

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**08-04-11
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August 4, 2011

Agenda ID#10606
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 11-05-005

This is the proposed decision of Administrative Law Judge (ALJ) Anne E. Simon. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Anne E. Simon at aes@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ SIMON** (Mailed 8/4/2011)

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)

**DECISION CLARIFYING STATUS OF CITY OF CERRITOS FOR
RENEWABLES PORTFOLIO STANDARD PURPOSES**

Summary

The City of Cerritos shall participate in the California renewables portfolio standard under the requirements and procedures applicable to local publicly owned utilities.

Procedural Background

The City of Cerritos (Cerritos) filed the Motion of the City of Cerritos for Certain Determinations (July 15, 2010) (Motion), pursuant to direction in the Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (September 2, 2009) (scoping memo) in Application (A.) 09-06-008. As required in the scoping memo and confirmed in Decision (D.) 10-01-012, Cerritos filed the Motion in Rulemaking (R.) 08-08-009, the predecessor to this proceeding.

In the Motion, Cerritos requested a determination that it should follow the rules applicable to electric service providers (ESPs) in participating in the

renewables portfolio standard (RPS) program, and proposed an initial schedule for its RPS compliance.¹ Southern California Edison Company (SCE) filed its Response to the Motion of the City of Cerritos for Certain Determinations on July 30, 2010. With the permission of the Administrative Law Judge (ALJ), Cerritos filed a reply to SCE's response on August 9, 2010.

Before any ruling on the Motion was made, Cerritos filed the Amended Motion of the City of Cerritos for Certain Determinations (December 3, 2010) (Amended Motion). In the Amended Motion, Cerritos requests that the Commission declare that Cerritos should continue to comply with the RPS program under the requirements and procedures applicable to a local publicly owned utility,² rather than as an ESP, as requested in the original Motion. SCE

¹ See Pub. Util. Code §§ 399.11-399.20. All further references to sections are to the Public Utilities Code, unless otherwise noted.

² The current RPS requirements for publicly owned utilities are set forth in § 387:

- (a) Each governing body of a local publicly owned electric utility shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.
- (b) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the State Energy Resources Conservation and Development Commission, the following:
 - (1) Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

Footnote continued on next page

filed a response to the Amended Motion on December 20, 2010. With the permission of the ALJ, Cerritos filed a reply to SCE's response on December 30, 2010.

The Order Instituting Rulemaking in this proceeding transferred the Amended Motion from R.08-08-009 to this proceeding.

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- (2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, except that the electricity is delivered to the local publicly owned electric utility and not a retail seller. Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource when the electricity would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller.
 - (3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

Discussion

Cerritos offers electric service to retail end-use customers within its jurisdiction pursuant to authorization granted by Assembly Bill (AB) 80 (Havice) (Stats. 2002, ch. 857), codified at § 366.1. This legislation concerns cities having rights and obligations with respect to the Magnolia Power Project, a gas-fired generation facility. In relevant part, the legislation allows any city participating in that project to "serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction."³

Cerritos and SCE entered into an agreement to implement AB 80 that was approved by the Commission in D.05-01-009. In A.09-06-008, Cerritos sought an interpretation of its rights under AB 80, as well as certain adjustments to its agreement with SCE. The principal focus of A.09-06-008, and thus D.10-01-012, was:

whether § 366.1(b) requires Cerritos to serve all retail end-use customers in its jurisdiction on an opt-in or opt-out basis and whether Cerritos had been granted a complete exemption from the suspension of direct access service thus warranting removal of the [initial load limitation] from the AB 80 Agreement.

(D.10-01-012 at 6.)

³ Section 366.1(b) provides in full:

Notwithstanding Section 80110 of the Water Code or Commission Decision 01-09-060, if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants, an existing project participant may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction.

The scoping memo in A.09-06-008 observed that the obligations of the RPS program applied to all community choice aggregators (CCAs) and ESPs, and assumed that Cerritos fell into one of these categories of load-serving entities (LSEs). This assumption was carried forward in D.10-01-012, which affirmed the scoping memo's determination that Cerritos must participate in the RPS program. (D.10-01-012 at 12, 14 (Finding of Fact 9).) In accordance with instructions in the scoping memo, Cerritos filed its Motion in July 2010.

In its Amended Motion, Cerritos asserts that "the regulatory landscape for small LSEs has changed." (Amended Motion at 5.) Cerritos also claims that this Commission does not have independent jurisdiction over it for purposes of the RPS program. SCE argues that Cerritos is bound by its prior agreement to seek treatment as a CCA or ESP, which the Commission adopted in D.10-01-012. SCE also claims that Cerritos is not a publicly owned utility, and that to treat it like one would be inconsistent with prior determinations.

Cerritos is correct that the RPS regulatory environment has changed in significant and relevant respects, though not for the reasons Cerritos advances.⁴ The enactment of Senate Bill (SB) 2 (1X) (Simitian) (Stats. 2011, ch. 1) in the First Extraordinary Session of the Legislature has broadened the RPS program substantially.⁵ The most notable change for purposes of this decision is the expansion of the enforceable RPS goal from 20% of retail sales of all California investor-owned utilities (IOUs), ESPs, and CCAs by the end of 2010, to 33% of

⁴ See Amended Motion at 5-7.

⁵ Though signed by the Governor on April 12, 2011, SB 2 (1X) is not yet effective. It will not become effective until 90 days after the end of the special session in which it was enacted. (Gov't Code § 9600(a).)

retail sales of IOUs, ESPs, CCAs and publicly owned utilities by the end of 2020. Oversight of compliance with this firm statewide goal is assigned to this Commission with respect to IOUs, ESPs, and CCAs, and to the California Energy Commission (CEC) with respect to publicly owned utilities.⁶

Cerritos is identified by § 366.1(b) as a community aggregator. Neither current RPS law nor SB 2 (1X) mentions the status of a "community aggregator" for RPS purposes. This vacuum gives rise to the question of classification of Cerritos for RPS purposes that was addressed as part of resolving the issues presented in A.09-06-008. SCE correctly observes that the Commission and the parties previously regarded Cerritos as subject to this Commission's RPS jurisdiction, leaving open only whether Cerritos was to be treated as a CCA or an ESP. Cerritos points out that SCE does not address the most important issue for RPS purposes: whether there will be appropriate oversight of Cerritos' RPS compliance, from some regulatory authority – which does not necessarily have to be this Commission.

From this Commission's perspective, there is no benefit to the RPS program in disturbing the *status quo*, in which Cerritos reports to the CEC pursuant to § 387, in order to require Cerritos to be treated like either a CCA or an ESP under our jurisdiction. SB 2 (1X) makes extensive changes to the RPS participation of publicly owned utilities, by prescribing detailed program and compliance requirements for publicly owned utilities that are similar to those for retail sellers under this Commission's jurisdiction.⁷ SB 2 (1X) also gives the CEC

⁶ See current §§ 399.12(g) and 387 and new §§ 399.12(j) and 399.30.

⁶ Compare current § 387 with new § 399.30.

enforcement authority with respect to RPS compliance by publicly owned utilities.⁸ Going forward, Cerritos must meet substantially the same RPS requirements whether it is considered subject to the CEC's oversight of publicly owned utilities or to this Commission's jurisdiction over retail sellers. Thus, it is unnecessary to decide whether Cerritos is a CCA, an ESP, or a publicly owned utility in order to ensure that Cerritos will be under the same enforceable RPS obligations as other California LSEs.

The fair and efficient administration of the RPS program will be advanced by maintaining the existing reporting relationship between Cerritos and the CEC, and allowing Cerritos to continue to be subject to CEC oversight as the RPS program evolves under SB 2 (1X). Cerritos' request in the Amended Motion that this Commission determine that Cerritos should continue to be subject to the RPS requirements and procedures for publicly owned utilities should be granted.

Comments on Proposed Decision

The proposed decision of ALJ Anne E. Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Regina DeAngelis, Maryam Ebke, Burton W. Mattson, and Anne E. Simon are the assigned ALJs for this proceeding.

⁸ See new § 399.30(n).

Finding of Fact

Cerritos has participated in the current RPS program under the requirements and procedures applicable to publicly owned utilities, reporting on its obligations under current RPS statutes to the CEC.

Conclusions of Law

1. SB 2 (1X) provides that all IOUs, CCAs, ESPs and publicly owned utilities have enforceable obligations under the RPS program.
2. Pursuant to SB 2 (1X), this Commission is responsible for oversight of RPS compliance and enforcement with respect to IOUs, CCAs, and ESPs.
3. Pursuant to SB 2 (1X), the CEC is responsible for oversight of RPS compliance with respect to publicly owned utilities.
4. SB 2 (1X) does not change the status of Cerritos as a community aggregator pursuant to AB 80.
5. Cerritos should continue to participate in the statewide RPS program under the rules and procedures applicable to publicly owned utilities, under the oversight of the CEC.
6. The Amended Motion should be granted.
7. In order to end uncertainty about the RPS obligations of the City of Cerritos, this order should be effective immediately.

O R D E R**IT IS ORDERED** that:

1. The Amended Motion of the City of Cerritos for Certain Determinations, filed December 3, 2010, is granted.

2. The City of Cerritos shall participate in the statewide renewables portfolio standard program under the requirements and procedures applicable to a local publicly owned utility.

3. Decision 10-01-012 is modified to reflect the determination that the City of Cerritos shall participate in the statewide renewables portfolio standard program under the requirements and procedures applicable to a local publicly owned utility.

This order is effective today.

Dated _____, at San Francisco, California.