

**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 CALIFORNIA LARGE ENERGY CONSUMERS
ASSOCIATION, THE ENERGY PRODUCERS AND USERS
COALITION, AND THE CALIFORNIA MANUFACTURERS AND
TECHNOLOGY ASSOCIATION ON PROPOSED ALTERNATE
PROCUREMENT EXPENDITURE LIMITATIONS FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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ON PROPOSED ALTERNATE PROCUREMENT EXPENDITURE LIMITATIONS
FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

These comments on alternate proposals for Procurement Expenditure Limitations (PEL) for the Renewables Portfolio Standard Program (RPS) are submitted pursuant to the Administrative Law Judge's Ruling dated September 9, 2013. The California Large Energy Consumers Association¹ (CLECA), the Energy Producers and Users Coalition² (EPUC) and the California Manufacturers and Technology Association (CMTA)³ (collectively, Large Users)⁴ jointly submit these comments.

¹ CLECA is an ad hoc organization of large, high load factor industrial electric customers of Southern California Edison Company and Pacific Gas and Electric Company. CLECA has been an active participant in Commission regulatory proceedings since 1987.

² EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, Chevron U.S.A. Inc., ExxonMobil Power and Gas Services Inc., Phillips 66 Company, Shell Oil Products US, Tesoro Refining & Marketing Company LLC, THUMS Long Beach Company, and Occidental Elk Hills, Inc.

³ CMTA works to improve and enhance a strong business climate for California's 30,000 manufacturing, processing and technology based companies. Since 1918, CMTA has worked with state government to develop balanced laws, effective regulations and sound public policies to stimulate economic growth and create new jobs while safeguarding the state's environmental resources. CMTA represents businesses from the entire manufacturing community -- an economic sector that generates more than \$250 billion every year and employs more than 1.5 million Californians.

⁴ While CLECA/EPUC/CMTA have joined together in these comments, the parties reserve the right to participate separately in the proceeding as appropriate.

I. INTRODUCTION

Three diverse alternatives (including the modifications proposed by Large Users) offer different methods than the Staff Proposal for the Commission's consideration in setting the PEL. The efforts by staff and parties in helping the Commission meet its statutory obligation under SB 2 (1X) to establish PELs that prevent disproportionate rate impacts should be commended; this is a challenging endeavor. The PELs are mandated to protect ratepayers, and the statute does not limit application of the PEL to only some RPS procurement. Rather, the statute explicitly applies the limitation to "all eligible renewable energy resources used to comply with the renewables portfolio standard."⁵ Further, the statute provides that, once the PEL is hit, the rate increases associated with any additional procurement should be "*de minimis*."⁶

Large Users accordingly still support use of their recommended modifications to the Staff Proposal to limit RPS procurement expenditures that would result in an impermissible, disproportionate rate impact. Limiting incremental annual RPS expenditures to the annual average of the prior three year's RPS costs on a \$/MWh basis, as Large Users suggest, should allow continued RPS procurement while preventing disproportionate rate impacts. SCE's proposal may offer a reasonable alternative for preventing

⁵ PU Code §399.15(c)(emphasis added).

⁶ PU Code §399.15(f) ("If the cost limitation for an electrical corporation is insufficient to support the projected costs of meeting the [RPS] requirements, the electrical corporation may refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation, unless eligible renewable energy resources can be procured without exceeding a de minimis increase in rates, consistent with the long-term procurement plan established for electrical corporation pursuant to Section 454.5.").

disproportionate rate impacts, but from a ratepayer perspective, neither the Staff Proposal nor the LSA/CalWEA Proposal appear workable.

II. COMMENTS

The RPS cost containment provisions focus on the impact to ratepayers of the RPS. Notably, these provisions were neither deleted nor changed by the Perea Bill (AB 327), recently signed into law by Governor Brown. While the Commission may now order RPS procurement above the 33% level, the cost containment provisions should also apply to that RPS procurement. Contrary interpretations would nullify the cost containment sections mandating the PEL and limiting rate impacts of additional procurement to a “de minimis” level.⁷

A. SCE’s Alternate Proposal May Be Supportable, If Its Effectiveness Can Be Demonstrated

Large Users may support use of Southern California Edison Company’s alternative proposal (SCE Proposal), if it could be proven to be an effective restraint on RPS costs that would lead to disproportionate rate impacts. SCE proposes to limit RPS costs with an Acceptable Renewable Rate, which is the \$/MWh costs of the prior year’s non-renewable generation revenue requirement, escalated by 2.75% plus a 25% renewables premium.⁸ SCE also proposes use of a longer-term Acceptable Renewable Budget to set “a total bucket of money to be spent on renewable procurement” for a ten year period; this budget would be

⁷ See, e.g., *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357, 19 Cal.Rptr.2d 882, 852 P.2d 377 [“An interpretation that renders statutory language a nullity is obviously to be avoided”].

⁸ See SCE Alternate Proposal in Response to Administrative Law Judge’s Ruling Requesting Comments on Staff Proposal For a Methodology To Implement Procurement Expenditure Limitations For the Renewables Portfolio Standard Program (SCE Alternate Proposal), at 2-3.

calculated with a 10 year forecast of Acceptable Renewable Rates times the forecasted adjusted renewable net short for each year.⁹ Generally, this proposal seems reasonable, with the use of the prior year's cost data as a starting point; however Large Users must reserve judgment as to the level of renewables "buffer." Without access to RPS cost data, it cannot be determined whether 25% is an appropriate level for a renewable premium. Additionally, the sensitivity of the SCE proposal to significant variations in fossil fuel prices is uncertain.

Ideally, SCE would be able to publicly demonstrate the effectiveness of its proposal with current RPS cost data and scenarios addressing the impact of fossil fuel volatility at the workshop tentatively scheduled for November 20, 2013. The Commission's existing confidentiality rules, however, would hinder this necessary evaluation, as RPS cost data is generally redacted for a period of three years following the online date of an RPS project; a pending, preliminary staff proposal to clarify and improve confidentiality rules for the RPS program would unmask redacted cost data and enable this necessary evaluation, if adopted prior to the workshop.¹⁰ Large Users urge expedited adoption of the proposed clarifying and improving revisions to RPS confidentiality rules to enable an informed public discussion of the proposed PELs using current RPS costs.

⁹ See SCE Alternate Proposal, at 5-6.

¹⁰ See Administrative Law Judge's Ruling Requesting Comments On Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program, dated July 1, 2013.

B. The Commission Should Not Use Staff's Proposal or the LSA/CalWEA Proposal to Set the PEL

Without modification, from a ratepayer perspective, neither Staff's Proposal nor the proposal by the California Wind Energy Association (CalWEA) and the Large-Scale Solar Association (LSA) (LSA/CalWEA Proposal) should be adopted. As previously noted, Staff's Proposal would merely track RPS costs with a rolling forecast and would not serve to prevent disproportionate rate impacts.¹¹ The LSA/CalWEA Proposal seems similarly flawed, appearing procedurally unwieldy, time-consuming and complex.

The LSA/CalWEA Proposal would rely on multiple Energy Division calculations of 20 year forecasts of system average retail rates; these forecasts would have to be calculated for "both the RPS Mandate and the No Mandate cases, for all three gas price scenarios and for the different RPS scenarios".¹² The LSA/CalWEA Proposal thus requires an updated RPS calculator, which itself would involve several process steps and possibly use of an independent consultant to help with the RPS calculator update.¹³ It also requires development of multiple scenarios and cases to produce long-term forecasts.¹⁴ The development of different RPS scenarios, let alone the "No Mandate" cases, could become a lengthy, litigious undertaking. A simpler solution, such as the proposal

¹¹ See Large User's Comments, dated Sept. 26, 2013, at 9-11; see also Administrative Law Judge's Ruling Requesting Comments on Staff Proposal for a Methodology to Implement Procurement Expenditure Limitations for the Renewables Portfolio Standard Program" (ALJ July Ruling), dated July 23, 2013, at 9 (Staff proposed to use a "ratio of an IOU's RPS procurement expenditures over the IOU's total revenue requirement" as compared to the ratio of the highest forecast RPS costs over the entire revenue requirement (escalated annually) over a 10-year, rolling period.)

¹² See Proposal of the California Wind Energy Association and the Large-Scale Solar Association For a Procurement Expenditure Limitation for the California Renewables Portfolio Standard Program (LSA/CalWEA Proposal), at 8.

¹³ See LSA/CalWEA Proposal, at 8-9.

¹⁴ See LSA/CalWEA Proposal,, at 9-11.

by Large Users to rely on the annual average RPS costs for the prior three years, would be easier to calculate and easier to implement. Moreover, the use of historical data would be less error-prone as compared to the use of multiple, long-term forecasts.

Indeed, most, if not all, of the multiple 20-year forecasts would likely prove inaccurate. LSA/CalWEA rightly acknowledge the difficulty in “setting a PEL that accurately forecasts the future” and provide for revised PELs whenever the limitation is close to being hit.¹⁵ To meet the SB 2 (1X) requirement that it prevent disproportionate rate impacts, the PEL must actually affect RPS procurement. Recognizing the likely inaccuracy of the long-term forecasts, however, the LSA/CalWEA Proposal permits changes if the PEL is approached. So not only could the long-term forecasts prove inaccurate, the resulting limitation can be revised to enable further procurement.¹⁶ From a ratepayer perspective, it seems unlikely that the LSA/CalWEA Proposal would serve to prevent disproportionate rate impacts.

Additionally, PU Code §399.15(d)(3) requires exclusion of indirect expenses from the PEL.¹⁷ The LSA/CalWEA Proposal, however, like the Staff Proposal, appears to include such expenses. The Staff Proposal included the indirect expenses with its use of the total system revenue requirement; the LSA/CalWEA Proposal includes the indirect expenses by using system average

¹⁵ See LSA/CalWEA Proposal, at 11.

¹⁶ See LSA/CalWEA Proposal, at 11.

¹⁷ P.U. Code § 399.15(d)(3) (“Procurement expenditures do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.”).

retail rates in setting the PEL.¹⁸ System average retail rates include such “indirect” expenses as imbalance energy charges, transmission, and hydro relicensing costs. This aspect of the LSA/CalWEA Proposal may not comport with PU Code §399.15(d)(3) and its required exclusion of such costs.

III. CONCLUSION

Large Users appreciate the opportunity to comment on the various alternative proposals and look forward to further discussion at the workshop.

Respectfully submitted,



/s/

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October 23, 2013

¹⁸ See LSA/CalWEA Proposal, at 10-11.

VERIFICATION

I am the attorney for the California Large Energy Consumers Association in this matter. CLECA 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 CLECA for that reason. I have prepared and read the attached "**COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, THE ENERGY PRODUCERS AND USERS COALITION, AND THE CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION ON PROPOSED ALTERNATE PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM,**" dated October 23, 2013. I am informed and believe that the matters stated in this document are true.

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

Executed on October 23, 2013 at San Francisco, California.



Nora Sheriff
Counsel to the
California Large Energy Consumers Association

VERIFICATION

I am an attorney for the Energy Producers and Users Coalition (EPUC) in this matter. EPUC 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 EPUC for that reason. I have read the attached **"COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, THE ENERGY PRODUCERS AND USERS COALITION, AND THE CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION ON PROPOSED ALTERNATE PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM"** dated October 23, 2013. I am informed and believe, and on those grounds allege, that the matters stated in this document are true.

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

Executed on October 23, 2013.



Nora Sheriff
Counsel to the
Energy Producers and Users Coalition

VERIFICATION

I am the Senior Vice President for the California Manufacturers and Technology Association. Under Rule 1.11 of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of CMTA. I have read the attached **"COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, THE ENERGY PRODUCERS AND USERS COALITION, AND THE CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION ON PROPOSED ALTERNATE PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM,"** dated October 23, 2012. I am informed and believe, and on those grounds allege, that the matters stated in this document are true.

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

Executed on October 23, 2013 at Sacramento, CA.

/s/

Dorothy Rothrock
Sr. VP, Government Relations
California Manufacturers and
Technology Association