

**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)

**RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN OF
CONSTELLATION NEWENERGY, INC.**

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Pursuant to the April 5, 2012 Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on new Proposals (“Assigned Commissioner’s Ruling” or “ACR”), issued by Commissioner Mark Ferron of the California Public Utilities Commission (“Commission” or “CPUC”), Constellation NewEnergy, Inc. (“CNE”) submits the following Renewables Portfolio Standard (“RPS”) Procurement Plan. In accordance with the Assigned Commissioner’s Ruling, Constellation provides the following responses to sections 6.1 through 6.5.

CNE is an electric service provider (“ESP”) registered with the CPUC to serve commercial customers in California participating in the direct access program. CNE is in full compliance with its procurement obligations under the RPS and resource adequacy programs, and all other terms and conditions required of a registered ESP. Unlike the investor owned utilities (“IOUs”), CNE’s load is fully contestable at the customer’s choice such that at the end of their contract term they could renew with CNE, or they could decide to move to other ESPs or return to the IOUs. Against this backdrop, CNE undertakes its procurement activities to meet regulatory and commercial obligations while managing market and regulatory risks.

I. Assessment of RPS Portfolio Supplies and Demand - § 399.13(a)(5)(A) (Section 6.1 of the Assigned Commissioner’s Ruling)

Section 6.1 of the Assigned Commissioner’s Ruling requests:

Provide a written description assessing annual or multi-year portfolio supplies and demand to determine the retail seller’s optimal mix of eligible renewable energy resources. In addition, the assessment should consider, at a minimum, a 10-year planning horizon. This written description must include the retail seller’s need for RPS resources with specific deliverability characteristics, such as, peaking, dispatchable, baseload, firm, and as-available capacity. It should also address the retail seller’s need for and plan for procuring resources that satisfy the three portfolio content categories of RPS procurement. This written description must explain how the proposed renewable energy portfolio will align with expected load curves and durations. It must also explain how quantitative analysis provided in response to section 6.5 supports the assessment.

A. Assessment of annual or multi-year portfolio supplies and demand (forecast out to 10-years)

Because retail suppliers typically do not have retail customer contract commitments that exceed 36-months, 10-year forecasts are not used. CNE sources supplies from the competitive regional markets, and structures its purchases to hedge its retail commercial commitments with corresponding supply commitments. Based on its best estimate of customer demand, CNE undertakes RPS procurement consistent with the regulatory obligation’s compliance horizon. Consistent with its risk management practices, CNE builds its portfolio consistent with regulatory obligations, and corresponding customer commitments.

B. Constellation’s need for RPS resources with specific deliverability characteristics, including peaking, dispatchable, baseload, firm and as-available.

The RPS procurement obligation is an *energy-based* obligation for the applicable percentage of MWhs over the particular compliance period. Accordingly, CNE does not procure RPS eligible generation for capacity or ancillary service characteristics. Instead, capacity requirements are procured separately consistent with RA obligations, and ancillary services needed for load

following, voltage support, and regulation are purchased through the CAISO ancillary service markets.

C. Need for and plan for procuring portfolio content category requirement.

CNE anticipates undertaking RPS procurement from the regional market in a manner that optimizes available supplies consistent with established RPS procurement requirements, some of which are still under development by the CPUC. Currently, CNE anticipates that procurement will seek to optimize against variable customer demand and two dimensions of the RPS procurement obligation: namely, the “total volume requirement” and the “content category mix requirement” applicable for the compliance period. CNE will seek to secure during a compliance period the mix of resources that would minimize stranding of procurement due to inability to bank surplus of most product types or shorter duration commitments. This strategy will focus on the escalating Product 1 category requirements and the decrementing Product 3 category. CNE will also seek to incorporate renewable Distributed Generation (“DG”) as part of its RPS portfolio as market rules develop for the use of DG to meet the RPS requirements.

D. Description of how procurement will meet Constellation’s load forecasts

As previously mentioned, CNE’s loads are fully contestable, and the RPS obligation is based upon served loads, so CNE must seek to balance its regulatory obligations for duration and RPS product type over the compliance period. Under the previous RPS program structure, CNE avoided developing procurement deficits and instead utilized a strategy of maintaining a bank of eligible procurement to help address variations in loads or RPS eligible supplies. However, under the new program, procurement of excess RPS eligible generation is subject to specific restrictions on what can be carried from one compliance period to the next, such that some forms of procurement will be stranded if not used in the compliance period in which they are procured.

Moreover, current CPUC rules prohibit Product 1 or Product 2 compliance instruments from being bought or sold with their original compliance categorization intact. Because RPS product pricing can vary significantly by product type, this restriction on the ability to re-market products that may be surplus due to load changes will require CNE and all other load serving entities to analyze the most efficient manner to balance the higher cost Product 1 resource procurement requirement against a potential stranding of Product 2 or 3 surpluses. Depending on how compliance rules are structured and how availability of Product 1 develops during the compliance period, the short-term nature of retail choice customer commitments may make achieving the portfolio mix requirement challenging and could increase customer migration.

II. Potential Compliance Delays - § 399.13(a)(5)(B) (Section 6.2 of the Assigned Commissioner’s Ruling)

Section 6.2 of the Assigned Commissioner’s Ruling requests:

Describe in writing any potential issues that could delay RPS compliance, including inadequate transmission capacity and the relationship, if any, to deliveries and project development delays by, for example, permitting, interconnection, or other circumstances. Describe the steps taken to account for and minimize these potential compliance delays. The potential compliance delays included in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the compliance delays will impact the retail seller’s net short and its procurement decisions.

A. Description of potential issues that could delay RPS compliance

CNE, a retail provider, typically contracts for resources from the regional markets to supply its loads and meet regulatory requirements. CNE directly seeks out arrangements with counterparties involved in project development and can negotiate contracts initiated in the brokered markets. CNE looks for resources that have achieved, or are close to achieving, commercial operations. In those cases the developer has addressed its permitting, engineering,

procurement and construction requirements, and interconnection requirements with the CAISO and Participation Transmission Owners.

RPS compliance could be delayed to the extent that there is scarcity of eligible generation resources in the regional market, or limitations on the resources' ability to contemporaneously import or directly connect to a California Balancing Authority Area. To the extent that import limitations increase over time, portions of some Product 1 procurement may end up being converted to Product 2 or Product 3, depending on the ability to reschedule under the revised delivery rules, balancing authority area tariffs and system conditions. Such impacts may impede compliance with the content category mix requirement, but CNE does not expect at this time that such events will impede meeting the total RPS volume requirement.

B. Description of steps taken to minimize compliance delays

CNE does not undertake any transmission development, so it is not in a position to address alleviation of interconnection timing or transmission availability issues. Moreover, as noted above, in contracting for RPS resources, CNE will typically do so with projects that are on-line or where the on-line date is known with a high degree of certainty. In addition, CNE is actively engaged on an ongoing basis in the renewable energy markets, and enters into renewable transactions to meet its requirements. CNE's ongoing and active monitoring of market conditions is a key element of its ability to avoid and/or minimize compliance delays.

C. Description of the impact of delays on Constellation's net short and procurement decisions

If project developers in the regional market experience delays in reaching commercial operations, CNE may anticipate scarcity issues around meeting the content mix requirement (which is distinct from the total volume requirement).

III. Project Development Status Update - § 399.13(a)(5)(D) (Section 6.3 of the Assigned Commissioner’s Ruling)

Section 6.3 of the Assigned Commissioner’s Ruling requests:

Provide a written status update on the development schedule of all eligible renewable energy resources currently under contract but not yet delivering generation. This written status update may rely upon the most recent filed Project Development Status Reports but must elaborate upon these reports. Providing a copy of the Project Development Status Report will not be a sufficient response. The status updates provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5, below. Given this analysis, discuss how the status updates will impact the retail seller’s net short and its procurement decisions. Project Development Status Reports shall continue to be filed twice a year based on a schedule directed by the Commission’s Energy Division Director.

- A. *Update on development schedule for resources not yet online.*
- B. *Impact of schedule on Constellation’s net short and procurement decisions*

Electrical corporations file the project development status reports. All resources noted in CNE’s last RPS Progress Report, submitted to the CPUC in March, 2012, have achieved commercial operations.

IV. Risk Assessment - § 399.13(a)(5)(F) (Section 6.4 of the Assigned Commissioner’s Ruling)

Section 6.4 of the Assigned Commissioner’s Ruling requests:

Provide a written assessment of the risk of failure to build or of construction delay for eligible renewable energy resource projects currently under contract. The risk assessment provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the risk assessment will impact the retail seller’s net short and its procurement decisions. The written assessment must explain how quantitative analysis provided in response to section 6.5 supports this response.

At present, these risks are not applicable to CNE’s portfolio as the supplying resources have achieved commercial operations.

V. Quantitative Information - §§ 399.13(a)(5)(A),(B), (D) and (F) (Section 6.5 of the Assigned Commissioner's Ruling)

Section 6.5 of the Assigned Commissioner's Ruling provides:

In addition to the written descriptive responses to section 6.1 through 6.4, provide quantitative data, methodologies, and calculations relied upon to assess the retail seller's RPS portfolio needs and procurement net short. This quantitative analysis must take into account, where appropriate, the quantitative discussion requirement by sections 6.1-6.4, above. As stated above, the portfolio assessment should be for a minimum of ten years in the future. The responses must be clear regarding the quantitative progress made towards RPS requirements and the specific risks to the electrical corporation's RPS procurement portfolio. Risks may include, but are not limited to, project development, regulatory, and market risks. The quantitative response must be provided in an Excel spreadsheet or similar format.

The Commission's Energy Division Staff will hold a workshop for retail sellers and all interested parties to develop a methodology, inputs, and format, as needed, for reporting the quantitative information required here. This will include a discussion on the definition of the net short to be calculated for the RPS Procurement Plans and the extent to which it takes into account a utility's need to satisfy future electric load and/or RPS procurement requirements. The date of this workshop will be announced in the near future. Once a methodology is developed, it shall be incorporated in either the draft or final 2012 Procurement Plans, depending on the availability of the final methodology.

Due to ongoing uncertainties about the overall RPS compliance framework, and because of the shorter term nature of CNE's load, preparation of 10 year supply and demand balance is not feasible. The following describes the process that CNE follows in determining its RPS procurement requirements:

- (1) CNE matches its procurement to the load it has under contract, which typically is no longer than three or fewer years. Accordingly, while CNE has found its load to be fairly stable on a year to year basis, its procurement to meet its load requirements reflects this contract duration. CNE anticipates regulatory risks through its involvement in regulatory proceedings at the CPUC and CEC and its monitoring of legislative activities impacting the energy markets, and incorporates developments in ongoing analysis of potential wholesale supply transactions including RPS;
- (2) CNE's net short position is a function of customer load commitments over the compliance period. Put simply, CNE will seek to procure RPS compliant energy based on an estimate of customer loads during the compliance period with adjustments as final load figures become available. The net short or long position would be the difference between the anticipated loads and procured quantities. Because of narrow eligibility for carrying forward excess procurement, CNE needs to balance its procurement during the compliance period with

potential load migration changes to minimize potentially stranded procurement due to load migration or energy demand forecast changes.

- (3) A number of significant and material elements of the compliance program are currently pending before the Commission that will necessarily drive compliance strategies in light of the shorter-term nature of customer commitments. Additionally, the Air Resources Board's GHG program rules are also under development with respect to what the GHG obligation will be for Product 2 imported power, and the final rules will impact RPS portfolio compliance strategies. Until those program elements are finalized a quantitative analysis as requested here would be speculative.

VI. Conclusion

CNE provides this submission in compliance with the April 5, 2012 Assigned Commissioner's ruling. As described herein, CNE takes its RPS energy procurement compliance obligations seriously and is actively engaged with the Commission's processes in developing the new implementation requirements. CNE undertakes procurement actions commensurate with the shorter-term nature of our customer commitments.

Dated: May 23, 2012

Respectfully submitted,

/s/

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VERIFICATION

I am the attorney for Constellation NewEnergy, Inc. (“Constellation”) and am authorized to make this verification on its behalf. Constellation is absent from the County of Sacramento, California, where I have my office, and I make this verification for that reason. 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 May 23, 2012 at Sacramento, California.

/s/

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