

**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)

**REPLY COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION
ON PROCUREMENT EXPENDITURE LIMITATIONS FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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Pursuant to Rule 14.3(d) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Large-scale Solar Association (LSA) respectfully submits these reply comments on Administrative Law Judge Simon's January 24th *Ruling Requesting Comments on Procurement Expenditure Limitations For the Renewables Portfolio Standard Program* (Ruling). In LSA's opening comments, we laid out several overarching policy considerations that should guide the development of the procurement expenditure limitation mechanism and provided initial responses to the questions posed in the Ruling.¹

The opening comments expressed broad — although not always unanimous — agreement on a number of issues, including:

- The same procurement expenditure limitation methodology should be used for all the utilities, although the inputs may differ;

¹ Comments of the Large-scale Solar Association on the Procurement Expenditure Limitations for the Renewable Portfolio Standard Program (February 16, 2012) (LSA Comments).

- All programs that count towards the Renewables Portfolio Standard (RPS) goal, including those enumerated in Question #2 of the Ruling, should be encompassed in the methodology;
- Least Cost, Best Fit (LCBF) criteria and the procurement expenditure limitation serve distinct and separate purposes and should not be incorporated into one another;
- The procurement expenditure limitation methodology should provide a cushion for delays and cancellations of projects based on RPS procurement plan projections;
- The procurement expenditure limitation is program-based and should not be used to set individual project benchmark prices;
- The methodology should not include a specific limitation or extra credit for technology or geographic diversity;
- Public data should be used to develop estimates of renewable resource costs;² and
- Questions regarding the application of the limitation in years following 2020 should be deferred.

However, parties had divergent opinions on multiple issues, including the time period and adjustment of the limitation, the scope of the costs included in the limitation, the use of scenarios in establishing the limitation, the application of the limitation to individual project review and the consequences when an electrical corporation's procurement expenditures are projected to meet the limitation. These issues are addressed in LSA's reply comments below.

² A few parties suggested some use of confidential data in their comments. *See* Opening Comments of the Utility Reform Network on the Procurement Expenditure Limitations for the Renewables Portfolio Standard Program (February 16, 2012) (TURN Comments), p. 6; Comments of the Center for Energy Efficiency and Renewable Technologies on RPS Procurement Expenditure Limitations (February 16, 2012), p. 13-14. LSA reiterates our position that public data should serve as the foundation for renewable cost estimates, as the use of public data provides transparency and contributes to market certainty. LSA Comments, p. 16.

RESPONSE OF LSA TO OPENING COMMENTS

1. Time period and adjustment of the limitation³

Generally, parties fell into one of two camps regarding the time period that the procurement expenditure limitation should cover; parties either supported a compliance period limitation or a single limitation covering 2011 through 2020.⁴ Opinions were similarly divided between whether the limitation should be revisited once in 2016 or more frequently.⁵ In its opening comments, LSA supported a single limitation for each utility for the 2011-2020 time period, focusing on the costs of achieving 33% by 2020 (p. 12), and recommended a single adjustment in 2016, as provided in Public Utilities Code Section 399.15(e)(1). (LSA Comments, p. 18.) LSA and the other parties that made similar recommendations cited to the potential for market disruption from multiple limitation trigger points, the lumpiness of project procurement and development, the need to maintain procurement flexibility, and the uncertainty created by continual readjustment of the limitation. For example, Pacific Gas & Electric (PG&E) stated:

PG&E does not believe that annual or compliance period caps sufficiently recognize the multi-year timeline that accompanies the development and construction of a renewable project. A single limitation allows flexibility to procure least cost and best fit resources and prevents potential complications from costs associated with projects that begin delivering at the end (or beginning) of a

³ The Ruling raised this issue in Questions 3, 4, 5 (focused on post-2020), 6 (re updates of RPS procurement plan), 9, and 10 (focused on post-2020).

⁴ For example, *compare* TURN Comments at p. 4-5 *with* Comments of Pacific Gas And Electric Company (U 39 E) on Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program (February 16, 2012) (PG&E Comments), p. 8-9.

⁵ For example, *compare* LSA Comments at p. 12-13 *with* Comments of the Energy Producers And Users Coalition, the California Large Energy Consumers Association, and the California Manufacturers and Technology Association on the 33% RPS Procurement Expenditure Limitations (February 16, 2012) (CLECA/EPUC/CMTA Comments), p. 11.

compliance period. In addition, frequent revisions of the cap could result in complexities in administering the cap and evaluating potential transactions. (PG&E Comments, p. 9.)

Advocates of the compliance period approach stated that conforming the limitation to the compliance periods will simplify reporting and verification, and that more frequent adjustments will “[a]llow for the flexibility needed to reflect changing market conditions.”⁶ LSA is not persuaded that reporting and verification simplification supports the compliance period approach, since the status of the limitation will have to be reported and verified at least annually in the utility RPS procurement plans and compliance reports and potentially even more frequently in the Commission’s quarterly reports to the Legislature. (*See* Pub. Util. Code §910 (a), (b); LSA Comments, p. 14.)

The argument for more frequent adjustments to accommodate changing market conditions has greater merit. It may be appropriate for the limitation mechanism to incorporate certain pre-identified assumptions that are adjusted regularly, such as load or natural gas price projections. (LSA Comments, p.15.) The limitation must be sufficiently flexible to account for the volatility in fossil fuel prices⁷ and adjust accordingly. To the extent that the limitation is overly prescriptive and based on fossil fuel prices assumptions that underestimate actual costs, the limitation could have the unintended effect of increasing overall costs on ratepayers. LSA recommends that such design features be further explored. However, revisiting the limitation each compliance

⁶ San Diego Gas & Electric Company (U 902 E) Comments on Ruling Regarding Procurement Expenditure Limitations for the Renewable Portfolio Standard Program (February 16, 2012) (“SDG&E Comments”), p. 6.

⁷ The Commission and the California Energy Commission prepared a joint report for Senator Escutia on the natural gas market, which discusses the volatility of fossil fuel pricing and how it affects energy markets. The report is available at <http://docs.epuc.ca.gov/published/Report/54256.htm>.

period will automatically reopen all the underlying assumptions and inject substantial uncertainty into the RPS program even if market conditions have not changed significantly. LSA believes the better approach is to develop a single limitation for the 2011-2020 period based on a robust set of diverse market scenarios, and limit readjustment outside the 2016 review called for in Section 399.15(e) to specific parameters that track substantial market alterations.

2. Scope of costs included in the limitation⁸

Parties' proposals on defining the scope of "the costs of all procurement credited toward achieving the renewables portfolio standard" varied widely, with several parties specifically urging inclusion of transmission costs⁹ and integration costs¹⁰ in the limitation. LSA strongly disagrees with those who would include costs beyond those need to create "eligible renewable energy resources used to comply with the renewables portfolio standard," as stated in Public Utilities Code Section 399.15(c). Section 399.15(d)(3) explicitly states that "[p]rocurement expenditures do not include any indirect expenses." That section then provides examples of indirect expenses, and uses the word "including" to demonstrate conclusively that this list is illustrative, not exhaustive. Moreover, the statutory examples of "indirect costs" in Section 399.15(d)(3) include "imbalance energy charges, sale of excess energy, decreased generation from

⁸ The Ruling raised this issue in Question #2.

⁹ Opening Comments of the Division of Ratepayer Advocates in response to Administrative Law Judge Simon's Ruling Requiring [sic] Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program (February 16, 2012) ("DRA Comments"), p. 3-4; CLECA/EPUC/CMTA Comments, p. 7.

¹⁰ DRA Comments, p. 3, 13; Southern California Edison Company's (U 338-E) Comments on Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program (February 16, 2012) ("SCE Comments"), p. 7.

existing resources—all of which form components of the “integration” needs and costs being analyzed by the California Independent System Operator (“CAISO”) and the investor-owned utilities (“IOUs”) as part of the 2010 Long-Term Procurement Plan (“LTPP”) Proceeding.¹¹

“Transmission upgrades” are also an explicit part of the statutory examples. Those who claim the statute lets new transmission lines be treated as direct costs even though transmission upgrades must be treated as indirect costs rest on a reading of Section 399.15(d)(3) that impermissibly deletes the word “including” and ignores the patent legislative intent to focus the limitation on direct costs required to create the eligible renewable resource itself. Section 399.15(c)(2) further demonstrates the legislative intent to exclude transmission and integration costs from the procurement expenditure limitation. That section tells the Commission to rely on procurement expenditures “that approximate the expected cost of building, owning and operating eligible renewable energy resources” in developing the limitation. Resources like transmission and conventional generation used to provide load-following and regulation services are not “eligible renewable energy resources” and their costs must be kept distinct from the procurement expenditure limitation, or the basic purpose of the

¹¹ In R.10-05-006, the CAISO submitted testimony quantifying the needs and costs of load-following and regulation requirements under various RPS scenarios. *See* Ex. 2400, Track I Direct Testimony Of Mark Rothleder On Behalf Of The California Independent System Operator Corporation, p. 9. The CAISO analysis defined regulation and load-following as the difference over various time intervals between actual requirements and scheduled generation. *See* Integration of Renewable Resources: Technical Appendices for California ISO Renewable Integration Studies, Version I, available at <http://www.caiso.com/27be/27beb7931d800.html>. The CAISO website comments “[f]urther, renewables integration requires additional operational capabilities, including additional ramping support and ancillary services and increased ability to manage over-generation conditions. Renewable energy also imposes new operating requirements, such as more frequent starts and stops and cycling of existing generation units.” *Id.* To address these requirements, renewables integration needs could encompass imbalance energy, sales of excess energy, and changing levels of generation from existing resources.

limitation of demarcating RPS procurement costs will be lost.

The Division of Ratepayer Advocates (“DRA”) took a particularly broad view of the scope of Section 399.15(c) in its comments, suggesting that the procurement expenditure limitation should account for not only integration and new transmission costs, but also Resource Adequacy (“RA”) replacement value and RPS program administrative costs. (DRA Comments, p. 3.) Regarding RA replacement value, RA capacity is a separate product, distinct from the energy needed to comply with the RPS, and should be treated as such. While RA may be a product included in RPS power purchase agreements (“PPAs”), DRA’s proposal goes too far in suggesting that individual generators have a quasi-obligation to provide RA capacity. It is also inconsistent with the objective of ensuring that these separate obligations are addressed in the most economically efficient manner possible. On the RPS program administrative costs, these costs, similar to transmission and integration costs discussed above, are indirect expenditures. The statutory language identifying the costs included in the limitation does not extend to administrative costs, which are neither direct costs of procuring eligible renewable energy resources to comply with the RPS (Section 399.15(c)), nor are they costs of “building, owning and operating eligible renewable energy resources”(Section 399.15(c)(2)).

3. Use of scenarios to develop the limitation¹²

In opening comments, the California Wind Energy Association (“CalWEA”) and

¹² The Ruling raised the related issue of data used to develop the limitation primarily in Question 7.

the Independent Energy Producers Association (“IEP”)¹³ suggested that E3’s renewable scenarios, which were studied in the Commission’s 2010 LTPP proceeding, could inform the development of the procurement expenditure limitation. Generally, LSA believes the “but for” approach of establishing the appropriate baseline for rate comparisons that CalWEA and IEP recommended has considerable merit and should be further evaluated in this proceeding. However, in the LTPP, LSA has expressed concern about the assumptions used to develop these particular scenarios and whether the individual scenarios appropriately reflect the policy goals that they were designed to achieve.

If a scenario study approach is used in developing the procurement expenditure limitation, LSA recommends that the scenarios reflect a reasonable range of development scenarios, that the limitation be designed to avoid prescriptive requirements that focus on a single scenario or narrow set of scenarios, and that the resulting limitation provide flexibility to allow individual electrical corporations to achieve their RPS requirements in the most cost-effective manner, considering their overall portfolio and the needs of their customers.

4. Whether the limitation is should serve as a program and/or project metric¹⁴

In its opening comments, LSA stated that the limitation should be used as an overall RPS program metric and should not apply to the evaluation of individual RPS

¹³ Comments of the California Wind Energy Association on a Procurement Expenditure Limitation for the California Renewables Portfolio Standard Program (February 16, 2012) (“CalWEA Comments”), p. 11; Comments of the Independent Energy Producers Association on the Procurement Expenditure Limitations for the RPS Program (February 16, 2012) (“IEP Comments”), p. 6

¹⁴ The Ruling raised this issue in Questions #12 (re LCBF), 14, and 15 (re monitoring generally).

contracts. (LSA Comments, p. 22.) Several parties¹⁵ recommended that the Commission consider progress towards the limitation as it considers individual requests for approval of RPS contracts. As noted in LSA's opening comments, many of the questions in the Ruling focus attention on contracts resulting from RPS solicitations or bilateral agreements. However the limitation is intended to cover a range of programs, as the parties' near-consensus response to the Ruling's Question #2 recognized. Both the monitoring and the limitation itself must encompass all types of RPS procurement - and all types of RPS procurement must be equally subject to adjustment if the limitation is approached or reached. LSA strongly recommends that the next round of developing the limitation examine ways of ensuring that all types of RPS procurement are equally subject to ongoing monitoring and cost containment adjustment.

5. Process for addressing situation when costs are projected to meet or exceed the limitation and potential procurement changes in this situation¹⁶

Parties appear to have diverging opinions on (1) what is required of a utility in the situation where a utility's costs are expected to meet or exceed the limitation and, (2) more importantly, what changes in procurement may occur in such a situation.¹⁷ Here,

¹⁵ See, e.g., TURN Comments, p. 11; PG&E Comments, p. 18; DRA Comments, p. 16,

¹⁶ The Ruling questions did not directly address this issue, although parties' comments did touch on this issue. See, e.g., PG&E Comments, p. 19; SDG&E Comments, p. 6; SCE Comments, p. 3.

¹⁷ Compare SDG&E Comments, p. 6 ("If the IOU forecasted that it would exceed its Compliance Period 1 expenditure limitation, it would refrain from any further procurement of products that would provide deliveries in Compliance Period 1"); SCE Comments, p. 3 ("SCE supports using green light, yellow light, and red light thresholds within the procurement expenditure limitation methodology so as to differentiate when an IOU should slow down procurement versus when it should be allowed to completely halt procurement") with IEP Comments, p. 9 ("Even if the costs of a particular contract exceeded the limitation, the Commission would have the flexibility to approve the contract if the utility demonstrated that the contract would not have a disproportionate rate impact in the future compared to what rates would have been [but for] the RPS").

LSA offers comments specifically on a hypothetical situation where the utility projects that it will meet or exceed its limitation prior to meeting the RPS 33% goal.¹⁸ In such a situation, the Commission should require that the utility notify the Commission and stakeholders in advance; the notification should include a description any changes the utility proposes for future renewables procurement. Such notification is important, not only for program transparency, but also to ensure that stakeholders have the opportunity to provide comment in a public process and the Commission has the opportunity to provide feedback to the utility regarding its compliance obligations and its procurement activities going forward.

The statute addresses what changes to procurement are permitted in such a situation and does not allow renewable procurement activities to halt altogether. To the contrary, the statute requires a utility to continue renewable procurement if eligible renewable energy resources can be procured without exceeding a de minimis increase in rates, consistent with the long-term procurement plan established for the electrical corporation pursuant to Section 454.5. (Pub. Util. Code §399.15(f).) LSA supports the recommendation of IEP that any analysis of rate impacts both in this situation and more generally in developing the limitation, must focus on what rates would have been but for the RPS.¹⁹ Such an approach will help to ensure that limitation and renewable procurement activities appropriately take into account the benefits provided by renewable resources and ensure that ratepayers receive the highest value for their rate dollars.

¹⁸ LSA reiterates the point in our opening comments that this limitation should not create an artificial barrier for the procurement of renewables beyond the 33% RPS. p. 6-7.

¹⁹ IEP Comments, p. 9.

CONCLUSION

LSA appreciates the opportunity to provide comments on the design of the procurement expenditure limitation. We look forward to providing further comments and working with the parties and the Commission as the design of this procurement expenditure limitation mechanism progresses.

Dated: March 01, 2012

Respectfully Submitted,

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VERIFICATION

I, Shannon Eddy, am the Executive Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Reply Comments of the Large-scale Solar Association on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program* are true of my own knowledge, except as to the 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 March 1, 2012 at Sacramento, California.

/s/ Shannon Eddy

Shannon Eddy

Executive Director, Large-scale Solar
Association