

7/18/2012 L. Jan Reid



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

COMMENTS OF L. JAN REID ON RENEWABLE NET SHORT CALCULATION

July 18, 2012

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I. Introduction

Pursuant to the July 11, 2012 Ruling (Ruling) of Administrative Law Judge (ALJ) Regina DeAngelis, L. Jan Reid (Reid) submits these comments in Rulemaking 11-05-005 concerning the Renewable Nets Short (RNS) calculation in the Renewables Portfolio Standard (RPS) program. I will send this pleading to the Docket Office using the Commission's electronic filing system on July 18, 2012, intending that it be timely filed.

The Ruling requests that parties comment on three issues identified by the ALJ (Ruling, p. 2) as well as comment on the Energy Division Staff's Proposal (Proposal) given in Attachment 1 of the Ruling. I comment on these issues in Sections IV and V below.

II. Summary and Recommendations

I have relied on state law and past Commission decisions in developing recommendations concerning the calculation of RNS. I recommend the following:¹

1. The Commission should require retail sellers to calculate RNS on an annual basis. Retail sellers should provide RNS information to the Commission as part of the retail seller's annual compliance report. (pp. 3-4)
2. In its final decision on RNS calculation, the Commission should state that "Nothing in this decision changes or modifies the requirements of Decision 06-06-066." (pp. 4-5)

¹ Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

3. The Commission should require retail sellers to use the most recent Commission-approved methodology to forecast bundled retail sales. (pp. 6-7)
4. For purposes of RNS calculation, the Commission should order Staff to assume that (1) retail sellers will receive no generation from expiring contracts; and (2) a minimum over-procurement margin of zero will be used by the retail seller. (pp. 7-9)
5. The issue of over-procurement should not be resolved via ALJ ruling with a single set of comments, no reply comments, seven days' notice to the parties, an incomplete record, and only 13 days of deliberation by the ALJ. (pp. 7-9)
6. The Commission should order electrical corporations to include a risk assessment methodology as part of their renewable energy procurement plan. (p. 10)

III. Proposed Findings

My recommendations are based on the following proposed findings:

1. The California Legislature intended for the Commission to set annual RPS compliance goals for the period 2011 through 2020. (pp. 3-4)
2. There is an implicit tradeoff between confidentiality and transparency. If the level of confidentiality increases, procurement transparency necessarily decreases, and vice versa. (pp. 4-5)
3. Staff's proposed methodology (as modified in Section V) is appropriate for energy service providers (ESPs) and multi jurisdictional utilities (MJUs) as well as for investor owned utilities (IOUs). (pp. 5-6)
4. The Commission may decide to modify its retail sales methodology in Track III of Rulemaking 12-03-014. (pp. 6-7)
5. SCE and PG&E are fully procured for the first compliance period (2011-2013) and SDG&E is projected to procure enough generation to meet the first compliance period requirement. All three utilities are projected to exceed the procurement requirements for the second compliance period (2014-2016) even after assuming a 40% project failure rate for new projects. (p. 8)

6. The Commission has authorized a planning reserve margin, but this margin is not based on speculation concerning the viability of signed contracts. (p. 8)
7. Public Utilities Code Section 399.13(a)(5)(F) requires that an electrical corporation's renewable energy procurement plan must include "An assessment of the risk that an eligible renewable energy resource will not be built, or that construction will be delayed, with the result that electricity will not be delivered as required by the contract." (p. 10)

IV. ALJ Questions

A. Is measuring the renewable net short on an annual basis appropriate?

It is appropriate to measure RNS on an annual basis. Annual measurement is both efficient and consistent with state law. It would be especially burdensome for small retail sellers to provide the Commission with compliance or reporting filings more frequently than once per year.

Public Utilities Code Section (PUC §) 399.15(b)(1) establishes three compliance periods: January 1, 2011, to December 31, 2013 (first compliance period); January 1, 2014, to December 31, 2016 (second compliance period) ; and January 1, 2017, to December 31, 2020 (final compliance period). PUC § 399.15(b)(2)(B) requires that "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."

Thus, the California Legislature intended for the Commission to set annual compliance goals for the period 2011 through 2020. Consistent with the legislature's intent, the Commission used a straight-line method and set annual compliance goals ranging from 20% in 2011 to 33% in 2020.

(See Decision (D.) 11-12-020, slip op. at 2-3)

The Commission has pointed out that "Since SB 2 (1X) institutes multi-year compliance periods, an annual compliance report interval should allow retail sellers to provide sufficient information for Energy Division staff (Staff) to be able to understand a retail seller's compliance progress." (D.12-06-038, slip op. at 76)

For the reasons given above, the Commission should require retail sellers to calculate RNS on an annual basis. Retail sellers should provide RNS information to the Commission as part of the retail seller's annual compliance report.

B. Does this methodology appropriately balance the need to protect confidential project specific information with the desire to provide the Commission and the renewables market a renewable net short that can be used for RPS procurement authorization?

There is an implicit tradeoff between confidentiality and transparency. If the level of confidentiality increases, procurement transparency necessarily decreases, and vice versa. The Energy Division's proposed methodology neither recognizes nor addresses this balance.

In 2006, the Commission reviewed and modified its practices regarding confidential information as required by state law. The Commission stated that:

This decision implements Senate Bill (SB) No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)). SB 1488 requires that we examine our practices regarding confidential information to ensure

meaningful public participation in our proceedings and open decision making, while taking account of our obligations under §§ 454.5(g) and 583 to protect the confidentiality of certain information.

The Commission can best address the issue of confidentiality versus transparency by the language that it uses in its final decision on RNS calculation. In that decision, the Commission should state that “Nothing in this decision changes or modifies the requirements of D.06-06-066.”

C. Is this methodology appropriate for Energy Service Providers and Multi Jurisdictional Utilities?

As modified in Section V, the Energy Division’s proposed methodology is appropriate for Community Choice Aggregators (CCAs), Investor Owned Utilities (IOUs), Energy Service Providers (ESPs), and Multi Jurisdictional Utilities (MJUs). State law requires that the Commission establish identical rules for different retail sellers (e.g., CCAs, ESPs, MJUs, IOUs, etc.). For example, state law requires that:

- “Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission. The commission shall exercise its enforcement powers to ensure compliance by all load-serving entities.” (PUC § 380(e))
- “The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.” (PUC § 399.12(g)(2))
- “The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article.” (PUC § 399.12(g)(3))

- “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.”
(PUC § 399.15(b)(2)(A))

Since the Commission is legally required to apply the same rules to the procurement activities of each retail seller, the Staff’s proposed methodology (as modified in Section V) is appropriate for ESPs and MJUs as well as for IOUs.

V. Proposed Modifications to Staff’s Methodology

Below, I suggest a number of modification to Staff’s proposed methodology. These modifications include:

A. Sales Forecasts

Staff proposes that “Retail sellers’ bundled retail sales forecasts should utilize the same methodology as determined in the 2010 [Long Term Procurement Plan] LTPP bundled plans when calculating the renewable procurement quantity requirements.” (Proposal, p. 3)

Since the Commission-authorized system of RNS calculation will presumably be ongoing, retail sellers should use the most recent Commission-approved methodology to forecast bundled retail sales. For example, retail sellers should not rely on a 2010 decision in 2020. I note that the Commission has established a new LTPP proceeding, Rulemaking (R.) 12-03-014. The Commission has indicated that it will address bundled procurement plans in Track III of R.12-03-014. (R.12-03-014, “Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge,” May 17, 2012, p. 13) The Commission may decide to modify its retail sales methodology in Track III of R.12-03-014.

Therefore, I recommend that the Commission require retail sellers to use the most recent Commission-approved methodology to forecast bundled retail sales.

B. Staff Assumptions 4 and 5

Staff recommends that the following assumptions be used:

(Proposal, pp. 3-4)

4. Do not assume any generation from contracts that are expiring (i.e., re-contracting) or any generation after a facility's useful life if the contract does not extend after the term of the facility's useful life.
5. Include a margin of over-procurement to account for [the] project/forecasting question. Use the margin of over-procurement to ensure compliance in any given year.

For purposes of RNS calculation, I recommend that the Commission order Staff to assume that (1) retail sellers will receive no generation from expiring contracts; and (2) a minimum over-procurement margin of zero will be used by the retail seller. It is clear that many expiring contracts are successfully re-negotiated², and that some projects do not come on-line as anticipated by the project developer. I believe that these two situations tend to cancel each other out. Under Staff's proposal, retail sellers would effectively underestimate RPS supply by assuming no recontracting, and overestimate RPS demand by establishing an over-procurement margin.

Staff's over-procurement proposal will tend to increase renewables prices and harm bundled ratepayers. In 2011, I found that an increase of 1,000 GWh of RPS procurement will lead to a price increase of \$3.63/MWh for all RPS

² For example, see CPUC Resolution E-4455.

procurement. (See Comments of L. Jan Reid on New Procurement Targets and Certain Compliance Requirements for the Renewables Standard Portfolio Program, August 30, 2011, pp. 6-7)

1. Over-procurement

An over-procurement margin does not appear to be necessary. The Commission has pointed out that: (Renewables Portfolio Standard Quarterly Report [RPS Report], 4th Quarter 2011, Cost Compliance with SB836, p. 8)

SCE and PG&E are fully procured for the first compliance period (2011-2013) and SDG&E is projected to procure enough generation to meet the first compliance period requirement. All three utilities are projected to exceed the procurement requirements for the second compliance period (2014-2016) even after assuming a 40% project failure rate for new projects.

In 2011, the CPUC approved 2,461 megawatts (MW) of RPS capacity out of 4,525 MW submitted by the IOUs and awaiting approval. (RPS Report, Table 1, p. 5)

Additionally, I am not aware of any time in which the CPUC allowed IOUs to deliberately over-procure. The Commission has authorized a planning reserve margin, but this margin is not based on speculation concerning the viability of signed contracts. The issue of over-procurement was addressed in the 2007 LTPP proceeding, R.06-02-013.

In the 2007 LTPP proceeding, Aglet Consumer Alliance (Aglet) argued that: (R.06-02-013, Exhibit 52, p. 2-11)

PG&E states that it “has identified a 1,800 MW need for new generation in PG&E’s service area starting in 2011.” (PG&E Plan, Volume II, p. IV-11.) In addition, PG&E requests the authority to procure an additional 500 MW of capacity. PG&E’s request for the right to overprocure should be denied. Aglet is unaware of any instance where the Commission has allowed a regulated utility to overprocure.

The Commission agreed with Aglet when it stated that “We agree with Aglet’s position that discounting existing contracts based on questionable viability is inconsistent with historic Commission practices and we do not adopt such a contingency for PG&E in this decision.” (D.07-12-052, slip op. at 94)

The Ruling stated that: (Ruling, pp. 2-3)

Parties may comment on the attached proposal on or before July 18, 2012. By a subsequent ruling by either the assigned Commissioner or myself, retail sellers will be directed to update their net short calculations originally submitted in May with their 2012 RPS Procurement Plans by August 1, 2012, the date set forth in the April 5, 2012 ACR.

Thus, the Ruling gave parties seven days to file comments, and does not provide for reply comments. The Commission apparently intends for the ALJ to resolve all of the RNS issues via ruling within 13 days of the receipt of filed comments.

Over-procurement is not a trivial, ministerial issue. The Commission should not depart from longstanding Commission practice on an issue as important as over-procurement without careful review. Such an issue should not be resolved via ALJ ruling with a single set of comments, no reply comments, seven days’ notice to the parties, an incomplete record, and only 13 days of deliberation by the ALJ.

2. Project/Forecasting Question

Finally, Staff refers to the project/forecasting question in item 5. Staff does not indicate the item that relates to project/forecasting or where it is discussed. Therefore, I do not comment on the project/forecasting question in this pleading.

C. Risk Adjustment

Staff proposes that “Retail sellers must use their own internal analysis to risk-adjust all projects in their respective RPS portfolios (online and forecast).” (Proposal, p. 4) In other words, Staff apparently proposes that retail sellers (including IOUs) should be allowed to risk-adjust their portfolios with no Commission oversight. In this case, Staff’s proposal is inconsistent with state law.

State law requires that an electrical corporation’s renewable energy procurement plan must include “An assessment of the risk that an eligible renewable energy resource will not be built, or that construction will be delayed, with the result that electricity will not be delivered as required by the contract.” (PUC § 399.13(a)(5)(F))

Thus, electrical corporations must include a risk assessment methodology as part of their plan. The Commission must then review the plans and approve a plan for each electrical corporation. If an electrical corporation has not included a risk assessment methodology as part of their plan, they should be allowed to submit a risk assessment methodology as part of their RPS plan update on August 1, 2012.

VI. Conclusion

The Commission should adopt my recommendations for the reasons given herein.

* * *

Dated July 18, 2012, at Santa Cruz, California.

/s/

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VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated July 18, 2012, at Santa Cruz, California.

/s/

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