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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 08-08-009  
(Filed August 21, 2008)

**RESPONSE OF MARIN ENERGY AUTHORITY TO THE  
APPLICATIONS OF PACIFIC GAS AND ELECTRIC COMPANY AND  
SOUTHERN CALIFORNIA EDISON COMPANY FOR REHEARING OF  
DECISION 10-12-048**

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February 2, 2011

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DECISION 10-12-048**

Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Marin Energy Authority (“MEA”) respectfully offers the following response to the Application of Pacific Gas and Electric Company (“PG&E”) for Rehearing of Decision 10-12-048 (“PG&E Application”) and the Application of Southern California Edison Company (“SCE”) for Rehearing of Decision 10-12-048 (“SCE Application”, and together with the PG&E Application the “Applications”)<sup>1</sup>, which argue, *inter alia*,<sup>2</sup> that the Commission committed legal error by not applying the renewable auction mechanism (“RAM”) for California Renewables Portfolio Standard (“RPS”) energy and its related requirements set forth in Decision (D.) 10-12-048 (the “Decision”) to all electricity service providers (“ESPs”), including community choice aggregators (“CCAs”) such as MEA, and direct access providers. PG&E and SCE fail to demonstrate legal error on the part of the Commission. For the legal and policy reasons set forth below, the Commission correctly addressed the jurisdictional and policy

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<sup>1</sup> MEA notes that an additional Application for Rehearing was submitted by NextEra Energy Resources also on January 18, 2011. MEA does not address this Application for Rehearing here.

<sup>2</sup> SCE and PG&E also argue that (i) the Decision unlawfully requires procurement of RPS-eligible energy by investor-owned utilities (IOUs) above RPS mandates, and (ii) the Decision contravenes IOU procurement cost principles. We do not address these here.

issues pertinent to CCAs in the Decision, and therefore the Applications as they relate to CCAs should be denied.

**I. THE COMMISSION DID NOT COMMIT LEGAL ERROR IN EXCLUDING ESPS FROM RAM REQUIREMENTS**

**A. CCA and ESP Procurement Requirements Differ from Those of IOUs**

The Commission correctly concluded that it does not have the same jurisdiction over ESP procurement as it has over IOU procurement. The Commission does not have approval authority over ESP contracts, nor does it have jurisdiction over the process by which ESPs contract. Specifically, the Decision prohibits procurement by IOUs from renewable projects under 20 MW other than through the RAM, and specifically prohibits “voluntary programs that target the same market segment or bilateral negotiations.” (Decision at 4.) To apply this restriction on CCAs and other ESPs would far exceed the jurisdiction of the Commission. The Commission has consistently “[found] that [it does] not have broad regulatory authority over CCA program implementation.” (Decision 5-12-041 at 11.) The Decision is consistent with Commission precedent regarding its jurisdiction in concluding that “the Commission has no regulatory authority over ESP contracting processes. Such authority extends from the Commission’s regulatory rate authority over IOUs, and serves no purpose with regard to ESP contracts since the Commission has no regulatory authority over ESP contracting processes.” (Decision at 24.) Furthermore, the simplified advice letter process the decision proposes is not relevant to CCA and ESP procurement.

The Commission did not commit legal error in determining that the Commission jurisdiction over CCAs and ESPs is different than its jurisdiction over IOUs.

**B. The “Same Requirements” Conclusions in the Decision Do Not Commit Legal Error; Furthermore, SB 695 Is Not Applicable to CCAs**

SCE and PG&E further wrongly interpret the “same requirements” language in both Section 399.12 and SB 695. The “same requirements” set forth in Section 399.12 relates to the base RPS procurement targets, and each entity can reach those requirements as it deems appropriate. It is clear that the Commission “appl[ies] fundamental RPS program basics to all LSEs (e.g. targets, reporting, penalties), including not only the largest IOUs, but also small and multi-jurisdictional utilities (SMJUs), community choice aggregators (CCAs), and electric service providers.” (Decision at 23.)

In addition, the Commission clearly understood the plain meaning and the intent of Senate Bill (“SB”) 695, that it is not applicable to CCAs. SB 695 specifically exempts CCAs from its scope. As set forth in California Public Utilities Code (“P.U. Code”) Section 365.1:

“Other provider” does not include a community choice aggregator, as defined in Section 331.1, and the limitations in this section do not apply to the sale of electricity by “other providers” to a community choice aggregator for resale to community choice aggregation electricity consumers pursuant to Section 366.2.

Once more, the Commission did not commit legal error in reaching its conclusions.

**II. AS A MATTER OF POLICY, THE RAM SHOULD NOT APPLY TO CCAS OR OTHER ESPS**

**A. MEA Currently Exceeds State-mandated RPS Requirements and Actively Encourages Small-Scale Renewable Generation**

MEA currently serves 9,000 customers and has an approximate peak load of 33 MW. At full roll-out, MEA will have a peak load of approximately 140 MW, representing only about 0.5% of PG&E’s 23,000 MW peak load. As stated by the Decision, the Commission “expect[s] RAM to *compliment* the RPS Program by reducing transaction costs and providing a procurement opportunity for smaller RPS-eligible projects.” (Decision at 2, emphasis added.) However, applying RAM to MEA, given MEA’s small size, all other RPS procurement would be

effectively eliminated. One 20 MW project at a high capacity factor could exceed MEA's entire RPS requirements, even at full roll-out of MEA's CCA program.

Furthermore, one of MEA's main objectives is to procure *local* renewable energy, and due to its small load size, MEA procures in three key ways: (i) through RFPs, (ii) through bilateral negotiations, and (iii) through MEA's feed-in tariff. Separately, MEA has a generous net energy metering tariff to encourage local small-scale development of renewables, such as rooftop solar. As a result of these procurement methods, MEA is exceeding the California RPS by more than 30% and is far outpacing California's investor-owned utilities in the level of RPS-qualifying renewable energy content (currently 26.5%) it supplies to its customers.

The intent of the Commission was that the RAM not be a significant percentage of an IOU's load; however, in the case of MEA it would be. The "RAM evolved from the Commission's inquiry into expanding the existing feed-in tariff for generators 1.5 MW and below." (Decision at 2.) The RAM continues to have certain "feed-in tariff-like" attributes.

MEA has a feed-in tariff that, with an initial program size of 2 MW (representing over 11% of MEA's average load), offers a significantly higher percentage of load to its program than those offered by the IOUs. However, to ensure that MEA continues to adequately and responsibly procure for its load, taking into consideration MEA's aggressive local renewable targets, MEA has bilaterally negotiated for smaller RPS facilities, including two 1.6 MW landfill gas-to-energy facilities, and has also issued a RFP for local renewable energy, up to 40 MW.

**B. ESPs Enable their Customers to Have Uniquely Tailored Portfolios to Meet Their Needs**

ESPs' smaller sizes and independent procurement processes also suggest it would not advance Commission policy to apply the RAM to ESPs. Similar to how the needs and objectives of a local community are met through a CCA program, ESPs enable their customers to meet



**VERIFICATION**

I, Elizabeth Rasmussen, am Project Manager for the Marin Energy Authority and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of the *Response of Marin Energy Authority to the Applications of Pacific Gas and Electric Company and Southern California Edison Company for Rehearing of Decision 10-12-048*, filed in R.08-08-009, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on February 8, 2011, at San Rafael, California.

By: \_\_\_\_\_ /s/ Elizabeth Rasmussen \_\_\_\_\_

Elizabeth Rasmussen  
Project Manager  
MARIN ENERGY AUTHORITY

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing ***Response of Marin Energy Authority to the Applications of Pacific Gas and Electric Company and Southern California Edison Company for Rehearing of Decision 10-12-048*** on all parties of record in ***R.08-08-009*** by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on February 8, 2011, at San Rafael, California.

\_\_\_\_\_  
/s/ Jordis Weaver  
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