contracts executed after June 1, 2010 must come from procurement meeting the criteria of Section 399.16(c)(1).

However, a retail seller's procurement of only 45 percent in any one year of its total RPS procurement in that year from contracts meeting the criteria of Section 399.16(c)(1) should not result in the retail seller being deemed out of compliance. As noted above, such a policy would run afoul of the intended flexibility provided by SB 2 (1X).

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:**
    - **that were executed prior to June 1, 2010?**
    - **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?**

CPA has no comment on this question at this time, but reserves the right to provide reply comments on this issue.

Respectfully submitted,

/s/

---

Jeffrey P. Gray  
Davis Wright Tremaine LLP  
Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Email: jeffgray@dwt.com

Attorneys for Calpine PowerAmerica-CA,  
LLC

Dated: February 10, 2012

## VERIFICATION

I am the attorney for the Calpine PowerAmerica-CA, LLC, and I have been authorized to make this verification on the behalf of Calpine PowerAmerica-CA, LLC. Said party is located outside of the County of San Francisco, where I have my office, and I make this verification for said party for that reason.

I have read the foregoing document and based on information and belief, believe the matters in the application to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on February 10, 2012, at San Francisco, California.

\_\_\_\_\_/s/  
Jeffrey P. Gray