

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)

OPENING COMMENTS OF THE UTILITY REFORM NETWORK  
ON THE ADMINISTRATIVE LAW JUDGE'S RULING  
REQUESTING SUPPLEMENTAL COMMENTS ON REPORTING AND  
COMPLIANCE REQUIREMENTS ON  
THE RENEWABLES PORTFOLIO STANDARD PROGRAM



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**OPENING COMMENTS OF THE UTILITY REFORM NETWORK ON THE  
ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING SUPPLEMENTAL  
COMMENTS ON REPORTING AND COMPLIANCE REQUIREMENTS ON THE  
RENEWABLES PORTFOLIO STANDARD PROGRAM**

Pursuant to the February 1, 2012 ruling of ALJ Simon, The Utility Reform Network (TURN) hereby submits these opening comments on the certain reporting and compliance requirements for retail sellers under SBx2. TURN does not offer responses to every question in these opening comments but reserves the right to respond to proposals made by other parties in reply comments.

*Question 1 - Annual compliance reports*

TURN does not have a particular preference for the specific date upon which the annual compliance report must be submitted. However, TURN does urge the Commission to select the earliest feasible date in order to promote timely reporting and overall transparency. Moreover, the Commission should require that all retail sellers provide greater public information in their compliance reports and minimize the extent to which basic data on RPS compliance may be filed under seal.

A number of Electric Service Providers (ESPs) continue to redact extensive amounts of basic compliance information from their semi-annual RPS reports. For example, Shell's August 2011 RPS compliance report redacts all information relating to 2010 compliance including total procurement quantities, resource mix, retail sales and any contract data. As a result, the public version of this "compliance" filing yields no meaningful insights relating to Shell's compliance post-2009 (a year when it reported procuring 1.5% of retail sales from renewable resources).<sup>1</sup> The public should not be forced to wait until 2012 to determine the renewable procurement conducted by a retail seller in 2010.

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<sup>1</sup> Shell Semi-Annual RPS Compliance Report, Filed August 1, 2011.

While TURN appreciates the desire of some market participants to keep forecasts of future retail sales confidential, there no compelling rationale for keeping historical procurement and compliance data shielded from public view. The Commission should end this practice and require far greater transparency as part of the new reporting requirements under the revised RPS program. To this end, the Commission should require public disclosure of all information relating to prior year procurement activities.

A revised public disclosure requirement will be critical when retail sellers report on the results of their first compliance period in early 2014. Absent this change, the Commission will face widespread criticism when various stakeholders not entitled to review confidential information (including the Legislature) are told that it will not be possible to disclose whether retail sellers met or exceeded the 2011-2013 targets until sometime in 2015. There is no valid public policy reason for shielding these retail sellers from having to disclose their compliance positions for this extended period of time.

Regular compliance reports should be modeled on the existing templates with a few modifications. First, the templates should eliminate the vast space provided to report on flexible compliance mechanisms such as earmarking, IPT deferral and year-to-year banking, none of which continue to be part of the RPS program. Second, the templates should add a section that requires disclosure of procurement classified by product category. Third, the annual penalty and deficit information can be eliminated and replaced with a comparison of cumulative procurement to date with the total procurement quantity required for the entire multi-year period.

*Question 2 - Additional RPS compliance reporting requirements*

TURN supports the continuation of the semi-annual compliance reporting cycle. As one of the parties that regularly reviews compliance reports, TURN believes that a semi-annual timeline promotes transparency and the timely release of information that allows the public to have greater confidence in the RPS program. Absent a compelling reason to the contrary, the Commission should retain the current twice per year cycle with the same information provided in each report.

The semi-annual reports should include cumulative totals for procurement in the current compliance period, the quantity of such procurement associated with each product category, and the breakdown of resources by type and facility. So long as this data is updated every six months, the Commission should have sufficient information to develop an evolving snapshot for the current compliance period. This snapshot will allow the Commission to identify potential problems or deficits as early as possible, thereby allowing all parties to work on developing a wide array of possible solutions.

### *Question 3 - Compliance period reporting*

TURN strongly urges the Commission to ensure that retail sellers provide updated compliance snapshots on a regular basis throughout each multi-year compliance period. So long as the Commission continues this practice, the primary rationale for an additional report at the end of the compliance period relates to verification. After the end of each compliance period, retail sellers must submit verification for the information contained in their semi-annual reports. Since verification could prove to be a complex endeavor, it is appropriate to limit this exercise to an end-of-compliance period report.

The Commission may wish to combine this additional report with any request by the retail seller for a reduction on product category requirements (pursuant to §399.16(e))

or an enforcement waiver (pursuant to §399.15(b)(5)). Combining these items into a single post-compliance period filing would promote judicial economy and allow for a consolidated review of compliance alongside any requests for a reduction in the applicable requirements.

*Question 4 - Applicability of §399.16(c) limits*

The procurement content limitations in §399.16(c) should be applied over the duration of each compliance period. In enacting SBx2, the Legislature intended to replace annual obligations with multi-year compliance windows to address the “lumpiness” of renewable resource additions and minimize the role of earmarking and other flexible compliance rules that made it difficult to determine the true compliance situation of each retail seller. The new statutory language contains no references to annual limits and repeatedly ties the product category restrictions to “each compliance period.” The compliance period is therefore the correct duration for demonstrating quantities of total procurement and quantities procured within each product category.

*Question 5 - Timing of request for relief from the product category requirement*

The Legislature intended to allow retail sellers to seek a reduction in the product category requirements only under extreme circumstances. Specifically, the statute requires a retail seller to demonstrate that it “cannot comply...because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15.”<sup>2</sup> The Commission should allow such requests to be submitted only at the end of a compliance period as part of a final report that shows cumulative procurement (by product category) and highlights any shortfalls.

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<sup>2</sup> Cal. Pub. Util. Code §399.16(e).

Because §399.16(e) explicitly refers to §399.15(b)(5), any request for a reduction in product category requirements should be made as part of an overall request for an enforcement waiver (pursuant to §399.15(b)(5)). The Commission should not provide retail sellers with separate opportunities to seek both an enforcement waiver and a modification to the product category requirements. Both opportunities should occur at the end of a compliance period and serve as the basis for a waiver in the event that the Commission concludes that overall compliance (including failure to satisfy the product category limitations) was not possible due to factors beyond the control of the retail seller.

*Question 6 - Relationship between procurement quantity targets and product category limits*

The ruling offers a hypothetical scenario in which a retail seller satisfies the procurement quantity requirement for the first compliance period but violates the product category limits by procuring insufficient percentages from the first product category (§399.16(b)(1)).<sup>3</sup> In this situation, the retail seller would fail to comply with the requirements of §399.16(c)(1) and be subject to potential penalties. The Commission must recognize that the §399.16(c) limits cannot be avoided simply by satisfying the procurement quantity targets for a given compliance period. The Commission must treat the limitations imposed by §399.16(c)(1) as independent of the targets established pursuant to §399.15(b).

In the hypothetical example, the retail seller does not meet the 50% minimum threshold for the first product category over the entire compliance period. The Commission should only allow the retail seller to receive compliance credit for total procurement quantities if the §399.16(c) limits are preserved. This objective is

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<sup>3</sup> The ruling erroneously references “procurement meeting the criteria of Section 399.16(c)(1)”. Since §399.16(c)(1) defines the limits but not the product criteria, TURN understands this question to be referring to “procurement meeting the criteria of” §399.16(b)(1).

accomplished by reducing total eligible procurement by the amount necessary to ensure that procurement in the first product category equals no less than 50% of the adjusted total. This adjusted total should be used to determine whether the retail seller has fallen short of the overall procurement quantity requirements for the entire compliance period.<sup>4</sup> If there is a deficit between this adjusted total and the procurement target, the Commission should consider assessing penalties based on the gap.<sup>5</sup>

TURN's proposal is less severe than the approach taken by the Commission in implementing the minimum long-term contract requirements under the 20% RPS program. In D.07-05-028, the Commission held that any retail seller failing to execute contracts satisfying the minimum quantities defined in §399.13(b) (formerly §399.14(b)) would lose the ability to count any procurement of existing renewable generation under short-term contracts towards RPS compliance.<sup>6</sup> If that approach were applied to the hypothetical example outlined in the ruling, the failure to procure sufficient first category products would cause the retail seller to lose the ability to apply any second or third product category products towards the procurement quantity requirements for the entire compliance period.

Rather than apply the precedent from D.07-05-028 to the limitations of §399.16(c), the Commission should adopt TURN's approach in order to maintain strong incentives for retail sellers to take the product category requirements seriously while avoiding an overly punitive result.

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<sup>4</sup> In this case, any procurement deemed ineligible should not be permitted to be carried over as excess procurement into the next compliance period.

<sup>5</sup> The retail seller would still be able to argue for some of the enforcement waiver criteria in §399.15(b)(5).

<sup>6</sup> D.07-05-028, Ordering Paragraph #2.

Respectfully submitted,

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Dated: February 10, 2012



**VERIFICATION**

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

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

Executed on February 10, 2012, at San Francisco, California.

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Matthew Freedman  
Staff Attorney