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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)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING COMMENTS ON PROCUREMENT EXPENDITURE
LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Background

The California renewables portfolio standard (RPS) program has been the subject of much legislation and many decisions by the Commission.¹ Most recently, Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1, was enacted in the First Extraordinary Session of the Legislature. SB 2 (1X) became effective 90 days after the end of the special session in which it was enacted, i.e., on December 10, 2011.²

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,

¹ See the Order Instituting Rulemaking for this proceeding, at 1, 7.

² See Gov't Code Section 9600(a).

CCAs and publicly owned utilities by the end of 2020.³ SB 2 (1X) also modifies or changes many details of the RPS program. This ruling seeks comment on the new procurement expenditure limitations for IOUs set out in Pub. Util. Code § 399.15(c)-(g).⁴

Plan of this Ruling

SB 2 (1X) replaces the prior RPS cost control regime. Under SB 1078 (Sher), Stats. 2002, ch. 516 (the original RPS statute), and SB 107 (Simitian), Stats. 2006, ch. 464 (the statute in effect prior to SB 2 (1X)), the market price referent (MPR) required by prior Section 399.15(c) was calculated by Commission staff on an annual basis.⁵ SB 1036 (Perata), Stats. 2007, ch. 685, provided for a limitation on the total above-market costs (i.e., cumulative costs above the MPR for RPS procurement contracts) expended by a utility. The Commission created a mechanism to allocate the above-MPR funds to individual procurement contracts with prices above the MPR.⁶ SB 2 (1X), by contrast, contains a broad mandate for the Commission to “establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard.” (Section 399.15(c).) It is anticipated that Energy Division staff will put forward a proposal for a

³ 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). All further references to sections are to the Public Utilities Code unless otherwise noted.

⁴ A copy of Sections 399.15(c)-(g) is attached as Attachment A.

⁵ See, e.g., D.03-06-071; D.04-06-015; D.05-12-042; D.08-10-026.

⁶ See Resolution E-4199 (March 16, 2009).

procurement expenditure limitation methodology on which parties may submit comments and participate in a workshop, if indicated.

This ruling seeks comment on issues related to the role of the new procurement expenditure limitation in the RPS procurement and compliance framework to aid in the development of the procurement expenditure limitation methodology. This ruling does not seek quantitative proposals or models for such a methodology.

Comments should respond to the questions posed in this ruling. Comments should be as specific and precise as possible. Legal arguments should be supported with specific citations. All comments should use publicly available materials (for example, the public description of a transaction in a resolution adopted by the Commission). All comments should specifically identify, with respect to each question, whether the potential sources of information addressed in the response to the question are public or confidential. If both public and confidential sources of information are identified, the comments should clearly identify which are public and which are confidential.

Parties may identify issues that are not addressed in the questions below; commenters doing so should clearly explain the relevance of the additional issue(s).

Comments

Opening comments of not more than 40 pages addressing the issues set forth in this ruling may be filed and served not later than February 16, 2012. Reply comments of not more than 20 pages may be filed and served not later than March 1, 2012.

Issues to Address in Comments

Please comment on the following, in accordance with the guidelines for comments set forth in this ruling.

1. Section 399.15(c) provides that a procurement expenditure limitation must be established “for each electrical corporation.”⁷ How should the procurement expenditure limitation methodology reflect this instruction?
 - Should the methodology be the same for all IOUs in all respects?
 - Should the inputs to the methodology be specific to each IOU?
 - Should both the methodology and the inputs be IOU-specific?
 - Should some other relationship between methodology and IOU be established? Please specify and explain any proposal.
2. Section 399.15(c)(2) provides that “the costs of all procurement credited toward achieving the renewables portfolio standard” should count towards the procurement expenditure limitation.
 - Please identify the types of procurement that should be included in this requirement and identify any special rules or methods that may be required to account for the costs. Please consider at a minimum the following situations:

⁷ Section 399.17(f) directs that multi-jurisdictional utilities or successor entities, as defined by Section 399.17(a), shall be subject to this procurement expenditure limitation.

- Procurement from RPS-eligible qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978 (Public law 95-617);
- Procurement pursuant to the renewable auction mechanism established by D.10-12-048;
- Procurement pursuant to the feed-in tariff program established by SB 32 (Negrete McLeod), Stats. 2009, ch. 328;
- Procurement from bilaterally negotiated contracts, not part of a utility solicitation for RPS-eligible generation resources;
- Procurement by means of utility-owned generation.
- Please identify all “costs” that are implicated by this requirement, taking into account those costs that are excluded by Section 399.15(d)(3).
- Should the statutory characterization of “the costs of all procurement credited toward achieving the renewables portfolio standard” be interpreted as including:
 - Estimates, made at the time a procurement contract is approved by the Commission, of the costs that will be incurred over a period of time.
 - should the period of time be the entire period of the contract?
 - should it be some other time period?
Please describe and justify the choice of another period; or

- A record of actual expenditures by the utility for the procurement contract over a period of time.
 - should the period of time be the entire period of the contract?
 - should it be some other time period?
Please describe and justify the choice of another period.
 - how should the actual expenditures be determined?
 - How should RPS procurement costs incurred prior to the implementation of the procurement expenditure limitation required by SB 2 (1X) be addressed in the procurement expenditure limitation methodology?
 - How should the costs of procurement from utility-owned generation be addressed in the procurement expenditure limitation methodology?
Please discuss any issues not addressed in response to other questions.
3. Should the procurement expenditure limitation methodology provide a single limitation for the time period 2011-2020?
 4. Should the procurement expenditure limitation methodology provide a limitation for a different time period or set of time periods?
 - Annual.
 - Each compliance period through 2020 (i.e. 2011-2013; 2014-2016; 2017-2020).

- The period 2011-2015 and the period 2016-2020.⁸
 - The year 2020.
 - The entire time an RPS procurement obligation has been in place (i.e., beginning in 2003).
 - Some other time period. Please specify and explain the reasons for the time period proposed.
5. Since RPS procurement obligations continue indefinitely, how should the procurement expenditure limitation methodology treat RPS procurement in the years after 2020?⁹
6. Section 399.15(c)(1) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, “the most recent renewable energy procurement plan.”
- What elements of an IOU’s RPS procurement plan should be used in establishing the procurement expenditure limitation methodology?
 - Should the methodology include a mechanism for updating the limitation with information from the IOU’s most recent RPS procurement plan?
 - Should the methodology use information from the most recent RPS procurement plan available at the time the Commission adopts the methodology, but not provide for periodic updates from more recent RPS procurement plans?

⁸ See Section 399.15(e)(1).

⁹ There is a procurement quantity requirement of 33% of total retail sales in each year from 2021 onward. See Section 399.15(b)(2)(B) and D.11-12-020.

7. Section 399.15(c)(2) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, “procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.”
- What sources of data should be used to develop this approximation? Please provide specific examples.
 - Should the methodology differentiate between utility-owned RPS-eligible generation and RPS-eligible generation owned by independent power producers? If so, what information or parameters should differ between the two types?
 - Should only publicly available data be used to develop this approximation? Please identify and explain any limitations of publicly available data for this purpose.
8. Section 399.15(c)(3) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, “the potential that some planned resource additions may be delayed or canceled.” How should the methodology take such potential into account?
- How should the methodology define a “delay”? A “cancellation”? Please discuss usual commercial practice and provide examples in support of the proposed definition. Please provide examples of how a delay could be distinguished from a cancellation for purposes of the procurement expenditure methodology.
 - Should delays in the progress of contracted-for RPS resources be treated differently from cancellations?
 - Should the methodology use data on the historical record of delays/cancellation of RPS procurement contracts for each IOU?
 - Should the methodology use each IOU’s projections of likely delays/cancellations in the future?

- Should the methodology create projections of delays/cancellations of contracted-for RPS generation projects in some other way? Please describe the proposal in detail.
 - How should the potential for delays/cancellations, however determined, be used in the procurement expenditure limitation methodology?
9. Taking into account your responses to questions 3-8, above, how often should the procurement expenditure limitation be calculated for the years through 2020, using the methodology and inputs that the Commission will adopt?
- Annually.
 - At the beginning of each compliance period (i.e. 2011-2013; 2014-2016; 2017-2020).
 - Once for the period 2011-2015 and once for the period 2016-2020.¹⁰
 - Once for the period 2011-2020.
 - Once for the year 2020.
 - Once for the entire time an RPS procurement obligation has been in place (i.e., beginning in 2003).
 - Some other time period. Please specify and explain the reasons for the time period proposed.
10. How often should the procurement expenditure limitation be calculated for the years after 2020, using the methodology and inputs that the Commission will adopt?

¹⁰ See Section 399.15(e)(1).

11. Section 399.13(a)(4)(D) requires the Commission to adopt “[a]n appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to mitigate the risk that renewable projects planned or under contract are delayed or canceled.”
 - How should such a margin of above-minimum procurement be addressed in the procurement expenditure limitation methodology?
 - How should the methodology treat the interaction of the margin of above-minimum procurement and the potential for delays and/or cancellations?
12. Section 399.13(a)(4)(A) requires the Commission to adopt “criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources...on a total cost basis...” taking various factors into account.
 - Should the procurement expenditure limitation methodology incorporate the “total cost basis” factors set out in Section 399.13(a)(4)(A). If so, how?
 - Should the procurement expenditure limitation methodology be used as the criterion of “least-cost” for the least-cost best-fit determination? If so, how?
13. Should the procurement expenditure limitation methodology take into consideration the value of diversification of resources in IOUs’ RPS procurement? Specifically,
 - Should the methodology create a set of technology-specific expenditure limitations?
 - Should the methodology create a set of geographically-defined expenditure limitations?
 - Should the methodology give “extra credit” for diversification by technology?

- Should the methodology give “extra credit” for geographic diversification?
14. How should the procurement expenditure limitation be applied to the Commission’s evaluation of individual RPS contracts?
- The methodology should include a way to calculate a benchmark limit on the price of RPS procurement contracts (in dollars per megawatt-hour of generation) of a particular duration and technology type.
 - The methodology should include a way to consider an individual RPS procurement contract, on a total expected cost basis, as a fraction of some larger procurement expenditure limitation.
 - The methodology should use some other way to consider an individual RPS procurement contract in the context of the procurement expenditure limitation. Please provide a detailed explanation.
 - The methodology should not be applied to individual RPS procurement contracts at all.
15. Should the procurement expenditure limitation methodology include a methodology by which Energy Division staff could “monitor the status of the cost limitation for each electrical corporation,” as required by Section 399.15(g)(1)?
- What elements would be required in order to monitor the status of the cost limitation for each IOU?
 - How often should the status of the cost limitation for each IOU be examined?
 - Annually;
 - Once per compliance period;

- Once before January 1, 2016;¹¹
- Once before January 1, 2016 and again before December 31, 2020;
- Once before December 31, 2020;
- At the discretion of the Director of Energy Division;
- Some other time interval.

IT IS RULED that:

1. Comments of not more than 40 pages, addressing the issues identified in this ruling, may be filed and served not later than February 16, 2012.

2. Reply comments of not more than 20 pages may be filed and served not later than March 1, 2012.

3. In addition to service by electronic mail, paper copies of comments and reply comments must be promptly provided to Administrative Law Judges Anne Simon and Regina DeAngelis.

Dated January 24, 2012, at San Francisco, California.

/s/ ANNE E. SIMON
Anne E. Simon
Administrative Law Judge

¹¹ See Section 399.15(e)(1).

ATTACHMENT A
Section 399.15(c) – (g) of Public Utilities Code
(Enacted by Senate Bill 2 (1x), Stats. 2011, ch. 1)

(c) The commission shall establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard. In establishing this limitation, the commission shall rely on the following:

- (1) The most recent renewable energy procurement plan.
- (2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.
- (3) The potential that some planned resource additions may be delayed or canceled.

(d) In developing the limitation pursuant to subdivision (c), the commission shall ensure all of the following:

- (1) The limitation is set at a level that prevents disproportionate rate impacts.
- (2) The costs of all procurement credited toward achieving the renewables portfolio standard are counted towards the limitation.
- (3) Procurement expenditures do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.

(e) (1) No later than January 1, 2016, the commission shall prepare a report to the Legislature assessing whether each electrical corporation can achieve a 33-percent renewables portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations. If the commission determines that it is necessary to change the limitation for procurement costs incurred by any electrical corporation after that date, it may propose a revised cap consistent with the criteria in subdivisions (c) and (d). The proposed modifications shall take effect no earlier than January 1, 2017.

(2) Notwithstanding Section 10231.5 of the Government Code, the requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2021.

(3) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(f) If the cost limitation for an electrical corporation is insufficient to support the projected costs of meeting the renewables portfolio standard procurement requirements, the electrical corporation may refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation, unless eligible renewable energy resources can be procured without exceeding a de minimis increase in rates, consistent with the long-term procurement plan established for the electrical corporation pursuant to Section 454.5.

(g) (1) The commission shall monitor the status of the cost limitation for each electrical corporation in order to ensure compliance with this article.

(2) If the commission determines that an electrical corporation may exceed its cost limitation prior to achieving the renewables portfolio standard procurement requirements, the commission shall do both of the following within 60 days of making that determination:

(A) Investigate and identify the reasons why the electrical corporation may exceed its annual cost limitation.

(B) Notify the appropriate policy and fiscal committees of the Legislature that the electrical corporation may exceed its cost limitation, and include the reasons why the electrical corporation may exceed its cost limitation.

(END OF ATTACHMENT A)