

**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 INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON THE PROPOSED DECISION ON
COMPLIANCE RULES**

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Dated: May 14, 2012

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The Independent Energy Producers Association (IEP) has only one comment on Administrative Law Judge Anne Simon's Proposed Decision Setting Compliance Rules for the Renewables Portfolio Standard Program (PD), issued on April 24, 2012.

The PD's discussion of Public Utilities Code section 399.16(d) includes an ambiguous and apparently erroneous statement that, if left uncorrected, could create continuing confusion and contradict the intent of the legislature. Section 399.16 establishes the new portfolio content categories for eligible renewable energy products (subdivision (b)) and sets procurement limitations for certain of these content categories. Subdivision (d) creates an exception to the procurement limitations for contracts executed prior to June 1, 2010 that also meet other criteria.

Subdivision (d) of section 399.16 is quoted in footnote 42 on page 26 of the PD. The footnote reads:

“Section 399.16(d) provides in full:

“Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:

“(1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.

“(2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.

“(3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

“IOUs’ contracts must be approved by the Commission in accordance with the standards for approval in effect at the time the contracts were approved, regardless of whether the contracts were approved before or after June 1, 2010.”

The last paragraph of this footnote, which is not part of the statute, contains language that appears to be an inadvertent error. It appears that this paragraph was intended to summarize the requirements of paragraphs (1) and (2) of section 399.16(d), *i.e.*, that a resource had to be eligible under the rules in effect when the contract was signed, and the Commission’s approval could occur either before or after June 1, 2010. Procurement from contracts that met these two requirements (and did not have amendments or modifications after June 1, 2010 that exceed the requirements of paragraph (3)) would “count for RPS compliance without regard to portfolio content category or minimum or maximum quantity requirements.”¹ If the paragraph was intended to express a different concept, then IEP is unclear about what the paragraph means.

¹ PD, p. 27

The apparent error is that the paragraph refers to the time the contract were *approved*, rather than when they were *executed*, as stated in paragraph (1). To align the paragraph with the provisions of section 399.16(d) that it apparently attempts to summarize and consolidate, the last paragraph of footnote 42 should be revised as follows:

To implement this provision, IOUs' contracts must be approved by the Commission in accordance with the standards for approval in effect at the time the contracts were ~~approved~~ executed, regardless of whether the contracts were approved before or after June 1, 2010.

Alternatively, the paragraph could be deleted to avoid confusion. The statute is clear on the points that the paragraph is apparently attempting to summarize, and further efforts to summarize this portion of the statute might lead to further confusion.

Respectfully submitted this 14th day of May, 2012 at San Francisco, California.

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By /s/ Brian T. Cragg

Brian T. Cragg

Attorneys for the Independent Energy
Producers Association

VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Comments of the Independent Energy Producers Association on the Proposed Decision on Compliance Rules," dated May 14, 2012. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 14th day of May, 2012, at San Francisco, California.

/s/ Brian T. Cragg

Brian T. Cragg