BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
02-10-12
04:59 PM

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

COMMENTS OF PACIFICORP (U 901 E) ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING SUPPLEMENTAL COMMENTS ON REPORTING AND COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Mary M. Wiencke
Legal Counsel
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, OR 97232
Telephone: (503) 813-5058
Facsimile: (503) 813-7252
Email: mary.wiencke@PacifiCorp.com
Attorney for PacifiCorp

Jedediah J. Gibson
Ellison, Schneider & Harris, LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

Attorney for PacifiCorp

February 10, 2012

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 PACIFICORP (U 901 E) ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING SUPPLEMENTAL COMMENTS ON REPORTING AND COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Pursuant to the February 1, 2012 Administrative Law Judge's Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the Renewables Portfolio Standard Program (ALJ Ruling), PacifiCorp (U-901-E), d.b.a. Pacific Power (PacifiCorp or Company) hereby submits the following comments addressing issues in the ALJ Ruling.

I. Introduction and Background

PacifiCorp is a multi-jurisdictional electric utility (MJU) with approximately 1.7 million customers in California, Idaho, Oregon, Utah, Washington and Wyoming. Approximately 45,000 of those customers are located in Shasta, Modoc, Siskiyou and Del Norte counties in Northern California, representing less than two percent of the total retail load served across PacifiCorp's six-state system. PacifiCorp's California service territory is not connected to the California Independent System Operator (CAISO), but rather PacifiCorp is the balancing authority for its California service territory, which is operated on an integrated basis with other states in the western portion of its multi-state territory. Therefore, bundled energy deliveries to the portion of PacifiCorp's balancing authority area physically located in California are treated differently than deliveries to California balancing authorities.

These unique characteristics of PacifiCorp, the only electric MJU in California, have been recognized by the Legislature when enacting California law and by the Commission when interpreting and implementing California law. More specifically, and relevant to these comments, Senate Bill No. 2 of the California Legislature's 2011 First Extraordinary Session (SB 2 (1X)) describes the unique RPS requirements that apply to PacifiCorp as an MJU. These requirements differ from the requirements of other load serving entities (LSEs) and any new RPS requirements adopted by the California Public Utilities Commission (Commission or CPUC), including RPS reporting requirements and templates, should reflect these differences.

Historically, the Commission has deferred to PacifiCorp's use of its comprehensive Integrated Resource Plan (IRP) in lieu of requiring PacifiCorp to comply with RPS planning requirements. Furthermore, PacifiCorp is not subject to the same contract approval process as other investor owned utilities (IOUs).[1] Rather than approve all contracts, the Commission relies on PacifiCorp's IRP and defers to PacifiCorp's multi-state resource planning efforts. In light of these differences, and pursuant to the explicit statutory authority in Section 399.17 of the Public Utilities Code, the Commission must ensure that any RPS reporting requirements and templates adopted and applied to PacifiCorp are reasonably tailored to reflect PacifiCorp's unique circumstances and planning requirements. As described in greater detail below, for PacifiCorp, the Commission should require:

- Only one RPS procurement report to be submitted annually on October 1st;
    - Reports submitted for intervening years would be treated as RPS "progress" reports;
    - Reports submitted after a compliance period would be treated as RPS "compliance" reports;

[1] *See* D.08-05-029. *See also* Pub. Util. Code § 399.17(d).

- RPS reports should include data on retail load and RPS procurement;
    - RPS reports need not include information related to portfolio content categories;
    - RPS reports need not include information related to the status of any siting and permitting approvals, the status and progress of any construction and upgrades to transmission and distribution, recommendations to remove impediments toward meeting RPS requirements, or earmarking details.

II. Responses to Issues Posed in the ALJ Ruling

PacifiCorp provides the following responses to specific issues posed in the ALJ Ruling.

1. Section 399.13(a)(3) requires that each retail seller must submit an annual RPS compliance report.

- **When should the annual RPS compliance report be submitted? Please consider at least the following in choosing a date for your proposal:**
    - **The information identified by Section 399.13(a)(3) as necessary for the compliance report;**
    - **The RPS reporting and verification requirements of the California Energy Commission;**
    - **Any other reporting or information requirements that may be relevant to the RPS compliance reporting process. Please be specific.**

The annual RPS report should be due on October 1st of each year. An October 1st due date will ensure reporting of the most accurate renewable procurement data and will avoid other important compliance deadlines.[2] Additionally, an October 1st deadline will provide retail sellers

[2] For example, PacifiCorp will not have available finalized data vital to RPS reporting until May. Such data includes information related to annual electric loads, annual generation quantities, and, perhaps most importantly, the California-allocation factor allocating specific renewable generation to California for the prior year. Additionally, the California Energy Commission (CEC), the entity responsible for verifying certain renewable procurement by MJUs like PacifiCorp (*see* Pub. Util. Code § 399.17(b)(3)), currently has a June 1st deadline to report renewable procurement data. Similarly, the CEC currently requires that procurement from prior years be retired in the Western Renewable Energy Generation Information System (WREGIS) by June 1st. (*See* CEC RPS Eligibility Guidebook, App. A, p. 9, Instructions for Filing a State/Provincial/Voluntary Compliance Report Using WREGIS, available at http://www.energy.ca.gov/2010publications/CEC-300-2010-007/CEC-300-2010-007-CMF.PDF.) It is important to adopt a reporting deadline that falls after the CEC deadlines in order to ensure that any data submitted to the CEC can be included in the report. Therefore, any report due to the Commission must occur after the June 1st date to help ensure that generation from prior years has been retired in WREGIS so that the most accurate accounting of renewable procurement data can be verified and reported.

with additional time to retire RECs in WREGIS, which may be necessary pursuant to Section 399.21(a)(6)'s allowance for a 36-month window to retire RECs in WREGIS. This 36-month window may necessitate additional flexibility in RPS procurement reporting and supports a later reporting deadline. A later reporting deadline is important, particularly given the multi-year RPS procurement compliance periods and the current uncertainty surrounding the eligibility of pre-2011 procurement to be carried forward and applied to future compliance periods. The uncertainty of a retail seller's ability to bank and carry forward prior procurement means that a retail seller will not know how much additional procurement it will need in order to meet its actual procurement targets. Without knowing how much additional procurement is required to meet targets and without having clarity on the ability to carry prior procurement forward to apply to subsequent compliance periods, retail sellers do not have the clarity needed to confidently retire RECs in the proper retirement account. A retail seller should not be forced to retire RECs until it is certain that those RECs are needed for a specific compliance period, as it is extremely difficult to unretire RECs. A reporting deadline of October 1st provides additional time to determine how RECs should be allocated and retired and will help ensure that RECs have been retired accurately and appropriately.

Accordingly, for the reasons stated above, PacifiCorp recommends an October 1st reporting deadline should be adopted by the Commission.

- **What information should the annual RPS compliance report contain? Please consider both the requirements set out in Section 399.13(a)(3) and the information provided in compliance reports submitted through 2010.**

As described above, PacifiCorp not only has unique characteristics, but is the only electric MJU in California. Accordingly, an MJU-specific annual RPS compliance report should be developed for PacifiCorp. As recognized by the Legislature in adopting SB 2 (1X),

PacifiCorp's unique characteristics warrant different treatment than California's other IOUs. Public Utilities Code Section 399.17 explicitly allows PacifiCorp to use its IRP in lieu of preparing a renewable energy procurement plan.[3] Additionally, PacifiCorp is not subject to the procurement content limitations of Section 399.16.[4] Therefore, any RPS compliance report must avoid imposing a uniform one-size-fits-all reporting template on all retail sellers and should be tailored to PacifiCorp's unique requirements.

Specifically, PacifiCorp recommends that any RPS compliance report should include data on retail load and California allocated RPS procurement information. The required information to be included in the report would be very similar to the information reported using RPS reporting templates from 2011, templates which were tailored to recognize the unique characteristics of MJUs. A unique reporting template should be developed for MJUs going forward to continue to capture the unique characteristics and differing legal standards applicable to such utilities. While additional information may be required for other retail sellers, PacifiCorp's unique characteristics and explicit statutory exemptions mandate a simpler compliance report. For PacifiCorp, the information provided in the RPS report will be somewhat simpler as additional information related to portfolio content categories, the status of any siting and permitting approvals, the status and progress of any construction and upgrades to transmission and distribution, and recommendations to remove impediments toward meeting RPS requirements is unnecessary for a Section 399.17 utility.

For the reasons described below, PacifiCorp should not be required to classify its renewable procurement under one of the three procurement content categories in its compliance report. Although PacifiCorp is not a California balancing authority, PacifiCorp otherwise meets

---

[3] *See* Pub. Util. Code § 399.17(d).

[4] *See* Pub. Util. Code § 399.17(b). *See also* D.11-12-052, Ordering Paragraph 16.

the requirements for providing a bundled renewable product (energy from a renewable resource and the associated RECs from that energy) to PacifiCorp's California customers and service territory. These bundled renewable deliveries meet the requirements for Category 1 but for meeting the requirements of section 399.17(a)(1)(B) rather than the requirements of Section 399.16(b)(1)(A) since PacifiCorp's balancing authority areas are not defined as a California balancing authority. Because of the bundled nature of the energy deliveries, PacifiCorp should not be required to classify its procurement pursuant to Section 399.16.

Avoiding any requirement to classify renewable procurement in PacifiCorp's RPS reports remains consistent with statutory directives, and also avoids administrative burdens and reduces customer costs. Such classification provides no useful benefit to the Commission or to PacifiCorp and could result in complications related to carrying forward or banking excess renewable procurement. Despite the fact that all RPS deliveries to PacifiCorp's California customers occur contemporaneously with the production of that renewable generation, because PacifiCorp is not considered a California balancing authority under Section 399.12(d), those real-time, bundled deliveries may not be defined as portfolio content Category 1. To rectify the inequities that could result to PacifiCorp's customers from the complex program design, the Commission should make clear that PacifiCorp may carry forward any surplus procurement in its bank because bundled deliveries to a control area specified in Section 399.17(a)(1)(B) are the functional equivalent of a Category 1 product for California's largest IOUs. Accordingly, the reporting done by PacifiCorp in its RPS reports should simply differentiate between bundled procurement from resources within its balancing authority area and unbundled REC purchases, if any.

Finally, in accordance with Section 399.17 and the Commission's traditional deferral to PacifiCorp's IRP process in lieu of preparing a renewable energy procurement plan,[5] PacifiCorp's RPS report should not include additional information regarding the status of any siting and permitting approvals, the status and progress of any construction and upgrades to transmission and distribution, and recommendations to remove impediments toward meeting RPS requirements. As an MJU, PacifiCorp addresses these issues differently than California-only utilities and traditionally does not report this information to the Commission. PacifiCorp's integrated resource planning and procurement process, specifically contemplated by Section 399.17, applies a least-cost resource portfolio criterion that considers resource risks, planning uncertainties, supply reliability, resource diversity, and the long-run public interest. Furthermore, PacifiCorp's IRP supports informed decision-making on resource procurement by providing an analytical framework for assessing resource investment tradeoffs, including supporting multiple requests for proposals (RFP) bid evaluation efforts. The Commission should continue to defer to PacifiCorp's multi-state planning and procurement efforts, which are done on an integrated basis, and, in accordance with Section 399.17, should not impose these additional and unnecessary reporting requirements on PacifiCorp.

2. In addition to the annual RPS compliance reporting requirement in Section 399.13(a)(3), should the Commission require an RPS progress report from retail sellers during the same calendar year? Please explain why or why not.

- **If there should be a progress report, should it contain the same information as the annual compliance report?**
- **If the information in the progress report should be different from the information in the annual report, please specify and explain your proposal.**

[5] *See* Pub. Util. Code § 399.17(d).

The Commission should only require one annual RPS report and should not impose unnecessary requirements to submit additional RPS progress reports. The law clearly states that only one report need be submitted annually.[6] Furthermore, the annual RPS report is already a progress report so additional reports during the year would be superfluous. As Section 399.13(a)(3)(A) states, the report is meant to describe the "current status and ***progress*** made during the prior year toward procurement of eligible renewable energy resources…" (Emphasis added.) Additionally, the Commission has determined that "[r]etail sellers should not be required to demonstrate a specific quantity of procurement for any intervening year in a compliance period."[7] Accordingly, as there are no enforceable targets for intervening years in a compliance period, such reports can only serve as progress reports. Therefore, requiring additional progress reports would be unnecessary and provide no benefit while increasing administrative burdens and associated costs for retail sellers. For these reasons, only one annual report, due on October 1st, should be required for PacifiCorp.

3. In addition to the annual RPS compliance reporting requirement in Section 399.13(a)(3), should the Commission require a separate report on compliance for an entire compliance period?

- **If not, please explain why not and identify how the Commission would receive information about the retail seller's attainment of the procurement requirements for a compliance period, as required by Section 399.15(b), as implemented by D.11-12-020.**

- **If yes,**
  - **When should such a report be submitted? (For example, March 1 of the year following the end of the compliance period; for the first compliance period, that would be March 1, 2014.)**
  - **How should such a report present the quantities of the retail seller's RPS procurement for the compliance period?**

[6] *See* Pub. Util. Code § 399.13(a)(3), "[t]he commission shall direct each retail seller to prepare and submit an annual compliance report…"

[7] D.11-12-020, Conclusion of Law 6.

No, the Commission should not require a separate RPS report for reporting compliance for an entire compliance period. However, the Commission should treat the RPS report differently than a report submitted for an intervening year. The RPS report submitted in the year following the end of a compliance period would be used to determine a retail sellers' compliance with the RPS targets for that period while an intervening RPS report would simply provide a progress update. Multiple filings in a single year are unnecessary. Having both a "progress" report and a "compliance" report in one year provides minimal, if any, benefit while increasing administrative burdens. Instead, the annual report should be structured to provide sufficient information to analyze a retail seller's attainment of the procurement requirements for a compliance period. That way, only the title of the report would need to be modified to reflect that the report submitted after a compliance period would be deemed the "compliance" report while intervening year reports would be considered "progress" reports. Additionally, for the reasons described above, the timing of the "compliance" report should remain the same as other years and should be October 1st.

4. Section 399.16(c) sets minimum percentages for procurement that meets the criteria of Section 399.16(b)(1) in each compliance period, as well as maximum percentages for procurement that meets the criteria of Section 399.16(b)(3) in each compliance period.

- **Should the percentage requirements for procurement meeting the specified criteria be applied:**
  - **Annually?**
  - **For each compliance period as a whole?**
  - **Over some other time period?**

As described above, PacifiCorp is not subject to the procurement content limitations or percentage requirements of Section 399.16.[8] Accordingly, any reporting template for PacifiCorp should not include procurement content category designations.

> **5. Should the Commission require a particular format or time at which a "retail seller may apply to the Commission for a reduction of a procurement content requirement of subdivision [399.16](c)," in accordance with Section 399.16(e)?**
>
> - **If yes, please explain and provide a justification for the proposal.**
> - **If no, please explain how retail sellers would inform the Commission of a request under Section 399.16(e).**

PacifiCorp is not subject to the procurement content limitations of Section 399.16.[9] Accordingly, PacifiCorp will not need to apply for a reduction of a procurement content requirement and provides no comment on this issue at this time.

> **6. How should the relationship between the minimum percentage requirement for procurement meeting the criteria of Section 399.16(c)(1) and the procurement quantity requirements for a compliance period be interpreted? Please discuss at least the following example:**
>
> ***A retail seller meets the RPS procurement quantity requirement of an average of 20 percent of its retail sales for the compliance period 2011-2013. During that compliance period, an average of 45 percent of the retail seller's RPS procurement associated with contracts executed after June 1, 2010, is from procurement meeting the criteria of Section 399.16(c)(1).***

PacifiCorp is not subject to the procurement content limitations of Section 399.16.[10] Accordingly, PacifiCorp provides no comment on this issue at this time.

> **7. In D.11-12-052, the Commission noted that "some rules for the use of unbundled RECs set forth in D.10-03-021, as modified by D.11-01-025, are not affected by new § 399.16 and continue in force." (D.11-12-052 at 55). Two of the rules prohibit the unbundling of RECs from contracts that have been "earmarked" to apply to a shortfall in a retail seller's annual procurement target.**

---

[8] *See* Pub. Util. Code § 399.17(b). *See also* D.11-12-052, Ordering Paragraph 16.

[9] *See* Pub. Util. Code § 399.17(b). *See also* D.11-12-052, Ordering Paragraph 16.

[10] *See* Pub. Util. Code § 399.17(b). *See also* D.11-12-052, Ordering Paragraph 16.

- **How, if at all, should the prohibition on unbundling RECs from earmarked contracts now be applied to contracts for RPS procurement:**
  - **that were executed prior to June 1, 2010?**
  - **that were executed prior to January 1, 2011?**
- **How should the compliance reports required by Section 399.13(a)(3) account for the unbundling of RECs from previously earmarked contracts?**

PacifiCorp has never used the earmarking flexible compliance option. Accordingly, PacifiCorp provides no comment on the application of the treatment of unbundling RECs from earmarked contracts. Additionally, as PacifiCorp has never earmarked any contracts, the MJU RPS reporting template does not need to include any information regarding earmarking.

III. Conclusion

For the reasons described above, the Commission should continue to recognize the unique characteristics and statutory requirements that differentiate PacifiCorp from other California utilities and develop an MJU-specific RPS reporting template to be submitted annually on October 1st. The MJU-specific RPS report would include data on retail load and renewable procurement, but would not include information on procurement content categories, related to the status of any siting and permitting approvals, the status and progress of any construction and upgrades to transmission and distribution, or recommendations to remove impediments toward meeting RPS requirements.

Dated: February 10, 2012

Respectfully submitted,

/s/

Jedediah J. Gibson
Ellison, Schneider & Harris, LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com
Attorneys for PacifiCorp

Mary M. Wiencke
Legal Counsel
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, OR 97232
Telephone: (503) 813-5058
Facsimile: (503) 813-7252
Email: Mary.Wiencke@PacifiCorp.com
Attorney for PacifiCorp

VERIFICATION

I am the attorney for PacifiCorp, dba Pacific Power (PacifiCorp); PacifiCorp 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 forgoing is true and correct.

Executed on February 10, 2012 at Sacramento, California.

/s/

Jedediah J. Gibson
Ellison, Schneider & Harris, LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

Attorney for PacifiCorp