

Decision 11-12-020 December 1, 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 SETTING PROCUREMENT QUANTITY  
REQUIREMENTS FOR RETAIL SELLERS FOR THE  
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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**DECISION SETTING PROCUREMENT QUANTITY  
REQUIREMENTS FOR RETAIL SELLERS FOR  
THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

**1. Summary**

This decision sets the new renewables portfolio standard (RPS) procurement quantities required by new Pub. Util. Code § 399.15(b), for all retail sellers (investor-owned utilities, community choice aggregators, and electric service providers).<sup>1</sup>

For the RPS compliance period 2011-2013, each retail seller must procure an average of 20% of its retail sales for the entire period from RPS-eligible resources. The numerical expression of this requirement is:

Megawatt-hours of RPS-eligible procurement required =  
.20 \* (retail sales for 2011 + retail sales for 2012 + retail sales for  
2013), where retail sales are expressed in megawatt-hours (MWh).

For the RPS compliance period 2014-2016, each retail seller must have sufficient procurement of RPS-eligible resources to meet its procurement quantity requirement for the compliance period. In determining the cumulative procurement quantity, the Commission applies a straight-line trend from the quantity for the prior compliance period (average of 20% of retail sales) to the concluding year of the 2014-2016 compliance period (25% of retail sales), yielding intervening year targets of 21.7% of retail sales in 2014 and 23.3% of retail sales in 2015. The numerical expression of this requirement is:

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<sup>1</sup> Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1, enacted in the 2011-2012 First Extraordinary Session of the Legislature, will “go into effect on the 91st day after adjournment of the special session at which the bill was passed.” (Gov't. Code § 9600(a).) The 2011-2012 First Extraordinary Session adjourned on September 10, 2011, making SB 2 (1X) effective on December 10, 2011.

Megawatt-hours (MWh) of RPS-eligible procurement required =  
(.217 \* 2014 retail sales) + (.233 \* 2015 retail sales) + (.25 \* 2016 retail sales), where retail sales are expressed in MWh.

For the RPS compliance period 2017-2020, each retail seller must have sufficient procurement from RPS-eligible resources to meet its procurement quantity requirement for the compliance period. In determining the cumulative procurement quantity, the Commission applies a straight-line trend from the statutory target for the concluding year of the prior compliance period (25% of retail sales) to the concluding year of the 2017-2020 compliance period (33% of retail sales), yielding intervening year targets of 27% of retail sales in 2017, 29% of retail sales in 2018, 31% of retail sales in 2019, and 33% of retail sales in 2020. The numerical expression of this requirement is:

MWh of RPS-eligible procurement required =  
(.27 \* 2017 retail sales) + (.29 \* 2018 retail sales) + (.31 \* 2019 retail sales) + (.33 \* 2020 retail sales), where retail sales are expressed in MWh.

For the year 2021 and each following year, each retail seller must have sufficient procurement from RPS-eligible resources to meet its annual procurement quantity requirement of 33% of retail sales. The numerical expression of this requirement is:

MWh of RPS-eligible procurement required=  
.33 \* Year's retail sales, where retail sales are expressed in MWh.

This proceeding remains open.

## **2. Procedural History**

The Order Instituting Rulemaking (OIR) for this proceeding was adopted by the Commission on May 5, 2011. Comments on the OIR were filed by more than 40 parties on May 31; reply comments were filed by 13 parties on

June 9, 2011. A prehearing conference was held on June 13, 2011. The Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) was issued July 8, 2011.

The Scoping Memo noted that Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1, makes significant changes to the renewables portfolio standard (RPS) program.<sup>2</sup> The Scoping Memo identified four "highest priority" issues for immediate attention in the Commission's implementation of the new RPS statute. One of these issues is setting the new RPS procurement quantity requirements, as mandated by new § 399.15(b). New § 399.15(b) is attached as Appendix A.

On July 15, 2011, the Administrative Law Judge's (ALJ's) Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program (Ruling) asked parties to comment on the interpretation of several new statutory provisions, including the new procurement quantity requirements.<sup>3</sup> Comments were filed on August 30, 2011 by 24 parties.<sup>4</sup> Reply comments were filed on September 12, 2011, by 17 parties.<sup>5</sup>

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<sup>2</sup> The RPS is codified at Pub. Util. Code § 399.11-399.20. Unless otherwise noted, all further references to sections are to the Public Utilities Code.

<sup>3</sup> This decision implements only the new procurement quantity requirements, as set forth in § 399.15(b)(1) and (2). Other parts of § 399.15 will be addressed in later decisions.

<sup>4</sup> Comments were filed by Alliance for Retail Energy Markets (AReM); California Municipal Utilities Association; California Pacific Electric Company (CalPeco); California Wind Energy Association and Large Scale Solar Association (jointly) (collectively, CalWEA/LSA); Calpine Corporation (Calpine); City and County of San Francisco (CCSF); Division of Ratepayer Advocates (DRA); Green Power Institute (GPI); Independent Energy Producers Association (IEP); Los Angeles Department of Water and Power (LADWP); Marin Energy Authority (MEA); Noble Americas Energy

*Footnote continued on next page*

### 3. Discussion

#### 3.1. Legislative Background

The RPS program has been the subject of much legislation and many decisions by this Commission.<sup>6</sup> Most recently, SB 2 (1X) was enacted in the First Extraordinary Session of the Legislature.<sup>7</sup> SB 2 (1X) becomes effective December 10, 2011, 90 days after the end of the special session in which it was enacted.<sup>8</sup>

SB 2 (1X) makes numerous changes to the RPS program, most notably extending the RPS goal from 20% of retail sales of all California investor-owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs) by the end of 2010, to 33% of retail sales of IOUs, ESPs,

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Solutions LLC (Noble Solutions); PacifiCorp; Pacific Gas and Electric Company (PG&E); L. Jan Reid (Reid); San Diego Gas & Electric Company (SDG&E); Shell Energy North America (US), L.P. (Shell); Sierra Club California; Southern California Edison Company (SCE); The Utility Reform Network (TURN) and Coalition of California Utility Employees (jointly) (collectively, TURN/CUE); TransWest Express LLC (TransWest); and Union of Concerned Scientists (UCS).

<sup>5</sup> Reply comments were filed by AREM; CalPeco; CalWEA/LSA; Calpine; Center for Energy Efficiency and Renewable Technologies; CCSF; DRA; GPI; Noble Solutions; PG&E; PacifiCorp; Reid; SDG&E; SCE; and TURN/CUE.

<sup>6</sup> The RPS program was initiated by SB 1078 (Sher), Stats. 2002, ch. 516, which set a goal for retail sellers of providing 20 per cent of their retail sales from eligible renewable energy resources by 2017. SB 107 (Simitian), Stats. 2006, ch. 464, accelerated the 20% goal to 2010, as well as making other changes in the RPS program. See also the OIR for this proceeding at 1, 7.

<sup>7</sup> SB 2 (1X) is substantially similar to SB 722 (Simitian), introduced in the 2009-2010 session of the Legislature but not enacted.

<sup>8</sup> Gov't Code § 9600(a).

CCAs and publicly owned utilities by the end of 2020.<sup>9</sup> In new § 399.15(b), the statute directs the Commission to set retail sellers' RPS procurement quantity requirements pursuant to certain statutory standards, by January 1, 2012. This decision sets the mandated procurement quantity requirements for retail sellers.

### **3.2. Plan of this Decision**

This decision is one of several decisions that will be needed to implement the complex provisions of SB 2 (1X). Because SB 2 (1X) becomes effective near the end of 2011, provisions of the RPS statute in effect prior to that time are referred to in this decision as "prior" provisions or sections; provisions as they will be upon the effective date of SB 2 (1X) are referred to as "new," or with no modifier.

This decision focuses on one part of new § 399.15(b): the subsections that direct the Commission to implement new compliance periods and procurement quantity requirements for RPS compliance for all retail sellers. Consideration of other parts of new § 399.15, as well as of related issues that are addressed in party comments on the Ruling and on the earlier ALJ Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program (July 12, 2011) is deferred to later decisions. Although prompt implementation of SB 2 (1X) is the Commission's goal, the complexity of the new provisions of SB 2 (1X) and the transition between the prior and new RPS requirements make it advisable to look carefully

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<sup>9</sup> The Commission has jurisdiction, for RPS purposes, over the first three groups of retail sellers; it does not have jurisdiction over publicly-owned utilities. Pub. Util. Code § 399.12(j); § 399.30(p).

before leaping into the full suite of compliance rules necessary to implement SB 2 (1X).

Since the principal task of this decision is implementing new statutory provisions, the decision is guided by the basic principles of statutory construction. The California Supreme Court has enunciated clear standards for courts or agencies construing a statute. The Commission must

... look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy. . . .

Where more than one statutory construction is arguably possible, our policy has long been to favor the construction that leads to the more reasonable result. This policy derives largely from the presumption that the Legislature intends reasonable results consistent with the apparent purpose of the legislation.<sup>10</sup>

Although the courts remain the ultimate arbiters of statutory meaning, they accord deference to the Commission's reasonable interpretation of statutes.<sup>11</sup>

### **3.3. RPS Compliance Periods**

SB 2 (1X) makes significant changes in the way RPS compliance is determined. The prior regime was based on annual procurement targets (APT), calculated as a one percent annual increase in the proportion of RPS-eligible

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<sup>10</sup> *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 387-388. See also, e.g., *People v. Canty* (2004) 32 Cal.4th 1266, 1276; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

<sup>11</sup> *Greyhound Lines, Inc. v. Public Utilities Commission* (1968) 68 Cal.2d 406, 410; *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1090-1091.



energy to total retail sales, until 2010, when APT becomes the 20% statutory target for 2010 and all later years.<sup>12</sup> Prior § 399.14(a)(C)(i) also requires the Commission to adopt flexible rules for compliance.<sup>13</sup>

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<sup>12</sup> Prior § 399.15(b) provides:

b) The commission shall implement annual procurement targets for each retail seller as follows:

(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.

(3) Only for purposes of establishing these targets, the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).

See also the Commission decisions implementing the prior procurement targets, including Decision (D.) 03-06-071, D.06-10-050, and D.08-02-008.

SB 2 (1X) differs in several important ways from these RPS compliance rules. As relevant to this decision, SB 2 (1X):

- adopts multi-year compliance periods (Section 399.15(b)(1));
- eliminates the carry-over of deficits from one compliance period to another (Section 399.15(b)(9)); and
- eliminates the direction to the Commission to adopt flexible rules for compliance; instead the statute provides specific requirements.

These new provisions require the Commission to set a method for calculating the total quantity of RPS-eligible procurement required for each compliance period. The required procurement quantity for each compliance period must be determined in accordance with statutory directives for reasonable progress during the compliance period; statutory procurement targets for the final years in compliance periods; statutory prohibitions on requiring retail sellers to demonstrate a particular quantity of procurement in any intervening year during a compliance period; and a special statutory rule for the initial compliance period, 2011-2013.

The methods of determining the procurement quantity required for each compliance period are discussed below. In an effort to preserve the statutory

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<sup>13</sup> Prior § 399.14(a)(C)(i) requires:

[f]lexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

distinction between the compliance period requirements and the demonstration of progress in intervening years of a compliance period, the total quantity of RPS-eligible procurement required for a compliance period will be referred to as the “procurement quantity requirement;” the procurement associated with reasonable progress in intervening years, or with any particular year, will be referred to as a “target.”

### **3.4. Compliance Period 2011-2013**

Because SB 2 (1X) becomes effective near the end of 2011, the Ruling asked parties for their views on how the compliance period denominated "January 1, 2011 to December 31, 2013, inclusive" in new § 399.15(b)(1)(A) should be treated. Most parties assert that the new compliance period requirements begin January 1, 2011.<sup>14</sup> A few parties argue that the SB 2 (1X) compliance rules should not apply until the effective date of the new statute, at the earliest.<sup>15</sup>

Although the full range of the compliance rules necessary to implement SB 2 (1X) is outside the scope of this decision, the 2011-2013 compliance period begins on January 1, 2011 and ends on December 31, 2013, by the express terms of the statute. Even if the effective date of the law is after the opening date of the compliance period, setting the compliance period in this way is within the authority of the Legislature.<sup>16</sup> As a practical matter, as PG&E points out, this first compliance period extends for three years. Retail sellers will have time to

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<sup>14</sup> CalWEA/LSA, DRA, GPI, IEP, PG&E, Reid, SCE, SDG&E, Sierra Club California, TURN/CUE, and UCS take this position.

<sup>15</sup> They include Calpine, MEA, Noble Solutions, PacifiCorp, and Shell.

<sup>16</sup> The Legislature has the power, though it does not often exercise it, to enact a civil (not criminal) law that will reach and change the legal effect of actions taken in the past. *In re Marriage of Bouquet*, 16 Cal.3d 583, 586-88 (1976).

adjust to the new statutory requirements well before they must demonstrate compliance with the 2011-2013 procurement quantity requirements.

New § 399.15(b)(2)(B) mandates that, for the first compliance period under the new statute, the Commission must "require procurement for each retail seller equal to an average of 20% of retail sales." The Ruling includes a straw proposal for setting the target for each of the three years in this compliance period as 20% of retail sales.<sup>17</sup> Many parties endorse the straw proposal.<sup>18</sup>

AReM, Calpine, and SCE suggest that the statutory language should be read to require simply 20% of total retail sales for the period, without any structure for the intervening years. While numerically the same as the Ruling's straw proposal, this suggestion is more consistent with the statutory language that identifies targets for "intervening years" only for the two later compliance periods, and is adopted.<sup>19</sup>

The numerical expression of the procurement quantity requirement of each retail seller for the January 1, 2011 - December 31, 2013 compliance period therefore is:

**Megawatt-hours (MWh) of RPS-eligible procurement required =  
.20 \* (retail sales for 2011 + retail sales for 2012 + retail sales for  
2013), where retail sales are expressed in MWh.**

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<sup>17</sup> The straw proposals made in the Ruling, as well as all other quantitative proposals made by parties, are set out in Appendix B.

<sup>18</sup> CalWEA/LSA, DRA, GPI, IEP, SCE, SDG&E, Shell, Sierra Club California, TURN/CUE, and UCS support the proposal.

<sup>19</sup> Reid proposes targets of 19% in 2011, 20% in 2012, and 21% in 2013. Although this proposal meets the statutory test of being "equal to an average of 20 percent of retail sales" for the 2011-2013 compliance period, it relies on specific targets for the intervening years, which are not part of the statutory description of this first compliance period.

### **3.5. Additional Parameters for Compliance Periods 2014-2016 and 2017-2020**

For the 2014-2016 and 2017-2020 compliance periods, the statute includes three parameters not used for the first compliance period.

1. For the following compliance periods [i.e. 2014-2016 and 2017-2020], the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25% of retail sales by December 31, 2016, and 33% of retail sales by December 31, 2020. (Section 399.15(b)(2)(B).)
2. Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. (Section 399.15(b)(2)(C).)
3. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year. (Section 399.15(b)(2)(C).)

#### **3.5.1. Reasonable Progress in Intervening Years**

Almost all parties agree that the measure of "reasonable progress in each of the intervening years" is quantitative, in keeping with the reference to "quantities" in the same sentence.<sup>20</sup> Parties disagree about the appropriate quantitative measure.

The Ruling makes a straw proposal that the measure should be a straight-line trend; i.e., uniform increases in each of the three years of the

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<sup>20</sup> LADWP and PacifiCorp propose qualitative measures of "reasonable progress;" for example, a demonstration of contract negotiations.

compliance period. Many parties support this proposal.<sup>21</sup> Other parties offer a variety of other proposals.

PG&E, SCE and SDG&E propose that the target for each intervening year of the second and third compliance periods should be a 1% increase over the prior year; i.e., 21% in 2014, 22% in 2015, and then the statutory 25% in 2016; and 26% in 2017, 27% in 2018, 28% in 2019, and then the statutory 33% in 2020. They argue that year-to-year variations in the availability of renewable resources and the uncertainties of the contracting process make RPS procurement inherently "lumpy." Having straight-line targets for the intervening years, the large utilities assert, is unrealistic and reduces the flexibility they need to make the most effective RPS procurement decisions.

DRA objects to the large jump in the target in the final years of the two compliance periods required by the utilities' proposal. DRA asserts that this is likely to increase demand for renewables at the end of a compliance period so much that prices will be driven up and increase the cost of RPS compliance. TURN/CUE argues that the large utilities' proposal simply reduces the utilities' total RPS-eligible procurement obligation, without having any other benefits.

DRA also proposes targets that are lower in the earlier years of a compliance period than the Ruling's straw proposal, but less strongly so than in

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<sup>21</sup> These include CalWEA/LSA, GPI, IEP, Shell, Sierra Club, TURN/CUE, and UCS. Reid proposes a straight-line trend, but beginning from his proposed 21% figure for 2013. GPI and IEP point out that the proposal in the Ruling does not include equal increases for each year of the 2014-2016 compliance period. We agree that the actual quantities should be more evenly set, as reflected in the final numerical formula for this compliance period presented in the text.

the large utilities' proposal.<sup>22</sup> DRA asserts that this "concave" pattern reduces pressure on the utilities to make unwise procurement commitments in the earlier years of a compliance period, but does not leave such a large gap at the end that higher prices will be likely to result.

AReM, CalPeco, and Noble Solutions each independently propose that the target for the final year of the previous compliance period should remain the target for the initial years of the next compliance period; then the target should jump to the target for the final year. That is, the target for 2014 and 2015 would be 20% of retail sales, then the target for 2016 would be 25%. The target for 2017, 2018, and 2019 would be 25%, then the target for 2020 would be 33%.

LADWP and PacifiCorp object to any quantitative targets and propose qualitative measures, such as the pendency of studies pursuant to the California Environmental Quality Act, or contract negotiations. Both Reid and TURN/CUE argue that the statutory language requires that "quantities" be the measure in the intervening years and does not allow purely qualitative measures.

Over all, the straight-line trend provides the most sensible approach to setting quantitative targets that represent retail sellers' "reasonable progress" for the "intervening years" of a compliance period. The ultimate goal of 33% of retail sales by the end of 2020 (and each year thereafter) remains, as GPI points out, a challenging one. Encouraging steady progress toward that goal is in keeping with the legislative mandate to ensure reasonable progress.

In SB 2 (1X), the Legislature responded in several ways to the issue of "lumpy" RPS procurement raised by the three large utilities in their comments in

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<sup>22</sup> See "DRA" proposal in Appendix B for details.

response to the Ruling. Most notably, SB 2 (1X) replaces the annual RPS procurement target with a multi-year compliance period. As discussed further below, SB 2 (1X) also eliminates enforceable annual requirements. In § 399.15(b)(9), SB 2 (1X) eliminates the carry-over of procurement deficits from one compliance period to the next. Further, the new statute maintains the 20% target instituted by SB 107 for the entire 2011-2013 compliance period, requiring no new planning for compliance in that initial period.

The large utilities' proposal does not take these changes into account. Their arguments for a jump from low targets at the beginning of a period to a high target at the end assume that the RPS compliance parameters under SB (1X) are essentially the same as under the APT system. The changes made by SB 2 (1X), on the contrary, alter the compliance requirements so as to reduce the significance of procurement variations between years and to provide more flexibility to achieve quantitative requirements over time. The large utilities offer no persuasive reason to believe that these changes will not operate as they appear to be intended, shifting the RPS procurement emphasis from individual years to the entire compliance period. DRA's proposal includes a smaller jump to the final year of the compliance period. For the same reasons noted with respect to the large utilities, it is not necessary to adopt DRA's proposal.

The approach of AReM, CalPeco, and Noble Solutions would require no progress in the intervening years of a compliance period. This proposal is not consistent with the statutory standard of showing reasonable progress in intervening years and is not adopted.



### **3.5.2. Must Procure No Less Than Quantities Associated with All Intervening Years**

There is no dispute that the phrase "intervening years" should be understood to mean, "years that are not the final year of a compliance period."<sup>23</sup> The Ruling offers a straw proposal that adds the quantities proposed as procurement targets for the intervening years to the end-year target set by statute to yield the cumulative procurement quantity requirement, in MWh, for the compliance period. Almost all parties (with the exception of Calpine) agree with the proposal for cumulating the targets set for each year to determine the procurement quantity requirement for the compliance period. Cumulating the targets for each year is a reasonable method for quantifying the procurement quantity requirement for the entire compliance period, in view both of the requirement to set targets showing reasonable progress, discussed above, and the prohibition on separately enforcing intervening year targets, discussed below.

### **3.5.3. No Requirement to Demonstrate a Specific Quantity of Procurement for Any Individual Intervening Year**

Parties agree that the statutory language does not allow enforcement of the target quantities for any of the intervening years in a compliance period. Parties disagree, however, about whether the target for the final year of a compliance period (25% of retail sales in 2014; 33% of retail sales in 2020) is an independent procurement requirement.

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<sup>23</sup> For the second compliance period covering 2014-2016, these years would be 2014 and 2015; for the third compliance period covering 2017-2020, they would be 2017, 2018, and 2019.

CalWEA/LSA, DRA, and Sierra Club California assert that the final year target is a separate and enforceable requirement, in addition to the cumulative procurement quantity requirement for the compliance period. CalWEA/LSA argue that the statutory direction that specific targets for individual intervening years do not need to be demonstrated shows that the Legislature intended that the specified target for the last year of a compliance period must be met. Otherwise, CalWEA/LSA assert, a retail seller could meet the cumulative target for the period set by the Commission, but procure significantly less than the final-year quantity set by the Legislature.

SCE opposes this interpretation, arguing that the Legislature intended to create one, cumulative procurement quantity requirement for a compliance period. SCE argues that the procurement flexibility provided by the multi-year compliance period would be significantly reduced by reinstating a firm annual target in the final year of the compliance period. SCE also notes that, by contrast, for years after 2020, SB 2 (1X) mandates that the RPS procurement quantity requirement equals 33% of retail sales on an annual basis.

(Section 399.15(b)(2)(B).)

Although the argument of CalWEA/LSA has some linguistic force, the overall structure of new § 399.15(b) favors the view that there is one, cumulative target for each of the two later compliance periods. As discussed above, SB 2 (1X) makes a number of changes in the RPS compliance framework that move away from annual accountability by retail sellers and toward more flexible multi-year RPS procurement obligations. The specific quantitative targets of 25% in 2016 and 33% in 2020 are not ignored in the cumulative approach adopted in this decision, but are incorporated in the cumulative procurement quantity requirement for each compliance period. SB 2 (1X) requires retail sellers to meet

annual procurement quantity requirements in the years after 2020, further suggesting that the years prior to 2021 are covered by the compliance period paradigm.

### **3.6. Compliance Period 2014-2016**

Applying the parameters discussed above to the 2014-2016 compliance period, and using a straight-line trend from the quantity for the prior compliance period (average of 20% of retail sales) to the concluding year of the 2014-2016 compliance period (25% of retail sales), yields intervening year targets of 21.7% of retail sales in 2014 and 23.3% of retail sales in 2015. The numerical expression of the total compliance period procurement quantity requirement is:

**MWh of RPS-eligible procurement required =  
(.217 \* 2014 retail sales) + (.233 \* 2015 retail sales) + (.25 \* 2016 retail sales), where retail sales are expressed in MWh.**

### **3.7. Compliance Period 2017-2020**

Applying the parameters discussed above to the 2017-2020 compliance period, and using a straight-line trend from the statutory target for the concluding year of the prior compliance period (25% of retail sales) to the concluding year of the 2017-2020 compliance period (33% of retail sales), yields intervening year targets of 27% of retail sales in 2017, 29% of retail sales in 2018, 31% of retail sales in 2019, and 33% of retail sales in 2020. The numerical expression of the total compliance period procurement quantity requirement is:

**MWh of RPS-eligible procurement required =  
(.27 \* 2017 retail sales) + (.29 \* 2018 retail sales) + (.31 \* 2019 retail sales) + (.33 \* 2020 retail sales), where retail sales are expressed in MWh.**

### **3.8. Compliance in Years Following 2020**

After setting the parameters of the procurement quantities for the years through 2020, § 399.15(b)(2)(B) states that "[t]he commission shall require retail sellers to procure not less than 33% of retail sales of electricity products from eligible renewable energy resources in all subsequent years." As SCE notes, this is an annual requirement that does not vary, for all years from 2021 on. This annual procurement quantity requirement is expressed, for 2021 and each following year, as:

**MWh of RPS-eligible procurement required =  
.33 \* Year's retail sales, where retail sales are expressed in MWh.**

### **3.9. Reporting and Verification**

Retail sellers are currently required to file semiannual RPS compliance reports with Energy Division staff. The format for the current compliance report and associated documentation will have to be revised to reflect the new requirements of SB 2 (1X), including a change to annual compliance reporting made by new § 399.13(a)(3)(A). Energy Division staff should undertake revision of the reporting formats expeditiously, in consultation with the parties, once the Commission has fully identified the compliance rules that must be reflected in the compliance reports of retail sellers. In the meantime, the Director of Energy Division is authorized to develop and require the submission of any reporting formats necessary to provide information for the Commission to monitor retail sellers' compliance with the requirements of SB 2 (1X). Pending further action by the Commission on reporting requirements, the Director of Energy Division is authorized to set a reasonable date for the submission of retail sellers' reports covering RPS procurement for 2011.

The California Energy Commission (CEC) is responsible for verifying retail sellers' claimed RPS-eligible procurement. (new § 399.25; prior § 399.13.) In the current RPS compliance regime, retail sellers must provide final compliance reports to the Commission after the CEC has verified procurement claims for a particular year. (D.06-10-050.) The CEC is in the process of revising its verification procedures for the new compliance periods set by SB 2 (1X).<sup>24</sup> Once the CEC's verification regime for SB 2 (1X) is in place, Energy Division staff should work with CEC staff, as they have in the past, to develop a coordinated approach to retail sellers' reporting of verified procurement for RPS compliance purposes.

#### **4. Next Steps**

This decision sets the RPS procurement quantity required for the compliance periods beginning January 1, 2011. It does not implement the rules needed to determine how procurement will be categorized, counted, and banked for RPS compliance in the new RPS regime established by SB 2 (1X). Many parties have noted that this decision establishes the procurement quantity requirements, but does not resolve many other issues that are important for ongoing RPS procurement. The Commission intends to move expeditiously to address further rules for RPS compliance and additional elements of the transition from the RPS regime under SB 107 to the RPS regime set forth in SB 2 (1X).

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<sup>24</sup> *Renewables Portfolio Standard Eligibility*, Staff Draft Guidebook, Fifth Edition, October 2011, found at <http://www.energy.ca.gov/2011publications/CEC-300-2011-008/CEC-300-2011-008-SD.pdf>.

Even before all the outstanding issues addressed in comments on the ALJ Ruling are resolved, Energy Division staff should begin work on revisions to the RPS reporting formats, in consultation with the parties, as soon as practicable.

## **5. Comments on Proposed Decision**

The proposed decision (PD) of ALJ 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 November 17, 2011 by AReM, jointly with Retail Energy Supply Association; California Municipal Utilities Association; Calpine; GPI; IEP; Reid; LADWP; Noble Solutions; PG&E; SDG&E; Southern California Public Power Authority; SCE; TURN/CUE; and UCS. Reply comments were filed on November 22, 2011 by CalWEA/LSA; GPI; Reid; Noble Solutions; PG&E, Sierra Club of California; and UCS.

All comments and reply comments have been carefully considered. No changes have been made to the procurement quantity requirements set forth in the PD. In response to a number of comments, the process for developing new reporting requirements and submitting reports on RPS procurement is discussed in more detail.

Minor editorial changes have been made throughout for clarity and consistency, and to correct minor errors.

## **6. Assignment of Proceeding**

Mark J. Ferron is the assigned Commissioner and Anne E. Simon is the assigned ALJ for this portion of this proceeding.

### **Findings of Fact**

1. The RPS compliance accounting framework pursuant to SB 107 is based on APT.

2. The RPS compliance accounting framework pursuant to SB 2 (1X) is based on multi-year compliance periods.

### **Conclusions of Law**

1. SB 2 (1X) goes into effect on December 10, 2011.

2. Upon the effective date of SB 2 (1X), the RPS compliance periods set forth in Pub. Util. Code § 399.15(b) will apply to all retail sellers.

3. In order to implement the RPS procurement quantity requirement for the compliance period 2011-2013 in a manner most in keeping with the statutory language, there should be no intervening year targets in that compliance period.

4. For the compliance period 2011-2013, the RPS procurement quantity requirement of each retail seller should be:

Megawatt-hours (MWh) of RPS-eligible procurement required =  
.20 \* (2011 retail sales + 2012 retail sales + 2013 retail sales), where  
retail sales are expressed in MWh.

5. Reasonable progress for the compliance periods 2014-2016 and 2017-2020 should be determined by means of quantitative targets for the intervening years.

6. Retail sellers should not be required to demonstrate a specific quantity of procurement for any intervening year in a compliance period.

7. Retail sellers should show compliance with the procurement quantity requirement for a compliance period by procuring the cumulative quantity of RPS-eligible resources required for that compliance period.

8. For the compliance period 2014-2016, the RPS procurement quantity requirement of each retail seller should be:

Megawatt-hours (MWh) of RPS-eligible procurement required =  
(.217 \* 2014 retail sales) + (.233 \* 2015 retail sales) + (.25 \* 2016 retail  
sales), where retail sales are expressed in MWh.

9. For the compliance period 2017-2020, the RPS procurement quantity requirement of each retail seller should be:

Megawatt-hours (MWh) of RPS-eligible procurement required =  
(.27 \* 2017 retail sales) + (.29 \* 2018 retail sales) + (.31 \* 2019 retail sales) + (.33 \* 2020 retail sales), where retail sales are expressed in MWh.

10. For the year 2021 and each year thereafter, the RPS procurement quantity requirement of each retail seller should be:

Megawatt-hours (MWh) of RPS-eligible procurement required =  
.33 \* Year's retail sales, where retail sales are expressed in MWh.

11. In order to implement RPS procurement and compliance requirements, the Director of Energy Division should be authorized to set reporting requirements for all retail sellers, including the date for submission of reports on RPS procurement for 2011, and to develop appropriate documentation for retail sellers to report their RPS-eligible procurement.

12. In order to promote fair and efficient compliance with the new RPS requirements of SB 2 (1X), this order should be effective immediately.

## **O R D E R**

**IT IS ORDERED** that:

1. For compliance with the California renewables portfolio standard in the compliance period beginning January 1, 2011 and ending December 31, 2013, each retail seller must procure an average of 20% of its retail sales for the entire compliance period from procurement of renewable energy resources eligible under the California renewables portfolio standard. The numerical expression of this procurement quantity requirement is:



Megawatt-hours of procurement eligible under the California renewables portfolio standard required =  
.20 \* (2011 retail sales + 2012 retail sales + 2013 retail sales), where retail sales are expressed in megawatt-hours.

2. For compliance with the California renewables portfolio standard in the compliance period beginning January 1, 2014 and ending December 31, 2016, each retail seller must procure sufficient renewable energy resources eligible under the California renewables portfolio standard to demonstrate reasonable progress in meeting the procurement target of 25% of retail sales by December 31, 2016, and to procure no less than the quantities associated with the intervening years in the period. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the California renewables portfolio standard required =  
(.217 \* 2014 retail sales) + (.233 \* 2015 retail sales) + (.25 \* 2016 retail sales), where retail sales are expressed in megawatt-hours.

3. For compliance with the California renewables portfolio standard in the compliance period beginning January 1, 2017 and ending December 31, 2020, each retail seller must procure sufficient renewable energy resources eligible under the California renewables portfolio standard to demonstrate reasonable progress in meeting the procurement target of 33% of retail sales by December 31, 2020, and to procure no less than the quantities associated with the intervening years in the period. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the California renewables portfolio standard required =  
(.27 \* 2017 retail sales) + (.29 \* 2018 retail sales) + (.31 \* 2019 retail sales) + (.33 \* 2020 retail sales), where retail sales are expressed in megawatt-hours.

4. For compliance with the California renewables portfolio standard in the year 2021 and in each year thereafter, each retail seller must procure 33% of its retail sales from renewable energy resources eligible under the California renewables portfolio standard. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the California renewables portfolio standard procurement required =  
.33 \* Year's retail sales, where retail sales are expressed in megawatt-hours.

5. The Director of Energy Division is authorized to set reporting requirements for all retail sellers and to develop appropriate reporting formats and documentation for retail sellers to report their procurement eligible under the California renewables portfolio standard.

6. The Director of Energy Division is authorized to set a reasonable date for submission of retail sellers' reports on procurement of eligible renewable energy resources under the California renewables portfolio standard for 2011.

7. Rulemaking 11-05-005 remains open.

This order is effective today.

Dated December 1, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

## APPENDIX A

### **New Section 399.15 of the Public Utilities Code (Enacted by Senate Bill 2 (1X), Stats. 2011, ch. 1) Effective December 10, 2011**

(b) The commission shall implement renewables portfolio standard procurement requirements only as follows:

- (1) Each retail seller shall procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:
  - (A) January 1, 2011, to December 31, 2013, inclusive.
  - (B) January 1, 2014, to December 31, 2016, inclusive.
  - (C) January 1, 2017, to December 31, 2020, inclusive.
- (2) (A) No later than January 1, 2012, the commission shall establish the quantity of electricity products from eligible renewable energy resources to be procured by the retail seller for each compliance period. These quantities shall be established in the same manner for all retail sellers and result in the same percentages used to establish compliance period quantities for all retail sellers.
  - (B) In establishing quantities for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020. The commission shall require retail sellers to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years.
  - (C) Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.
- (3) The commission shall not require the procurement of eligible renewable energy resources in excess of the quantities identified in paragraph (2). A retail seller

may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.

- (4) Only for purposes of establishing the renewables portfolio standard procurement requirements of paragraph (1) and determining the quantities pursuant to paragraph (2), the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code in the calculation of retail sales by an electrical corporation.
- (5) The commission shall waive enforcement of this section if it finds that the retail seller has demonstrated any of the following conditions are beyond the control of the retail seller and will prevent compliance:
  - (A) There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator. In making its findings relative to the existence of this condition with respect to a retail seller that owns transmission lines, the commission shall consider both of the following:
    - (i) Whether the retail seller has undertaken, in a timely fashion, reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations, to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources. In determining the reasonableness of a retail seller's actions, the commission shall consider the retail seller's expectations for full-cost recovery for these transmission lines and upgrades.
    - (ii) Whether the retail seller has taken all reasonable operational measures to maximize cost-effective deliveries of electricity from eligible renewable energy resources in advance of transmission availability.
  - (B) Permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the retail seller. In making a finding that this condition prevents timely compliance, the commission shall consider whether the retail seller has done all of the following:
    - (i) Prudently managed portfolio risks, including relying on a sufficient number of viable projects.

- (ii) Sought to develop one of the following: its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources. This clause shall not require an electrical corporation to pursue development of eligible renewable energy resources pursuant to Section 399.14.
  - (iii) Procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply.
  - (iv) Taken reasonable measures, under the control of the retail seller, to procure cost-effective distributed generation and allowable unbundled renewable energy credits.
- (C) Unanticipated curtailment of eligible renewable energy resources necessary to address the needs of a balancing authority.
- (6) If the commission waives the compliance requirements of this section, the commission shall establish additional reporting requirements on the retail seller to demonstrate that all reasonable actions under the control of the retail seller are taken in each of the intervening years sufficient to satisfy future procurement requirements.
  - (7) The commission shall not waive enforcement pursuant to this section, unless the retail seller demonstrates that it has taken all reasonable actions under its control, as set forth in paragraph (5), to achieve full compliance.
  - (8) If a retail seller fails to procure sufficient eligible renewable energy resources to comply with a procurement requirement pursuant to paragraphs (1) and (2) and fails to obtain an order from the commission waiving enforcement pursuant to paragraph (5), the commission shall exercise its authority pursuant to Section 2113.
  - (9) Deficits associated with the compliance period shall not be added to a future compliance period.

**(END OF APPENDIX A)**

**APPENDIX B  
Summary of Proposals**

Method	Metric	1st Compliance Period			2nd Compliance Period			3rd Compliance Period			
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
ALJ Ruling Straw Proposal	Annual retail sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
	Progress target (%)	<b>20.00</b>	<b>20.00</b>	<b>20.00</b>	<b>21.50</b>	<b>23.50</b>	25.00	<b>27.00</b>	<b>29.00</b>	<b>31.00</b>	33.00
	Progress quantity (MWh)	2,000	2,000	2,000	2,150	2,350	2,500	2,700	2,900	3,100	3,300
	Compliance period quantity (MWh)			6,000			7,000				12,000

Method	Metric	1st Compliance Period			2nd Compliance Period			3rd Compliance Period			
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
PG&E, SCE, and SDG&E Proposal  1% annual increase for intervening years	Annual retail sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
	Progress target (%)	<b>20.00</b>	<b>20.00</b>	<b>20.00</b>	<b>21.00</b>	<b>22.00</b>	25.00	<b>26.00</b>	<b>27.00</b>	<b>28.00</b>	33.00
	Progress quantity (MWh)	2,000	2,000	2,000	2,100	2,200	2,500	2,600	2,700	2,800	3,300
	Compliance period quantity (MWh)			6,000			6,800				11,400

Method	Metric	1st Compliance Period			2nd Compliance Period			3rd Compliance Period			
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
DRA Proposal	Annual retail sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
	Progress target (%)	<b>20.00</b>	<b>20.00</b>	<b>20.00</b>	<b>21.00</b>	<b>22.50</b>	25.00	<b>26.00</b>	<b>28.00</b>	<b>30.25</b>	33.00
	Progress quantity (MWh)	2,000	2,000	2,000	2,100	2,250	2,500	2,600	2,800	3,025	3,300
	Compliance period quantity (MWh)			6,000			6,850				11,725

Method	Metric	1st Compliance Period			2nd Compliance Period			3rd Compliance Period			
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Reid Proposal	Annual retail sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
	Progress target (%)	<b>19.00</b>	<b>20.00</b>	<b>21.00</b>	<b>22.33</b>	<b>23.67</b>	25.00	<b>27.00</b>	<b>29.00</b>	<b>31.00</b>	33.00
	Progress quantity (MWh)	1,900	2,000	2,100	2,233	2,367	2,500	2,700	2,900	3,100	3,300
	Compliance period quantity (MWh)			6,000			7,100				12,000

		1st Compliance Period			2nd Compliance Period			3rd Compliance Period			
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Method	Metric	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
CalPeco, AReM, and Noble Proposal  Previous Period Targets	Annual retail sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
	Progress target (%)	<b>20.00</b>	<b>20.00</b>	<b>20.00</b>	<b>20.00</b>	<b>20.00</b>	25.00	<b>25.00</b>	<b>25.00</b>	<b>25.00</b>	33.00
	Progress quantity (MWh)	2,000	2,000	2,000	2,000	2,000	2,500	2,500	2,500	2,500	3,300
	Compliance period quantity (MWh)			6,000			6,500				10,800

**(END OF APPENDIX B)**