

**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 ALLIANCE FOR RETAIL ENERGY MARKETS ON REVISED
STAFF PROPOSAL AND UPDATED ALTERNATIVE PROPOSALS FOR A
METHODOLOGY TO IMPLEMENT PROCUREMENT EXPENDITURE
LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Andrew B. Brown
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

March 19, 2014

Attorneys for the Alliance for Retail Energy Markets

**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 ALLIANCE FOR RETAIL ENERGY MARKETS ON REVISED
STAFF PROPOSAL AND UPDATED ALTERNATIVE PROPOSALS FOR A
METHODOLOGY TO IMPLEMENT PROCUREMENT EXPENDITURE
LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Pursuant to the February 20, 2014 *Administrative Law Judge's Ruling Requesting Comments on Revised Staff Proposal and Updated Alternative Proposals for a Methodology to Implement Procurement Expenditure Limitations for the Renewables Portfolio Standard Program* ("ALJ Ruling") and the February 28, 2014 ruling revising the comment schedule,¹ the Alliance for Retail Energy Markets ("AReM")² provides the following comments on the ALJ Ruling and proposals for a procurement expenditure limitation ("PEL") for the renewables portfolio standard ("RPS") program as administered by the California Public Utilities Commission ("Commission").

AReM does not provide specific comments or recommendations for the PEL methodology itself, but instead focuses on how to avoid competitive market impacts that will be triggered when and if California's investor-owned utilities ("IOUs") are excused from

¹ See February 28, 2014 *Administrative Law Judge's Ruling Revising Schedule for Filing and Service of Revised Staff Proposal and Alternative Proposals for a Methodology to Implement Procurement Expenditure Limitations for the Renewables Portfolio Standard Program*.

² AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

incremental procurement to meet the RPS because the PEL has been reached. While the statute requires a PEL for the IOUs only, that statute does not prohibit the Commission from considering the impact of the PEL on the overall RPS market as it determines how best to implement it. Indeed, the section of statute that calls for the Commission to establish the PEL for the IOUs is the same section that sets forth conditions pursuant to which all retail sellers can (and should) seek waivers on RPS procurement. Therefore, to ensure that the RPS program functions equitably for all retail sellers and their customers, the Commission should consider mechanisms that will provide non-IOU retail sellers with additional procurement flexibility should market conditions warrant relieving an IOU from continuing its renewable procurement should its PEL be reached.

I. If the PEL is Triggered, the Commission Must Consider Impacts on Non-Utility Market Participants

Under the Staff proposal, as well as other proposals for the PEL, the PEL functions essentially as a “safety-valve” pursuant to which the IOUs will be excused from additional, incremental renewable procurement upon reaching the PEL, assuming no additional procurement can be procured at a “de minimis” cost. Providing an explicit trigger that will exempt IOUs from additional renewable procurement and the associated higher customer costs will confer a unique competitive advantage in comparison to non-IOU retail sellers.

AReM requests that the Commission account for this potential disparity in competition by promoting a level playing field. To do so, the Commission should ensure that some form of flexibility is provided to electric service providers (“ESPs”), and their direct access customers, when and if the PEL is triggered for an IOU, so that ESPs’ customers are not unfairly saddled

with high RPS costs, and so that both bundled and direct access customers are afforded equitable treatment if the IOU's PEL is triggered.

II. To Help Promote Competition and Cost-Effective Renewable Procurement, Once an IOU Reaches its PEL and is Excused from Additional Renewable Procurement, the Commission Must Keep Customer Costs Low by Expanding Procurement Waiver Options for Other Retail Sellers or Otherwise Protecting Customers of Non-IOUs

The Commission is currently considering compliance and enforcement issues for the RPS program, including the process for requesting a waiver of the procurement quantity requirement ("PQR") or a reduction of the portfolio balance requirement ("PBR").³ AReM has addressed those issues in depth in separate comments in accordance with the September 27, 2013 ruling.⁴ AReM believes there is a direct nexus between the PEL and a waiver of the PQR or a reduction of the PBR, as all three "waiver" processes would excuse IOUs from meeting the full statutory procurement obligations of the RPS program. Accordingly, as only the IOUs are afforded the PEL waiver option, the Commission should consider whether modifications to the other two waiver options are appropriate for non-IOU retail sellers if, and only if, an IOU reaches the PEL and is excused from meeting the statutory procurement obligations. For instance, if an IOU reached its PEL and was excused from additional procurement, the Commission could expand the available options justifying a PQR waiver or a PBR reduction request for non-IOU retail sellers, thereby providing those retail sellers and their customers with additional flexibility regarding their RPS procurement obligations. Similarly, the Commission could specify different

³ See the September 27, 2013 *Administrative Law Judge's Ruling Requesting Comments on Compliance and Enforcement Issues in the Renewables Portfolio Standard Program*, Sections 3.2 and 3.3.

⁴ See October 25, 2013 *Comments of AReM on Compliance and Enforcement Issues in the RPS Program*, available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M081/K528/81528951.PDF> and the November 12, 2013 *Reply Comments of AReM on Compliance and Enforcement Issues in the RPS Program*, available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M081/K492/81492761.PDF>.

criteria for evaluating requests for PQR waivers or PBR reductions for non-IOU retail sellers in the event an IOU has reached its PEL. In this way, both IOU and non-IOU customers would be equitably treated, as the IOUs could use the PEL as a method of reducing statutory procurement obligations while non-IOU retail sellers would be evenhandedly afforded expanded criteria for a waiver request, thereby conferring similar safeguards for bundled customers of the IOU and the direct access customers of ESPs.

In addition, AReM also recommends that when and if an IOU reaches its PEL and is relieved from incremental renewable procurement, the Commission should, as part of the proceeding to grant relief to the IOUs, revisit the Power Charge Indifference Amount (“PCIA”) that is charged to direct access customers. The purpose of this review would be to ensure that the calculation of the PCIA does not shift RPS costs onto those customers. For example, the PCIA is based, in part, upon forecasted expenditures. Upon reaching its PEL, an IOU would be excused from meeting the full statutory procurement targets of the RPS program. Therefore, forecasted expenditures assumed in calculating the PCIA would be inaccurate requiring the Commission to revisit the PCIA to ensure that any stranded RPS costs paid by direct access customers through the PCIA are proportionate to the new, lower procurement obligations of the IOU.

VERIFICATION

I am the attorney for the Alliance for Retail Energy Markets (“AReM”) and am authorized to make this verification on its behalf. AReM 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 March 19, 2014 at Sacramento, California.

/s/

Andrew B. Brown
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

Attorneys for the Alliance for Retail Energy Markets