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

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| Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program. | Rulemaking 11-05-005 (Filed May 5, 2011) |

# REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING SUPPLEMENTAL COMMENTS ON REPORTING AND COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD

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February 21, 2012

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## I. INTRODUCTION AND SUMMARY

Pursuant to the instruction in Administrative Law Judge ("ALJ") Anne E. Simon's February 1, 2012 *Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the Renewable Portfolio Standard*, ("ALJ Ruling"), the Alliance for Retail Energy Markets ("AReM")[1] submits these reply comments to other parties' answers to the questions posed in the ALJ Ruling.

For the reasons addressed below, AReM recommends:

- The California Public Utilities Commission ("Commission") should reject the recommendations of the Division of Ratepayer Advocates ("DRA") and The Utility Reform Network ("TURN") to require semi-annual RPS reports as such reports are unnecessary, overly burdensome and are contrary to the efficiency gains expected with the multi-year compliance period;

- TURN's request to erode existing confidentiality protections is misplaced and will result in increased costs risks to customers;

[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.

- Additional reporting requirements recommended by the California Wind Energy Association ("CalWEA") do not enhance the goals of Senate Bill ("SB") 2 1X, are overly burdensome, and should be rejected by the Commission;

- Any waiver process for the Section 399.16 portfolio content category requirements should be structured to avoid bestowing a competitive advantage on retail sellers that obtain a waiver;

- The Commission should ensure that customer value implicit in RPS purchases made in accordance with the rules and law at the time is not stranded or negated.

## II. REPLY COMMENTS

AReM offers the following reply comments to specific issues raised in opening comments in response to questions posed in the ALJ Ruling. As AReM is only responding to particular issues raised, not all of the questions in the ALJ Ruling are included. Silence with respect to any issue not addressed here should not be interpreted as AReM's agreement or consent.

### A. Semi-Annual Reporting is Unnecessary and Overly Burdensome

Only TURN and DRA recommend that RPS reports be submitted semi-annually.[2] All other parties commenting on the question of report frequency oppose semi-annual reports, providing a variety of reasons including the following: (i) imposition of semi-annual reporting is contrary to the explicit statutory language in Section 399.13(a)(3) that calls for "an annual compliance report"; (ii) the additional administrative burdens that semi-annual reporting will create; (iii) with the adoption of multi-year compliance periods, there is little need or use for semi-annual reporting; and, (iv) the lack of enforceable targets for intervening years renders semi-annual reporting superfluous and unnecessary. For all these reasons, AReM joins with

[2] *See* Opening Comments of TURN on ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, p. 3; Opening Comments of DRA in Response to ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, p. 2.

virtually all parties other than DRA and TURN and urges the Commission to reject any semi-annual reporting requirements.

### B. Erosion of the Existing Confidentiality Protections Should Not Be Permitted

In its comments, TURN suggests that existing Commission confidentiality rules that protect data regarding prior year procurement levels and associated load and procurement from public disclosure should be eliminated.[3] TURN's suggestion is contrary to the current confidentiality protections allowed; protections that were developed based on significant efforts and collaboration from the Commission, staff, and parties. The extensive efforts undertaken in developing the current confidentiality protections were found to provide sufficient transparency into the RPS procurement and planning process. Accordingly, AReM strongly opposes TURN's request. With the addition of the delivery-differentiated RPS products and limited opportunities for secondary transactions, as well as the fact that compliance spans a three year period, the process of procuring and managing RPS portfolios will be complex, and there is significant potential that there will be a period of supply scarcity. In this context, to protect their customers and their ability to negotiate for supplies, it is important that a Load Serving Entity's ("LSE's") current position, including activities from the most recently completed year, not be publicly disclosed. Contrary to TURN's claim, there will be sufficient transparency regarding progress and compliance over time, particularly with respect to the compliance reporting that will occur after the California Energy Commission ("CEC") verification reports, which should take place later than the existing year of historical data protection.

TURN's comments suggest that public disclosure is necessary to protect the market from manipulation. However, this issue has already been fully vetted by the Commission in adopting

[3] *See* Opening Comments of TURN on ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, p. 2.

the current confidentiality protections and should not be reversed based on TURN's cursory and baseless recommendation. Moreover, to the extent information is desired with respect to cumulative compliance by LSEs, the Energy Division may aggregate data in a way that will support protection of market sensitive data and still provide a progress report without causing the premature public disclosure of an LSE's compliance position. This aggregate data should be sufficient to satisfy TURN's desire to be a market watchdog, without eliminating existing confidentiality protections.

### C. Additional Reporting Requirements Must be Reasonably Tailored to Enhance the Goals of SB 2 (1X)

CalWEA recommends that RPS reports should include information relating to conditions that may prompt the Commission to waive enforcement of the RPS procurement targets, regardless of whether a retail seller will seek an enforcement waiver.[4] These additional proposed reporting requirements should be rejected by the Commission as such requirements are unnecessary and overly burdensome. Information regarding conditions that may prompt an enforcement waiver are already to be included in renewable energy procurement plans, pursuant to Sections 399.13(a)(1) and 399.13(a)(5). Additionally, any information prompting an enforcement waiver should be included in a retail seller's request for a waiver under Section 399.15(b)(5). CalWEA's proposed reporting requirements are therefore superfluous and will only result in increased administrative time and efforts for the Commission and retail sellers. This issue is further compounded for those retail sellers that will satisfy RPS procurement targets and therefore will have no need to provide data on potential enforcement waivers.

[4] *See* Comments of CalWEA on Reporting and Compliance Requirements for the RPS Program, pp. 3-7.

CalWEA similarly seeks to have reports contain information related to three different interconnection options, "full capacity," "energy-only," and "limited operation."[5] CalWEA also asks that reports include detailed information about curtailment of renewable generation in a retail seller's portfolio.[6] Again, such information is neither required for reports under SB 2 (1X) nor is it necessary. Moreover, such information may not even be available in instances where the LSE's supply contracts do not provide access to such information. For example, the LSE may only rely upon the entity providing the RPS product to conform to their balancing authority's dispatch instructions as necessary (including potential curtailments), and simply provide to the LSE the delivered energy and WREGIS certificates. It is unclear if such information would even be useful in either a renewable energy procurement plan or any request for an enforcement waiver. However, it is clear that such information will not assist in meeting the reporting requirements of Section 399.13(a)(3) while significantly increasing the administrative efforts required to complete the RPS report. The Commission should carefully weigh the administrative burden and corresponding rate impacts to customers against any purported benefit for additional reporting requirements, particularly proposed requirements that are outside the scope of the reporting contemplated by SB 2 (1X). Accordingly, the Commission must reject CalWEA's additional reporting recommendations.

### D. Waiver Request Processes Must Not Distort The Marketplace

With respect to the process for obtaining a waiver of the procurement content requirements of Section 399.16, the Investor Owned Utilities ("IOUs") recommend that no

[5] Comments of CalWEA on Reporting and Compliance Requirements for the RPS Program, pp. 4-5.

[6] Comments of CalWEA on Reporting and Compliance Requirements for the RPS Program, pp. 6-7.

particular format or process be required and that requests could be granted at any time.[7] As AReM noted in its opening comments, waiver requests should not occur prior to the end of a compliance period.[8] Aside from this timing issue, AReM is not opposed to an otherwise flexible process for processing waiver requests. The key to both the timing and process for waiver requests must be ensuring that no retail seller improve its competitive position vis-à-vis other retail sellers either in terms of compliance obligations or the costs of compliance; and the corollary exists too, that a retail seller should not have its competitive position diminished vis-à-vis other retail sellers due to RPS purchases made under the rules and laws at the time the purchase was made. Ensuring that no competitive advantage is bestowed to retail sellers granted a waiver will avoid the perverse outcome that would otherwise put retail sellers who complied with procurement requirements at a competitive disadvantage with respect to the cost of energy delivered to their customers.

### E. The Commission Should Avoid Stranding or Negating Customer Value for RPS Procurement and Must Avoid any Earmarking Forgiveness that Unfairly Benefits LSEs that Used Earmarking

Comments provided with respect to the unbundling of RECs from utility earmarked contracts have implications that go beyond the unbundling issue as the Commission's resolution of earmarking raises concerns about the potential stranding or negation of RPS compliance value associated with RPS procurement undertaken under the rules and policies in place at the time to achieve compliance. For example, the IOUs all recommend that prior earmarking rules should not continue into the new 33% RPS program, thereby negating the need to apply

[7] PG&E's Comments on ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, pp. 10-11; SDG&E Comments on Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, pp. 6-7; and SCE's Comments on ALJ's Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, p. 9.

[8] *See* Comments of AReM on ALJ's Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS, p. 7.

procurement from earmarked contracts to prior years.[9] As described previously by AReM,[10] the forgiveness of prior earmarked quantities must be netted against any renewable procurement surplus that was accrued during the time that earmarks were being accrued. Specifically, without a netting of excess procurement against earmarked quantities, the IOUs that used earmarking as a flexible compliance tool to avoid procurement deficiencies will effectively be "gifted" the additional procurement that will now be provided from the previously earmarked contracts. To avoid such a windfall, any earmarked quantities acrrued through December 31, 2010 must be offset by any excess procurement that the entity had banked through December 31, 2010. It is contrary to the spirit and intent of SB 2 (1X) to allow IOUs to retain their 2010 banks while at the same time eliminating their obligation to deliver earmarked volumes in the future.

Additionally, LSEs that did not use earmarking as a flexible compliance tool must be permitted to apply any surplus renewable procurement in excess of 14% of retail sales from 2010 towards the new procurement requirements of the 33% RPS program. SB 2 (1X) did not intend for retail sellers that had no procurement deficiencies and also had procurement banks as of December 31, 2010 to forfeit the entire value of their banked quantities while receiving no benefit for deficit forgiveness. Such an inequitable result must be avoided by the Commission and retail sellers must be allowed to retain the value of renewable procurement undertaken under the rules and policies in place at the time.

Whether the question is the correct treatment of the bank of existing RPS procurement from the 20% program regime, or treatment of procurement within product category types during

[9] PG&E's Comments on ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, pp. 15-16; SDG&E Comments on Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, p. 9; and SCE's Comments on ALJ's Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, pp. 12-13.

[10] *See* August 30, 2011 Comments of AReM on ALJ's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the RPS, pp. 10-13, available at http://docs.cpuc.ca.gov/efile/CM/142593.pdf.

a compliance period,[11] the Commission must avoid stranding or negating customer value. For example, AReM's reading of TURN's comments suggest that, should a LSE come to the end of a compliance period short with respect to the premium Category 1 product, volumes of the other products secured will be proportionately negated by excluding them from the total procurement volume until the minimum Category 1 level is achieved.[12] The Commission should reject an interpretation of the minimum product procurement requirements for the various product types that is not based upon the total volume of required RPS procurement. Taking TURN's proposal to the extreme, if a retail seller is unable to acquire any Category 1 RPS energy, but still procures half of their RPS obligation with Category 2 RPS energy, which is allowed under SB 2 (1X) for the first compliance period, TURN's proposal would discount all that RPS procurement to zero. There is nothing in SB 2 (1X) that supports such a circumscribed interpretation of the RPS product content categories.

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[11] *See* Opening Comments of TURN on ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, pp. 5-6.

[12] "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 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." Opening Comments of TURN on ALJ Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the RPS Program, pp. 5-6.

## III. CONCLUSION

AReM appreciates this opportunity to respond to opening comments on the ALJ Ruling. For the reasons described herein, the Commission should adopt reporting and compliance requirements as recommended by AReM, and reject requests for multiple annual reports and submission of data not reasonably related to an LSE's procurement compliance.

Respectfully submitted,

February 21, 2012

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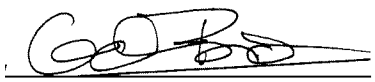
## VERIFICATION

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 forgoing is true and correct.

Executed on February 21, 2012 at Sacramento, California.



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