

**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)

**REQUEST OF COMMERCE ENERGY, INC. TO MAKE UP ITS RENEWABLES
PORTFOLIO STANDARD COMPLIANCE PERIOD 1 PROCUREMENT QUANTITY
REQUIREMENT IN COMPLIANCE PERIOD 2**

PUBLIC VERSION

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Although the California Public Utilities Commission (“CPUC” or “Commission”) has not finalized the enforcement rules, penalty structure, or waiver process for the renewables portfolio standard (“RPS”) program,¹ Commerce Energy, Inc. (“Commerce Energy”) hereby requests that the Commission allow Commerce Energy to make up its shortfall in reaching its RPS procurement quantity requirement (“PQR”) for compliance period 1 (2011-2013) in compliance period 2, and, more specifically, by December 31, 2014. This authorized make up of the PQR shortfall should be allowed in lieu of any RPS noncompliance penalty.

I. Background

Commerce Energy inadvertently failed to procure sufficient eligible renewable products to satisfy its RPS PQR for compliance period 1. This PQR shortfall resulted, in large part, due to higher than expected load and turnover of key staff. It is important to note that Commerce Energy fully intended to satisfy its RPS procurement obligations and has put in place measures to ensure that it meets all procurement targets in the future. Earlier this year, Commerce Energy

¹ See D.12-06-038, p. 3 (“In subsequent decisions, the Commission will complete the enforcement rules, including details of the process for seeking reduction or waiver of RPS compliance obligations and the potential imposition of penalties for noncompliance with RPS obligations.”)

hired a Senior Vice President with 22 years of back office experience to build out a best in class settlements organization and has contracted with new settlements and deal capture systems which are currently in the implementation process. Furthermore, Commerce Energy is currently in the process of updating its internal load forecasting process to more accurately forecast future loads to help meet its RPS procurement obligations going forward. Commerce Energy also has two existing contracts in place that can be used to satisfy the compliance period 1 PQR shortfall by December 31, 2014.

Commerce Energy's sales number for 2013 was [REDACTED] megawatt hours ("MWhs"), almost [REDACTED] MWhs higher than its forecasted projection of [REDACTED].² Part of the discrepancy between forecasted and actual numbers was due to the fact that one of Commerce Energy's large customers added load that was previously served by self-generation, thereby creating a significant increase in energy usage and overall load served by Commerce Energy.

It is important to note that Commerce Energy's load changes on a yearly basis and is fully contestable, making any forecast more than a few years out speculative and effectively useless. As RPS procurement targets are based on retail sales numbers, Commerce Energy conducts its renewable procurement based on its annual retail sales projections. This makes it difficult to execute long-term contracts as future loads are uncertain. Additionally, based on the restrictions on carrying forward certain procurement as excess procurement, Commerce Energy must manage procurement to avoid stranding costs by over-procuring renewable products that cannot be carried forward as excess procurement.

² See Commerce Energy's 2012 Preliminary Annual 33% RPS Compliance Report for Commerce's August 2013 projection of retail sales for 2013.

While the discrepancy between forecasted retail sales and actual retail sales contributed to Commerce Energy's RPS procurement shortfall, the shortfall was compounded by new staff who incorrectly believed a "true-up" process could be used under California's RPS program to make up any compliance period procurement shortfall, as is done in many other States. Commerce Energy has updated and improved its training efforts for staff on the specific requirements of California's RPS program and the nuances of its procurement requirements. Accordingly, it does not anticipate similar misunderstandings going forward.

II. Request to Make Up PQR Shortfall

Although Public Utilities Code Section 399.15(a) provides that deficits from one compliance period will not be added to a subsequent compliance period, the Commission should authorize Commerce Energy to make up its PQR shortfall. Given the fact that the Commission has still not implemented enforcement or waiver procedures for the RPS program, Commerce Energy does not believe that it is appropriate for the Commission to impose a noncompliance penalty on Commerce for failing to meet its compliance period 1 PQR. Any noncompliance penalty imposed by the Commission against Commerce Energy would not only be entirely new, but may not be fully vetted and proportional to the actions related to the noncompliance. Accordingly, Commerce Energy believes it is more appropriate for the Commission to simply allow Commerce Energy to make up the procurement shortfall from compliance period 1 by December 31, 2014.

By allowing Commerce Energy to "backfill" its RPS PQR shortfall, the Commission will ensure that overall RPS procurement targets are satisfied, even if the overall procurement is deferred by a year. Commerce Energy believes this is a more effective result for California than imposing a penalty, especially given the uncertainty surrounding the RPS program and, in

particular, the RPS enforcement and waiver processes. Accordingly, Commerce Energy asks that the Commission allow Commerce to make up its RPS PQR deficit by December 31, 2014 rather than impose any RPS noncompliance penalty.

III. Conclusion

Commerce Energy fully expects to meet all future RPS procurement obligations and will improve its procurement practices to ensure that it meets California's renewable goals. For the reasons described above, Commerce Energy requests that the Commission not impose a noncompliance penalty against Commerce Energy but instead allow Commerce Energy to make up its compliance period 1 PQR shortfall in compliance period 2 by December 31, 2014.

Dated: August 1, 2014

Respectfully submitted,

/s/

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