

**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 THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON
PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES
PORTFOLIO STANDARD PROGRAM**

Andrew B. Brown
Ellison Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

*Attorneys for the
Alliance for Retail Energy Markets*

February 16, 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)

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON ADMINISTRATIVE LAW JUDGE’S RULING REQUESTING COMMENTS ON
PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES
PORTFOLIO STANDARD PROGRAM**

I. INTRODUCTION AND SUMMARY

Pursuant to the instruction in Administrative Law Judge (“ALJ”) Anne E. Simon’s January 24, 2012 *Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewable Portfolio Standard Program*, (“ALJ Ruling”), the Alliance for Retail Energy Markets (“AREM”)¹ submits these comments. AREM recognizes that Senate Bill (“SB”) 2 1X does not impose expenditure limitations on the Electric Service Providers (“ESPs”) that AREM represents. Nevertheless, AREM is certain that the manner in which the California Public Utilities Commission (“Commission”) develops and implements the expenditure limitations to be imposed on the Investor-Owned Utilities (“IOUs”) will (obviously) impact their procurement to meet the RPS, which in turn will impact market prices for renewable energy and tradable renewable energy credits. As a result, AREM believes that the Commission must ensure that the development and enforcement of the expenditure limitations is fully transparent to all market

¹ AREM is a California mutual benefit corporation formed by electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AREM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

participants so that the expenditure limitations do not create an unintended competitive advantage for the IOUs. Moreover, AReM believes that the Commission should strive for administrative simplicity in developing the expenditure limitations. AReM's responses to the questions posed in the ALJ Ruling highlight these issues.

II. RESPONSE TO THE QUESTIONS POSED IN THE ALJ RULING

AReM offers the following responses to the questions posed in the ALJ Ruling:

Question 1: Section 399.15(c) provides that a procurement expenditure limitation must be established “for each electrical corporation.” How should the procurement expenditure limitation methodology reflect this instruction?

- Should the methodology be the same for all IOUs in all respects?
- Should the inputs to the methodology be specific to each IOU?
- Should both the methodology and the inputs be IOU-specific?
- Should some other relationship between methodology and IOU be established?
Please specify and explain any proposal.

AReM Response: AReM does not see any reason why different methodologies would or should be developed for each IOU, when structuring the expenditure limitations to be essentially the same for each IOU will undoubtedly ease the administrative burden associated with its implementation and enforcement. Moreover, as noted in the introductory remarks, the expenditure limitations imposed on the IOUs will have market implications; if the limitations are constructed differently for each IOU, those market impacts will differ in each of the IOU territories, creating the potential for unintended market arbitraging. Of particular importance would be that the metric for the expenditure limitation should be the same for each IOU. For instance, if Southern California Edison (“SCE”) has an expenditure limit that is structured in terms of amount spent per MWh, while Pacific Gas and Electric (“PG&E”) has an expenditure limit that is structured as a percentage of total spending, each IOU would almost surely reach the expenditure limit at very different times, and after having achieved very different levels of RPS procurement. Such disparity should be avoided.

Question 2: Section 399.15(c)(2) provides that “the costs of all procurement credited toward achieving the renewables portfolio standard” should count towards the procurement expenditure limitation.

- Please identify the types of procurement that should be included in this requirement and identify any special rules or methods that may be required to account for the costs. Please consider at a minimum the following situations:
 - Procurement from RPS-eligible qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978 (Public law 95-617);
 - Procurement pursuant to the renewable auction mechanism established by D.10-12-048;
 - Procurement pursuant to the feed-in tariff program established by SB 32 (Negrete McLeod), Stats. 2009, ch. 328;
 - Procurement from bilaterally negotiated contracts, not part of a utility solicitation for RPS-eligible generation resources;
 - Procurement by means of utility-owned generation.
- Please identify all “costs” that are implicated by this requirement, taking into account those costs that are excluded by Section 399.15(d)(3).
- Should the statutory characterization of “the costs of all procurement credited toward achieving the renewables portfolio standard” be interpreted as including:
 - Estimates, made at the time a procurement contract is approved by the Commission, of the costs that will be incurred over a period of time.
 - should the period of time be the entire period of the contract?
 - should it be some other time period? Please describe and justify the choice of another period; or
 - A record of actual expenditures by the utility for the procurement contract over a period of time.
 - should the period of time be the entire period of the contract?
 - should it be some other time period? Please describe and justify the choice of another period.
 - how should the actual expenditures be determined?
- How should RPS procurement costs incurred prior to the implementation of the procurement expenditure limitation required by SB 2 (1X) be addressed in the procurement expenditure limitation methodology?
- How should the costs of procurement from utility-owned generation be addressed in the procurement expenditure limitation methodology? Please discuss any issues not addressed in response to other questions.

AReM Response: With respect to the costs that will count toward the procurement expenditure limit, AReM reminds the Commission that retail choice customers pay the utility for a share of the costs incurred by IOUs for their RPS purchases through the Power Charge Indifference Amount. The amount of those payments should be deducted from the costs included in the

calculation, as should any revenues that the IOUs receive from a sale to third parties of any excess RPS procurement.

With respect to when the costs should be measured, AReM suggests that the Commission's monitoring of the expenditure limitations should have two parts.

First, when a contract is executed or a utility-owned facility is authorized, the estimated costs that will be incurred under that contract over the measurement time frame should be tallied to see if it, along with all other measurements, will cause the limitation to be exceeded. For instance, if the limitation metric is expressed such that the IOU spending cannot cause the overall cost per MWh for energy delivered over a three year time frame to exceed some benchmark, then the costs associated with each contract that will deliver renewable energy or tradable renewable energy credits over that time frame should be accumulated and divided by the expected MW of delivered energy over that time frame. That quotient should be compared to the metric. Monitoring the expenditure limits based on this estimated approach will provide an "early warning system" that the IOU is nearing the limitation.

Second, the actual costs incurred under each contract should be monitored as well, just in case the costs deviate significantly from the estimates.

Question 3: Should the procurement expenditure limitation methodology provide a single limitation for the time period 2011-2020?

AReM Response: AReM does not have a position at this time on whether there should be a single or multiple time periods over which the limitation is applied, except to note that each IOU's limitation should be for the same time period(s).

Question 4: Should the procurement expenditure limitation methodology provide a limitation for a different time period or set of time periods?

- Annual.

- Each compliance period through 2020 (i.e. 2011-2013;2014-2016; 2017- 2020).
- The period 2011-2015 and the period 2016-2020.8
- The year 2020.
- The entire time an RPS procurement obligation has been in place (i.e., beginning in 2003).
- Some other time period. Please specify and explain the reasons for the time period proposed.

AReM Response: See Response to Question 3 above.

Question 5: Since RPS procurement obligations continue indefinitely, how should the procurement expenditure limitation methodology treat RPS procurement in the years after 2020?

AReM Response: AReM does not have a position on this question at this time.

Question 6: Section 399.15(c)(1) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, “the most recent renewable energy procurement plan.”

- What elements of an IOU’s RPS procurement plan should be used in establishing the procurement expenditure limitation methodology?
- Should the methodology include a mechanism for updating the limitation with information from the IOU’s most recent RPS procurement plan?
- Should the methodology use information from the most recent RPS procurement plan available at the time the Commission adopts the methodology, but not provide for periodic updates from more recent RPS procurement plans?

AReM Response: AReM does not have a position on this issue at this time.

Question 7: Section 399.15(c)(2) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, “procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.”

- What sources of data should be used to develop this approximation? Please provide specific examples.
- Should the methodology differentiate between utility-owned RPS-eligible generation and RPS-eligible generation owned by independent power producers? If so, what information or parameters should differ between the two types?
- Should only publicly available data be used to develop this approximation? Please identify and explain any limitations of publicly available data for this purpose.

AReM Response: AReM does not have a position on this issue at this time, except to say that publicly available data should be used for this purpose to ensure that the expenditure limitation is clear and transparent.

Question 8: Section 399.15(c)(3) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, “the potential that some planned resource additions may be delayed or canceled.” How should the methodology take such potential into account?

- How should the methodology define a “delay”? A “cancellation”? Please discuss usual commercial practice and provide examples in support of the proposed definition. Please provide examples of how a delay could be distinguished from a cancellation for purposes of the procurement expenditure methodology.
- Should delays in the progress of contracted-for RPS resources be treated differently from cancellations?
- Should the methodology use data on the historical record of delays/cancellation of RPS procurement contracts for each IOU?
- Should the methodology use each IOU’s projections of likely delays/cancellations in the future?
- Should the methodology create projections of delays/cancellations of contracted-for RPS generation projects in some other way? Please describe the proposal in detail.
- How should the potential for delays/cancellations, however determined, be used in the procurement expenditure limitation methodology?

AReM Response: AReM does not have a position on this issue at this time.

Question 9: Taking into account your responses to questions 3-8, above, how often should the procurement expenditure limitation be calculated for the years through 2020, using the methodology and inputs that the Commission will adopt?

- Annually.
- At the beginning of each compliance period (i.e. 2011-2013; 2014-2016; 2017-2020).
- Once for the period 2011-2015 and once for the period 2016-2020.¹⁰
- Once for the period 2011-2020.
- Once for the year 2020.
- Once for the entire time an RPS procurement obligation has been in place (i.e., beginning in 2003).
- Some other time period. Please specify and explain the reasons for the time period proposed.

AReM Response: AReM recommends that any procurement expenditure limitation should be calculated annually and should be included as part of the annual RPS report. This will help provide transparency.

Question 10: How often should the procurement expenditure limitation be calculated for the years after 2020, using the methodology and inputs that the Commission will adopt?

AReM Response: As described in response to Question 9 above, AReM recommends that any limitation should be calculated annually as part of the RPS report.

Question 11: Section 399.13(a)(4)(D) requires the Commission to adopt “[a]n appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to mitigate the risk that renewable projects planned or under contract are delayed or canceled.”

- How should such a margin of above-minimum procurement be addressed in the procurement expenditure limitation methodology?
- How should the methodology treat the interaction of the margin of above-minimum procurement and the potential for delays and/or cancellations?

AReM Response: AReM has serious reservations about this aspect of the RPS program. The reason for these reservations is that a “minimum margin of procurement above the minimum procurement level” is nothing more than a higher minimum, and therefore – by definition – will lead to over procurement and unnecessary costs. Having said that, AReM recognizes that the policy issue of how high the “minimum above the minimum” should be is not at issue in this phase of the proceeding. With respect to whether any spending in connection with this “minimum above the minimum” is included in the limitation, AReM does not see how it could be excluded from the expenditure limitation.

Question 12: Section 399.13(a)(4)(A) requires the Commission to adopt “criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources...on a total cost basis...,” taking various factors into account.

- Should the procurement expenditure limitation methodology incorporate the “total cost basis” factors set out in Section 399.13(a)(4)(A). If so, how?

- Should the procurement expenditure limitation methodology be used as the criterion of “least-cost” for the least-cost best-fit determination? If so, how?

AReM Response: AReM does not have a position on this issue at this time.

Question 13: Should the procurement expenditure limitation methodology take into consideration the value of diversification of resources in IOUs’ RPS procurement? Specifically,

- Should the methodology create a set of technology-specific expenditure limitations?
- Should the methodology create a set of geographically-defined expenditure limitations?
- Should the methodology give “extra credit” for diversification by technology?
- Should the methodology give “extra credit” for geographic diversification?

AReM Response: No. Establishing the expenditure limitation with respect to resource types will be administratively difficult and will create a situation that would likely serve to favor one technology type over another, creating investment inefficiency.

Question 14: How should the procurement expenditure limitation be applied to the Commission’s evaluation of individual RPS contracts?

- The methodology should include a way to calculate a benchmark limit on the price of RPS procurement contracts (in dollars per megawatt-hour of generation) of a particular duration and technology type.
- The methodology should include a way to consider an individual RPS procurement contract, on a total expected cost basis, as a fraction of some larger procurement expenditure limitation.
- The methodology should use some other way to consider an individual RPS procurement contract in the context of the procurement expenditure limitation. Please provide a detailed explanation.
- The methodology should not be applied to individual RPS procurement contracts at all.

AReM Response: The expenditure limitation should have no bearing whatsoever in the Commission’s evaluation of individual RPS contracts, for the same reasons outlined in the response to Question 13; i.e., including the expenditure limit in the resource selection process will lead to investment inefficiencies.

Question 15: Should the procurement expenditure limitation methodology include a methodology by which Energy Division staff could “monitor the status of the cost limitation for each electrical corporation,” as required by Section 399.15(g)(1)?

- What elements would be required in order to monitor the status of the cost limitation for each IOU?
- How often should the status of the cost limitation for each IOU be examined?
 - Annually;
 - Once per compliance period;
 - Once before January 1, 2016;11
 - Once before January 1, 2016 and again before December 31, 2020;
 - Once before December 31, 2020;
 - At the discretion of the Director of Energy Division;
 - Some other time interval.

AReM Response: AReM believe that it is of the utmost importance that the Energy Division be able to monitor the status of the cost limitation for each IOU. Moreover, as noted in the introductory remarks, the expenditure limit will impact the status of an IOU’s procurement and thereby have a significant impact on the market. Accordingly, it is imperative that all market participants are apprised regularly – at least annually – as to how close the IOU procurement is to the limit. Otherwise, only the IOUs will have this information, creating a significant competitive advantage for them. AReM notes that its advocacy for market participants to be apprised of the IOUs’ procurement compared to the limit is not intended to force disclosure by the IOUs of any specific information about the costs any particular RPS procurement contract or investment made by the IOUs for RPS compliance – aggregate information will be sufficient.

III. CONCLUSION

AReM appreciates the opportunity to offer these comments. As described above, the Commission should strive to make any expenditure limitation as administratively simple as possible and must ensure that the development and enforcement of the expenditure limitations is fully transparent to all market participants so that the expenditure limitations do not create an unintended competitive advantage for the IOUs.

Respectfully submitted,



February 16, 2012

Andrew B. Brown
Ellison Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

*Attorneys for the
Alliance for Retail Energy Markets*

VERIFICATION

I am an agent of the respondent corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein 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.

Executed on February 16, 2012 at Sacramento, California.

A handwritten signature in black ink, appearing to read "A. B. Brown", with a long horizontal line extending to the right.

Andrew B. Brown

Ellison, Schneider & Harris L.L.P.

Attorneys for the Alliance for Retail Energy
Markets