

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 STAFF PROPOSAL FOR A METHODOLOGY TO IMPLEMENT
PROCUREMENT EXPENDITURE LIMITATIONS
FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM



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Pursuant to the July 23, 2013 ruling of ALJ Simon, The Utility Reform Network (TURN) hereby submits these opening comments on the staff proposal for a methodology to implement the Procurement Expenditure Limitation (PEL) contained in Public Utilities Code §399.15 and enacted in SBx2 (Simitian). As an active participant in the legislative negotiations surrounding this portion of SBx2, TURN has a strong interest in ensuring that the Commission faithfully implements the cost containment provisions in a manner consistent with the intent of the Legislature.

Due to staffing constraints and simultaneous deadlines across major Commission proceedings, TURN is unable to respond to the comprehensive list of questions provided in the ALJ ruling. Instead, TURN offers brief comments on the staff proposal and suggests, at a high level, a possible alternative approach that would satisfy the statutory requirements and provide useful information to utilities, policy makers and the public.

TURN agrees with the guiding principles articulated in the ruling and appreciates the hard work by Commission staff to date on the development of a draft PEL methodology.¹ Although TURN has serious concerns about some elements of the draft proposal, a modified version could be appropriate for implementing the requirements of §399.15 in a transparent, logical and helpful manner.

¹ ALJ July 23, 2013 ruling, page 7.

I. THE STAFF PROPOSAL IS LIKELY TO LEAD TO SIGNIFICANT CONFUSION AND MISUNDERSTANDING REGARDING THE EXPENDITURE LIMITATIONS

The staff proposal would yield a forecast highlighting the portion of total utility revenue requirements consumed by RPS costs over a 10-year planning horizon. Under this approach, the Commission would adopt limits on the % of total revenue requirements that could be applied to direct RPS compliance costs. TURN is concerned that these raw percentages are likely to be widely misunderstood and may lead to greater confusion rather than more clarity on the real-world cost impacts of the RPS program.

Although the staff proposal explicitly does not attempt to forecast actual retail rate impacts, the PEL forecasts are likely to be interpreted quite differently by the public and many decision makers. For example, a forecast that RPS procurement will comprise 25% of a utility's overall revenue requirement may be understood by those outside the regulatory bubble to indicate a 25% rate increase. Alternatively, there will be a temptation to compare the costs to the percentage of RPS energy in the overall utility portfolio in an attempt to perform a simplified calculation of net rate impacts. Neither of these takeaways would be accurate and both could undermine the goal of establishing a transparent and understandable PEL methodology that informs the public debate.

Absent a more comprehensible set of outputs, the Commission is likely to find itself continually responding to incorrect press reports, unfounded accusations by Legislators and other forms of mistaken characterizations regarding the PEL and the cost of the RPS program. No one would be served by the inevitable confusion and misunderstanding that would result. In order to prevent this result, and to comply with the direct requirements of the RPS statutory provisions, the Commission should

adopt a PEL based on forecasted net retail rate impacts. This change is discussed in Section III.

II. MODIFICATIONS TO THE METHOD FOR CALCULATING PROCUREMENT EXPENDITURES

The proposed methodology for calculating procurement expenditures is relatively straightforward but incomplete. Under the staff proposal, forecasted future expenditures are calculated based on anticipated payments under existing and new contracts and estimated revenue requirements for any Utility-Owned Generation (UOG) resources. TURN has identified major concerns relating to success rates for contracted generation under development and the absence of any assumption that forecasted procurement in excess of RPS targets will be banked or resold.

The first concern relates to the apparent assumption of a 100% success rate for utility contracts with facilities that are under development and have not yet achieved commercial operation. This assumption is inconsistent with the requirement in §399.15(c)(3) to account for “the potential that some planned resource additions may be delayed or canceled.” Moreover, utilities typically assume some level of nonperformance for contracts executed with facilities that are not yet operational as part of their own portfolio planning and intentionally procure in excess of their future targets to account for some amount of contract failures. Utilities are expressly directed, pursuant to §399.13(a)(4)(D), to assume a margin of overprocurement to mitigate the risk of nonperformance.² It is therefore reasonable to discount the expected future costs of any contracts with facilities that are not yet operational.

² Cal. Pub. Util. Code §399.13(a)(4)(D) (“An appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to mitigate the risk that renewable projects planned or under contract are delayed or canceled. This paragraph does not preclude an electrical corporation from voluntarily proposing a margin of procurement above the appropriate minimum margin established by the commission.”)

For purposes of the PEL, TURN recommends applying a 70% success rate to contracts with facilities not yet operational. This discount rate is consistent with assumptions made by utilities (particularly SCE) as part of the procurement planning process. The 70% success rate should also be assumed to apply to any generic procurement needed to fill the renewable net short since the IOUs are highly likely to contract with facilities under development via RPS solicitations, RAM solicitations, FIT contracts and other mechanisms to fill their net short positions.

The second concern relates to the assumption that forecasted excess procurement has no value unless the utility has an executed contract to sell future output from RPS generation under contract or ownership to another retail seller. Because the RPS program has multi-year compliance periods, utilities are likely to focus on selling excesses associated with current and near-term compliance deadlines. Projected excesses associated with deliveries more than five years in the future are unlikely to be sold to third parties so far in advance. As a result, any forecast of long-term excess that does not assume some sales is likely to overstate costs and the utility's likely compliance position. TURN therefore recommends that the Commission consider adjustments to the PEL that would discount a fraction of future year excess procurement to account for the real-world likelihood that such excesses will be resold to other retail sellers.

III. THE PROCUREMENT EXPENDITURE LIMITATION SHOULD PRODUCE A FORECAST OF RETAIL RATE IMPACTS

Although the staff proposal is well suited to forecasting the total revenue requirements associated with procurement credited to the RPS compliance of each utility, it does not allow for the calculation of the associated retail rate impacts. The proposed PEL only reveals RPS procurement costs as a fraction of total forecasted revenue requirements. This information does not allow for a determination of retail rate impacts because there is no consideration of how total revenue requirements

would change if the utility procured alternative resources in lieu of RPS-required generation.

Retail rate impacts are important under the RPS statutory provisions for two purposes. First, the Commission is directed by §399.15(d)(1) to set the PEL at a level “that prevents disproportionate rate impacts”. Second, the Commission may direct utilities to continue procuring RPS energy, even after exceeding the PEL, pursuant to §399.15(f) so long as the procurement will not result in more than a “de minimis increase in rates”. It is not obvious how the proposed PEL would allow either test to be applied.

In order to determine the impact on retail rates, the PEL should attempt to calculate the difference between the costs of RPS procurement and alternative conventional resources. The Commission’s 33% RPS implementation analysis used this type of analysis based on the E3 model and reviewed the relative projected rate impacts under various scenarios including all-gas, 20% renewables and a 33% reference case. TURN believes that the Commission should consider using a similar model to forecast RPS rate impacts for each utility.

Using the E3 model for the PEL should be a less complicated exercise than the 33% RPS implementation analysis. For purposes of the PEL, the Commission should limit its consideration to the rate impacts of direct RPS procurement costs and need not forecast any possible changes in transmission costs, system integration costs or other difficult-to-measure and highly disputed indirect costs.³ Direct RPS procurement costs can be based on the methodology provides in the staff proposal subject to the adjustments proposed in Section II.

³ The Commission is precluded from considering these indirect costs pursuant to §399.15(d)(3).

IV. CONSIDERATION OF SPECIFIC MARKET BENEFITS ASSOCIATED WITH RENEWABLE POWER

The proposed PEL does not take into account two key ratepayer benefits of increased renewable power development – a reduction in GHG allowance prices and lower energy prices in wholesale markets. Under an alternative scenario in which there were no renewable energy requirements, and less RPS-eligible renewable energy produced, GHG allowance prices would be significantly higher (assuming the same overall statewide cap). Higher allowance prices would be flowed through to ratepayers in the form of higher procurement costs under a no-RPS base case.

Moreover, it is beyond dispute that the operation of increasing quantities of both intermittent and baseload renewable generation, with near-zero dispatch costs, depresses wholesale market energy prices (both real-time and forwards). This impact offers real benefits to ratepayers in the form of lower conventional procurement costs. Under a base case in which less RPS-eligible renewable energy is produced (*i.e.* 0% or 20%), wholesale market energy prices would be higher.

The Commission should consider making price-elasticity adjustments for both GHG allowance costs and wholesale energy prices to reflect these benefits (or costs). TURN understands that there may be significant debate about the magnitude of these benefits (or costs) but believes that there is little doubt that they exist. The PEL model should attempt to capture these benefits, if possible, in determining the likely rates under a base case (or “all-gas” scenario).

**V. DISPROPORTIONATE RATE IMPACT SHOULD BE SET AT 10%
PENDING A REVIEW OF MODELING RESULTS**

TURN recognizes the difficulty of converting the “disproportionate rate impact” standard to a particular number. For purposes of the PEL under the RPS program, TURN proposes modeling a 10% retail rate impact to cap maximum renewable procurement expenditures. There is no magic to the choice of a rate impact cap and TURN is may modify this recommendation based on the results of modeling. Importantly, TURN does not believe that the rate impact level chosen for the PEL should have applicability beyond this mechanism. The PEL is set based on unique statutory language (“disproportionate rate impact”) that cannot be found elsewhere in the Public Utilities Code and is not consistent with the “just and reasonable” test typically applicable to Commission review of utility spending.

As indicated previously, rate impacts should be based on a comparison, for each utility, of an all-gas scenario to the latest updated RPS portfolio projections. By all-gas, TURN means a scenario in which each utility is assumed to meet all incremental needs with conventional resources after a certain date. TURN is open to the selection of different start dates for this purpose including 2001 (upon the enactment of the 20% RPS program) or sometime later in that decade (consistent with the 2007 date used in the E3 analysis). Given the limited additions of renewable power to utility portfolios between 2001 and 2007, it does not appear that the choice between these two dates will have a material impact on the overall analysis.

VI. CONCLUSION

TURN appreciates the hard work by Commission staff to propose a possible implementation for the PEL and looks forward to responding to other proposals and to participating in upcoming workshops and submitting comments.

Respectfully submitted,

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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 September 26, 2013, at San Francisco, California.

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Matthew Freedman
Staff Attorney