

**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 INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON STAFF PROPOSAL FOR A
METHODOLOGY TO IMPLEMENT PROCUREMENT
EXPENDITURE LIMITATIONS FOR THE RPS PROGRAM**

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On July 23, 2013, Administrative Law Judge (ALJ) Anne Simon issued a ruling inviting comments on a proposal developed by the Energy Division (ED) staff for a methodology to implement a procurement expenditure limitation (PEL) framework for the Renewables Portfolio Standard (RPS) program. The ruling also invited parties to submit alternative expenditure limitation proposals.¹ On September 26, 2013 the Independent Energy Producers Association (IEP) and other parties filed opening comments on the staff proposed PEL framework. In these comments, IEP replies to the comments submitted on September 26.

The staff proposed PEL framework is relatively straightforward to develop and to implement. With minor modifications this approach can meet the requirement for the Commission to establish a limit on RPS procurement expenditures pursuant to section 399.15(c) through (g) of the Public Utilities Code. In its opening comments, IEP identified the following issues that may require modification of the staff proposal:

¹ IEP's comments on two alternative proposals are being filed separately today.

- Rather than relying on levelized prices for executed contracts, the PEL method should use the actual contract prices specified for each year;
- The forecasted quantity from projects with approved power purchase agreements (PPAs) that are not yet operating should be adjusted to reflect the likelihood that a portion of those projects will be delayed or fail to develop; and
- Utility total revenue requirements should be escalated at a rate higher than the staff's proposed 2.75% per year to reflect actual experience, which over the past 10 years has averaged 4.25%.

While the staff's proposed PEL framework does not explicitly address rate impacts, staff proposes that the resolution establishing each utility's PEL should include a finding that the PEL is set at a level that prevents disproportionate rate impacts. IEP supports giving the Commission the flexibility and discretion to determine the level of the PEL that prevents disproportionate rate impacts rather than relying on an overly prescriptive method to make that determination. As discussed in IEP's opening comments, the Commission must determine whether the rate impact is disproportionate relative to the value of the various resource planning, environmental and economic benefits afforded by the purchase of renewable energy. This evaluation is somewhat subjective and should appropriately be left to the Commission's discretion when it approves the PEL.

I. THE ENERGY DIVISION STAFF'S PROPOSAL CORRECTLY USES THE TOTAL REVENUE REQUIREMENT WHEN CALCULATING THE PEL

Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) all recommend modifying the staff proposal to replace the total revenue requirement used in the denominator of the staff's proposed

PEL ratio with the generation revenue requirement.² IEP disagrees. The rates paid by customers are based on the utility's total revenue requirement. Since the purpose of the PEL is to prevent RPS expenditures from having a disproportionate impact on rates, it is reasonable to use a PEL method that takes into account all of the costs that determine those rates.

II. THE REFERENCE CASE FOR DETERMINING WHETHER RPS RATE IMPACTS ARE DISPROPORTIONATE MUST INCLUDE THE VALUE AND BENEFITS OF RENEWABLE RESOURCES

Several parties, including SCE, PG&E, SDG&E, The Utility Reform Network (TURN), California Large Energy Consumers Association (CLECA), the California Wind Energy Association (CalWEA), and the Large-scale Solar Association (LSA), call for the staff proposal to be modified to provide a reference case to be used as a point of comparison when determining whether a given PEL would result in disproportionate rate impacts. SCE recommends that the reference case should be the non-RPS portion of the generation revenue requirement, as described in its alternative proposal.³ TURN recommends that the reference case should be an all-gas scenario.⁴ Similarly, SDG&E recommends comparing RPS costs to the cost of conventional generation.⁵ PG&E recommends defining the reference case as a 2% increase in the generation revenue requirement.⁶ CLECA recommends that future incremental RPS procurement costs should be compared to past RPS procurement costs.⁷ CalWEA and LSA, in their joint alternate proposal, recommend development of a reference case that removes the RPS mandate, but maintains all other procurement requirements and policies, including compliance with Assembly Bill (AB 32) greenhouse gas (GHG) emission caps.⁸

² SCE Opening Comments, p. 3; PG&E Opening Comments, p. 4; SDG&E Opening Comments, pp. 6-7.

³ SCE Opening Comments, p. 3 and p. 9.

⁴ TURN Opening Comments, pp. 6-7.

⁵ SDG&E Opening Comments, pp. 6-7.

⁶ PG&E Opening Comments, p. 4.

⁷ CLECA Opening Comments, p. 5.

⁸ CalWEA and LSA Alternate Proposal, pp. 5-6.

With the exception CalWEA and LSA's alternative proposal, all of these parties seek to impose a standard for evaluating rate impacts that excludes the value that renewable energy resources bring to a utility's generation portfolio independent of their contribution to meeting the RPS mandate. It is not appropriate to consider only the costs of renewable energy procurement while ignoring these benefits, which include portfolio diversity and fuel price hedging, environmental benefits including GHG emissions reductions, and the economic benefits of local taxes and jobs derived from renewable resource development and procurement. The value of these benefits must be considered when determining whether the cost of procuring these resources is disproportionately larger than the value ratepayers receive. If the Commission chooses to rely on a specific pre-defined method to determine whether a PEL prevents disproportionate rate impacts, it must employ an approach like the one proposed by CalWEA and LSA, which establishes as a point of reference a scenario that continues to meet all of the procurement mandates and policies that govern utility procurement other than the 33% RPS requirement.

III. AN UPDATED PEL SHOULD SUPERSEDE PRIOR PELS ESTABLISHED FOR THE SAME PERIOD

The Energy Division staff proposes updating the PEL every two years. PG&E recommends establishing a new PEL every two years for the ten-year period beginning on the date the PEL is established (*e.g.*, a PEL would be established in 2014 for the period 2014-2024 and in 2016 for the period 2016-2026, etc.). PG&E suggests that the Commission, when applying the PEL to individual contracts, should use the lowest PEL that exists at the time of contract execution (*e.g.*, for a 2017 contract, there would be two PELs: one from 2014 and one from 2016).

Rather than picking the lowest PEL from dated forecasts, the Commission should use the most recent adopted PEL, which will reflect the most up-to-date information on costs, renewable net short quantities, and other input assumptions.

IV. INDIRECT COSTS ASSOCIATED WITH RPS PROCUREMENT SHOULD BE EXCLUDED WHEN DETERMINING THE PEL AND WHEN EVALUATING WHETHER THE PEL PREVENTS DISPROPORTIONATE RATE IMPACTS

The Division of Ratepayer Advocates (DRA) recommends that both direct and indirect costs of RPS procurement, including renewable integration costs and the costs of transmission and distribution upgrades, should be considered when determining whether the 33% RPS program has created disproportionate rate impacts. DRA claims, “While [Public Utilities Code] Section 399.15(d)(3) prohibits the Commission from considering any indirect costs as procurement expenditures, nothing in the statute prohibits including indirect costs in any determination of disproportionate rate impacts.”⁹

DRA’s interpretation is inconsistent with the statutory scheme. DRA focuses only on Public Utilities Code section 399.15 (d)(3), which states that procurement expenditures do not include indirect expenditures. The purpose for calculating the procurement expenditures, however, is to set the “limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard.”¹⁰ Furthermore, the Commission is instructed to ensure that “the limitation is set at a level that prevents disproportionate rate impacts.”¹¹ It would be inconsistent to exclude indirect costs when calculating procurement expenditures (*i.e.*, when adding up the costs of the RPS program) and then to include those costs when determining the rate impact of those very same procurement expenditures. The only reasonable interpretation of section 399.15(d) is that the

⁹ DRA Opening Comments, p. 9.

¹⁰ Public Utilities Code § 399.15(c).

¹¹ Public Utilities Code § 399.15(d)(1).

Legislature intended to exclude indirect expenses from both the procurement expenditures subject to the limitation established by sections 399.15 (c) through (g) and the procurement expenditure limitation when determining if the limitation would prevent disproportionate rate impacts.

V. CONCLUSION

IEP respectfully asks the Commission to consider these comments as it develops a cost containment methodology for RPS procurement expenditures in compliance with the requirements of Public Utilities Code section 399.15.

Respectfully submitted this 23rd day of October, 2013 at San Francisco, California.

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By /s/ Brian T. Cragg

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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 "Reply Comments of the Independent Energy Producers Association on Staff Proposal for a Methodology to Implement Procurement Expenditure Limitations for the RPS Program," dated October 23, 2013. 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 23rd day of October, 2013, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg