

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

FILED  
PUBLIC UTILITIES COMMISSION  
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SAN FRANCISCO OFFICE  
RULEMAKING 11-05-005

**ORDER INSTITUTING RULEMAKING  
REGARDING IMPLEMENTATION AND ADMINISTRATION  
OF THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

**1. Summary**

This rulemaking continues implementation and administration of the California Renewables Portfolio Standard (RPS) Program.<sup>1</sup> As a successor docket to Rulemaking (R.) 08-08-009, this proceeding involves ongoing oversight of the RPS Program. This includes reviewing RPS procurement plans, assessing compliance, and enforcing results.

Ongoing administration also now requires additional program modification and development to implement recent amendments to RPS statutes.

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<sup>1</sup> The California RPS Program was established by Senate Bill (SB) 1078 (Stats. 2002, Ch. 516, Sec. 3, codified as Pub. Util. Code §§ 399.11 *et seq.*, effective January 1, 2003). The RPS Program or related elements have been amended several times, including by SB 107 (Stats. 2006, Ch. 464), Assembly Bill (AB) 1969 (Stats. 2006, Ch. 731), SB 1036 (Stats. 2007, Ch. 685), SB 380 (Stats. 2008, Ch. 544), SB 32 (Stats. 2009, Ch. 328), SB 695 (Stats. 2009, Ch. 337), and SB 2 (2011-12 First Extraordinary Session, Stats. 2011, Ch 1; referred to herein as SB 2 (1X)). Unless noted otherwise, all statutory references herein are to the Public Utilities Code, as amended by SB 2 (1X).

These amendments, among other things, set an RPS procurement target of 33% of retail sales by 2020, and require Commission establishment of cost containment limits. Ongoing administration also includes consideration of policy options to achieve optimal RPS resource investment and operation at reasonable cost with equitable balancing of risks among stakeholders implemented through a fair and efficient program.

We coordinate this proceeding with several others addressing related matters.<sup>2</sup> R.08-08-009 is closed for purposes of Public Utilities Code Section 1701.5, and remains open only to consider existing petitions for modification, applications for rehearing, and requests for intervenor compensation.

## **2. Background**

### **2.1. Program Background**

Our fundamental responsibility is to oversee utility provision of an adequate supply of safe and reliable electricity at just and reasonable rates. As part of that responsibility, the Commission in 1976 ordered utilities to present proposals for the generation of electricity by alternative sources.<sup>3</sup> In 1979, we

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<sup>2</sup> For example, R.08-03-009 and Investigation 08-03-010 (to actively promote the development of transmission infrastructure providing access to renewable energy resources), R.10-05-004 (regarding policies, procedures and rules for the California Solar Initiative, the self-generation incentive program, and other distributed generation issues), and R.10-05-006 (integrating and refining procurement policies and considering long-term procurement plans).

<sup>3</sup> Decision (D.) 85559 (March 16, 1976); 79 CPUC 513, 558-561, 571. Also see Resolution E-1738 (January 10, 1978).

initiated our first significant program for alternative resource procurement.<sup>4</sup> These efforts resulted in the commercial operation of about 11,000 megawatts (MW) of new cogeneration (combined heat and power) and small power production facilities, with about 5,000 MW powered by renewable fuels.

Senate Bill (SB) 1078 established the California Renewables Portfolio Standard (RPS) program effective January 1, 2003. As adopted, it modified program design and structure for renewable resource procurement.<sup>5</sup> It specifically sought to increase the amount of California's electricity generated by renewable resources in order to achieve multiple important, expressly stated benefits.<sup>6</sup>

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<sup>4</sup> D.91109 (December 19, 1979), 3 CPUC2d 1. We also penalized Pacific Gas and Electric Company (PG&E) \$7.2 million for lack of progress, combined with an incentive for improvement (i.e., penalty offset upon presentation of signed contracts for certain procurement). (D.91107, 2 CPUC2d 596, 726-730, 743.)

<sup>5</sup> The RPS program design is largely based on bids (subject to further negotiation over prices, terms and conditions before final contract execution between buyer and seller; the markets are treated as sufficiently competitive to protect both buyer and seller). The prior procurement design was largely based on a standard contract with prices set at the buyer's avoided cost (to achieve a competitive market outcome without negotiations; the markets were treated as monopsony or otherwise not sufficiently competitive to protect both buyer and seller).

<sup>6</sup> The stated RPS program benefits (as updated by SB 2 (1X)) include, but are not limited to: displacing fossil fuel consumption; adding new electrical generating facilities; reducing air pollution; meeting climate change goals by reducing greenhouse gas emissions; promoting stable retail rates; meeting the need for a diversified and balanced energy generation portfolio; meeting resource adequacy requirements; contributing to safe and reliable operation of the electrical grid; and implementing RPS-related transmission and land use planning activities. (See § 399.11.) The Governor identifies several important benefits including: stimulating investment in green technologies in California; creating new jobs; improving local air quality, promoting energy independence, and reducing greenhouse gas emissions. (See Governor's SB 2 (1X) signing letter dated April 12, 2011.)

To achieve these objectives, statutes require that each California retail seller<sup>7</sup> procure a minimum quantity of electricity products from eligible renewable energy resources.<sup>8</sup> This quantity is measured as a specified percentage of total kilowatt-hours sold to the retail seller's end-use customers each compliance period. At present, compliance periods are annual. Utilities must reach 20% by 2010 (subject to certain provisions that allow compliance by 2013), and maintain 20% every year thereafter.

SB 2 (1X) institutes three compliance periods, each involving more than one year. The Commission must establish the quantity of electricity products from eligible resources to be procured by each retail seller for each compliance period. The first compliance period requires procurement from eligible renewable resources that averages 20% of retail sales over the period between January 1, 2011 and December 31, 2013. After 2013, quantities must reflect reasonable progress in each of the intervening years sufficient to ensure eligible renewable resource procurement achieves 25% of retail sales by December 31, 2016; 33% of retail sales by December 31, 2020; and not less than 33% thereafter.<sup>9</sup>

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<sup>7</sup> A retail seller is an entity engaged in the retail sale of electricity to an end-use customer located in California. Retail sellers under the Commission's jurisdiction for RPS purposes include electrical corporations, community choice aggregators (CCAs) and electric service providers (ESPs). (§ 399.12(j).)

<sup>8</sup> Eligible renewable resources are determined by the California Energy Commission (CEC), and may include the following: photovoltaic, wind, geothermal, solar thermal, biomass, digester gas, landfill gas, small hydroelectric, in-conduit hydroelectric, hydroelectric incremental generation from efficiency improvements, ocean wave, ocean thermal, tidal current, fuel cells using renewable fuels, and municipal solid waste conversion. (§ 399.12 and Public Resources Code § 25741.)

<sup>9</sup> §§ 399.15(a) and (b)(2).

The Commission implements and administers the RPS Program in collaboration and cooperation with the California Energy Commission (CEC) and other agencies. We monitor RPS goals and results, including compliance reviews and enforcement, as necessary.

We also require that electrical corporations prepare a renewable energy procurement plan, and update that plan when necessary.<sup>10</sup> We review these RPS procurement plans, and accept, reject or modify the plans.<sup>11</sup> We oversee electrical corporation RPS solicitations. We review the results of solicitations submitted for approval by an electrical corporation, and accept or reject proposed contracts based on consistency with the approved procurement plan.<sup>12</sup>

## **2.2. Procedural Background**

On August 22, 2002, in anticipation of the passage of RPS Program legislation (SB 1078), the Commission ordered the three major electric utilities to revitalize their procurement of renewable resources. We did this by requiring that each utility solicit an increment of electricity generated via renewable resources in an amount not less than one percent of the utility's actual energy and capacity needs. (D.02-08-071.)

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<sup>10</sup> § 399.13(a)(1). We also require that ESPs prepare an RPS procurement plan. (D.11-01-026.)

<sup>11</sup> § 399.13(c).

<sup>12</sup> § 399.14(d).

Upon SB 1078 becoming effective, we began implementation in Rulemaking (R.) 01-10-024. As required by the Legislature, within six months we adopted the first of several decisions to set initial parameters and requirements.<sup>13</sup> (D.03-06-071.)

We have considered numerous policy and other issues over the course of the last decade, including the review of multiple RPS procurement plans and administration of several solicitation cycles. We have done so in a number of proceedings including R.04-04-026, R.06-02-012 and R.06-05-027. In August 2008, we closed R.06-05-027 and opened R.08-08-009 to continue this work. Today we close R.08-08-009, and open this proceeding as its successor. We transfer the record from R.08-08-009 to this new proceeding and bring forward limited remaining issues. R.08-08-009 remains open only as necessary for the limited purpose of considering existing petitions for modification, applications for rehearing, and requests for intervenor compensation.

### **3. Preliminary Scoping Memo**

We include a preliminary scoping memo in this Order Instituting Rulemaking (OIR). (Rule 7.1(d) of the Commission's Rules of Practice and Procedure (Rules).) As discussed in the sections below, this is composed of the issues, preliminary determination of category, preliminary determination of need for hearing, and schedule.

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<sup>13</sup> These included: (a) a process for determining the market price of electricity, (b) criteria for the rank ordering and selection of least cost-best fit (LCBF) renewable resources, (c) flexible compliance rules, and (d) an approach to forming standard contract terms and conditions.

### 3.1. Issues

The issues for this proceeding include program modifications to implement recent statutory changes. To do so, the Commission may modify (on a present and going forward basis) some, all or none of our prior RPS Program decisions. As of today,<sup>14</sup> these decisions include (but are not necessarily limited to):

D.03-06-071; D.03-12-065; D.04-06-014; D.04-06-015; D.04-07-029;  
D.04-09-036; D.05-05-011; D.05-07-039; D.05-10-014; D.05-11-025;  
D.05-12-042; D.06-01-029; D.06-01-046; D.06-03-016; D.06-05-023;  
D.06-05-039; D.06-10-019; D.06-10-050; D.07-02-011; D.07-03-046;  
D.07-07-025; D.07-05-028; D.07-07-027; D.07-07-044; D.07-07-057;  
D.07-09-024; D.07-11-025; D.08-02-008; D.08-02-010; D.08-04-009;  
D.08-05-029; D.08-08-028; D.08-10-026; D.09-06-050; D.09-11-014;  
D.10-03-021; D.10-05-018; D.10-12-048; D.11-01-016; D.11-01-025;  
D.11-01-026; D.11-04-004; D.11-04-007; D.11-04-008; D.11-04-030.

The issues also include continuing oversight of RPS procurement, reporting, compliance and enforcement. We identify the preliminary list of issues.

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<sup>14</sup> Additional decisions, if any, implementing the RPS program prior to the effective date of SB 2 (1X) may also be affected.

### **Issue 1: Modify Program to Implement Recent Legislation**

Recent legislation expands the RPS requirements to 33% of retail sales by December 31, 2020. (SB 2 (1X).)<sup>15</sup> It also makes a number of other changes to procurement, compliance, reporting, and penalty provisions. These changes include, but are not limited to:

- Establishing a cost containment mechanism for utility RPS procurement;
- Using multiple-year (rather than annual) compliance periods, and modifying compliance provisions;
- Ending the use of the market price referent as a metric to limit mandatory procurement;
- Defining three categories of RPS-eligible procurement, and setting limits on the use of each category;
- Requiring an annual compliance report with specific information;
- Modifying enforcement provisions.

A preliminary but more comprehensive list is in Attachment A.

### **Issue 2: Procurement Plans**

Direct the filing of procurement plans consistent with new statutes.

- Review and accept, modify or reject each plan before commencement of procurement;
- Supervise plan implementation and RPS solicitation;
- Review results.

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<sup>15</sup> The legislation was signed by Governor Brown on April 12, 2011. Since the legislation was enacted during the Legislature's 2011-2012 First Extraordinary Session, it 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 First Extraordinary Session has not yet adjourned.

### **Issue 3: Compliance, Reporting And Enforcement**

Monitor and enforce compliance of retail sellers with RPS requirements, including but not limited to:

- Update formats for reporting RPS-eligible procurement;
- Clarify compliance requirements for years 2010-2013;
- Act on motions, or on the Commission's own initiative, on specific compliance reports, as necessary.

### **Issue 4: Least Cost-Best Fit**

Review and improve bid evaluation methodology, including adjustments, as necessary, for:

- Integration cost adders;<sup>16</sup>
- Tradable renewable energy credits (TREC)s;<sup>17</sup>
- Resource adequacy value;<sup>18</sup>
- Congestion cost adders;<sup>19</sup>
- Appropriate allocation of risk among ratepayers, generation developers, utility shareholders, and financing entities;
- Other issues, including any new statutory requirements.

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<sup>16</sup> Cost adders incorporated into utilities' LCBF bid evaluations to estimate costs associated with ancillary services needed for real time balancing of the transmission system of the California Independent System Operator. (See D.04-07-029.)

<sup>17</sup> See D.10-03-021.

<sup>18</sup> The value assigned to bids in a utility's LCBF evaluation based on capacity values, nameplate capacity, technology, and location, to reflect a generation project's contribution to the utility's resource adequacy requirements. (See D.04-07-029.)

<sup>19</sup> Cost adders incorporated into utilities' LCBF bid evaluations that estimate costs associated with local transmission congestion and over-generation. (See D.11-04-030.)

**Issue 5: Implement Section 399.20, as amended**

Develop requirements for standard tariffs of utilities for RPS-eligible generators of up to three megawatts capacity, including but not limited to:

- Supplement briefs already submitted in R.08-08-009 to cover new statutory requirements;
- Establish methodology to determine market price for standard tariffs;
- Set up process for expedited interconnection procedures.

**Issue 6: Other Ongoing Implementation and Administration**

This includes but is not limited to:

- 6.1 Implementation of amended or new statutes, if any.
- 6.2 Further consideration of rules for CCAs and ESPs, as necessary, such as but not limited to:
  - When obligations start for new entrants;
  - When obligations under D.07-05-028 and other procurement requirements commence.
- 6.3 Integration of TRECs into RPS procurement and compliance rules, such as but not limited to:
  - Utility evaluation of TREC contracts;
  - Commission process for reviewing TREC contracts and modification, if necessary, of fast-track advice letter procedure (D.09-06-050);
  - Classification of RPS contracts using firm transmission.

6.4 Development of RPS Need Assessment Methodology.

Develop methodology to determine RPS resource need and integration into RPS procurement plans.

6.5 Revision of Standard Terms and Conditions (STCs).

Review and revise STCs<sup>20</sup> for new RPS contracts, as needed, including but not limited to:

- Green attributes;
- Eligibility;
- Whether or not to add a term that provides for ongoing Commission jurisdiction over contract terms and conditions.

6.6 Ruling on unresolved motions, including but not limited to the Amended Motion of the City of Cerritos for Certain Determinations (December 3, 2010).

6.7 Continuation of any unresolved matter in R.08-08-009 that is specifically identified as an issue in the assigned Commissioner's Scoping Memo and Ruling in this successor proceeding.

6.8 Other issues identified by parties or the Commission.

We will not address issues here that are being addressed elsewhere. This includes, for example, but is not limited to, specific issues stated in the Scoping Memos in other proceedings (i.e., issues specifically scoped in R.08-03-009, Investigation (I.) 08-03-010, R.10-05-004, R.10-05-006).

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<sup>20</sup> Current STCs are set out in D.08-04-009, D.08-08-028, and D.10-03-021 (as modified by D.11-01-025).

**3.2. Preliminary Determination of Category**

We preliminarily determine that the category of this proceeding is ratesetting. (Rules 1.3(e) and 7.1(d).) This is based on the requirement to establish an RPS procurement cost limitation, and our ongoing implementation and administration of the RPS Program (as part of the larger procurement process) which impacts respondent utilities’ rates. This is consistent with our categorizations of the same or similar work in R.04-04-026, R.06-02-012, R.06-05-027, and R.08-08-009.

**3.3. Preliminary Determination of Need for Hearing**

We must preliminarily determine the need for hearing. (Rule 7.1(d).) Although we expect that many of the issues may be resolved through the formal filing of comments and replies, we preliminarily determine that hearings will be needed, at least on some issues.

**3.4. Schedule**

We adopt the following schedule, which anticipates the proceeding to be closed within 24 months of the date of the assigned Commissioner’s Scoping Memo and Ruling:

<b>LINE NO</b>	<b>ITEM</b>	<b>DAYS</b> (number of days from date OIR is mailed)
1	Notify ALJ of Single Lead Representative for Party Status	10
2	Motions for prehearing conference	21
3	Comments on OIR	21
4	Reply Comments on OIR	30
5	Prehearing Conference	To be determined
6	NOI or Amendment to Prior NOI	30

Within 10 days of the date this order is mailed, each party with more than one person listed on the service list in the party category shall notify the Administrative Law Judge (ALJ). The notification shall state the lead representative, as more fully described below. (See section on Parties and Service List.)

The assigned Commissioner or ALJ may set a prehearing conference (PHC) if either determines that a PHC will help with case management. Any party recommending a PHC should file a motion within 21 days of the date this order is mailed asking for a PHC. The motion should specifically identify the items the party would seek to address at the PHC, and provide any other relevant information to assist with the setting and conduct of an efficient and productive PHC.

Comments on this OIR may be filed, and those comments shall be filed and served within 21 days of the date this order is mailed. Reply comments may be filed, and shall be filed and served within nine days of the filing of comments (i.e., 30 days from the date this order is mailed). Further information on comments and reply comments is contained below. (See section on Comments.)

A notice of intent (NOI) to claim intervenor compensation should be filed, and updates to prior NOIs filed as amendments, within 30 days of the date this order is mailed, as described below. (See section on Intervenor Compensation.)

The assigned Commissioner or ALJ may alter the dates for the filing of motions for PHC, comments, reply comments, NOIs, amendments to NOIs or other dates as necessary to promote efficient and fair administration of this proceeding.

No further schedule is set here. Rather, the assigned Commissioner will issue a Scoping Memo and Ruling after considering comments and reply comments on the OIR, and a PHC, if one is held, including parties' views on issues, identified priorities, and recommendations on the schedule for addressing the substance of issues over 24 months. (See section below on Comments.)

The Scoping Memo and Ruling will rule on the issues, category, need for hearing, and schedule for the remainder of the proceeding. The final determination only as to category is subject to appeal. (Rule 7.6.)

This proceeding will conform to the statutory case management deadline for ratesetting matters set forth in Pub. Util. Code § 1701.5. In particular, it is our intention to resolve all relevant issues within 24 months of the date of the assigned Commissioner's Scoping Memo. This is consistent with the 24-month period adopted in R.06-02-012, R.08-08-009, and other similar matters.<sup>21</sup> In using the authority granted in § 1701.5(b) to set a time longer than 18 months, we consider the number and complexity of the tasks, the need to coordinate with other Commission proceedings, and the need to coordinate with CEC (e.g., IEPR, RPS Verification Reports). We consider the potential for likely further legislation, and the time necessary for its implementation.<sup>22</sup> We recognize that this is an ongoing program with some details not yet fully developed. We also recognize that the 20% RPS statutory target is now changed to incremental

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<sup>21</sup> See, for example, R.08-02-007, R.08-03-008, R.08-03-009, I.08-03-010, and R.10-05-004.

<sup>22</sup> The April 12, 2011 Governor's signing letter asked the Legislature to quickly amend SB 2 (1X) to address certain implementation difficulties or inefficiencies.

growth leading to 33% over approximately the next nine years (with maintenance of not less than 33% after 2020). These factors will require at least 24 months to address. In fact, these multiple responsibilities will likely require active Commission policy-making involvement beyond 2013. As such, we will likely issue a successor OIR upon the closing of this OIR.

#### **4. Comments**

Comments and reply comments shall be filed and served on the schedule stated above. Comments shall state any objections to the preliminary scoping memo regarding the issues, category, need for hearing, or schedule. (Rule 6.2.) Comments shall also address any matter a party believes should be considered now for the purpose of scoping this OIR, and anything else necessary for the efficient, effective and equitable conduct of this proceeding.

In particular, each party should clearly state and describe the issues it recommends be considered by the Commission in this proceeding, the priority for taking up these issues, and the party's preferred schedule for addressing the issues over 24 months. Active parties should coordinate with other active parties to determine whether or not there is agreement on the issues, priorities, schedule and any other matters to be considered in this proceeding. If so, parties should file one joint comment statement reflecting consensus on issues, priorities, schedule and related matters, along with separate comments on other matters to the extent necessary.

#### **5. Respondents**

We name as respondents all retail sellers now named in R.08-08-009. This includes large electric utilities, small electric utilities, multi-jurisdictional electric utilities, ESPs and CCAs. Respondents not named in R.08-08-009 but covered now also include any new electric utility upon operation or transfer (e.g.,

California Pacific Electric Company, LLC), and several new ESPs and CCAs upon registration since August 2008.<sup>23</sup> Any respondent in this rulemaking that does not have a representative on the service list for R.08-08-009 will not automatically be placed on the service list, but must also provide information necessary to establish party status for this OIR. (See section below on Parties, Service List and Electronic Service.)

As we stated in R.08-08-009, any ESP that, subsequent to the date of this OIR, becomes registered to provide service through direct access transactions within the service territory of one or more of the respondent electrical corporations shall automatically, as a result of that registration, become a respondent to this proceeding effective upon such registration, and must also seek party status if it wishes to actively participate in the proceeding. Any ESP withdrawing its registration should notify the assigned ALJ within five days of effectuating the withdrawal of its registration.

Further, any CCA that, subsequent to the date of this OIR, becomes registered to provide service within the service territory of one or more of the respondent electrical corporations through CCA transactions shall automatically, as a result of that registration, become a respondent to this proceeding effective upon such registration, and must seek party status if it wishes to actively participate in this proceeding. Any CCA withdrawing its registration should

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<sup>23</sup> New ESPs include: BlueStar Energy Solutions, Commercial Energy of California, Direct Energy Business, Direct Energy Services LLC, EnerCal USA, Glacial Energy of California Inc., Liberty Power Delaware LLC, Liberty Power Holdings LLC, Noble Americas Energy Solution, Shell Energy, and Tiger Natural Gas Inc. New CCAs include: Clean Power San Francisco, and Marin Energy Authority. Any error or omission in this list shall not excuse any retail seller from respondent status.

notify the assigned ALJ within five days of effectuating the withdrawal of its registration. All entities considering becoming ESPs or CCAs, even if they are at the early stages of their consideration, are encouraged to participate in this proceeding.

## **6. Parties, Service List and Electronic Service**

This proceeding is a successor to R.08-08-009. Therefore, we continue the service list from R.08-08-009. This includes the existing classification of each person or entity in the category of party, state service or information only. Persons or entities on the R.08-08-009 service list do not need to take any further action to be on the new service list in the same category in this proceeding.

Persons or entities, including additional respondents, who are not on the current service list but who wish to be added as a party may do so by filing comments on this OIR. (*See* Rule 1.4(a)(2)(ii).) The comments should specifically state in a clearly identified separate section of the document that the person or entity wishes to become a party.<sup>24</sup> Persons may also request party status at the PHC (if one is held), or by the filing and service of a motion. (Rule 1.4(a)(3) and (4).) Persons who wish to be in the state service or information only category may do so by letter to the Process Office.

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<sup>24</sup> For the necessary information (e.g., name, organization, address, phone, e-mail) please refer to the Commission's form titled "Request for Addition/Change to Official Service List" which is available on-line on the Commission's web page: <http://www.cpuc.ca.gov/PUC/forms/>. A completed form should be attached to the party's comments.

It is the responsibility of each person or entity to notify the Process Office of his or her current postal service mailing address, current electronic-mail address, and any changes or corrections. (Rule 1.9(e).) The Process Office may be reached via e-mail at: [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov); or via mail at: Process Office, CPUC, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102. The service list will be posted on the Commission's web site, at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Parties must use the latest service list for service of each pleading over the course of this proceeding.

Commission practice is to allow only one person to formally represent each party. (See Request for Addition/Change to Official Service List.) At present, a few parties list more than one person. In those cases, parties should identify the lead representative and notify the ALJ within 10 days of the date this OIR is mailed of the name of the lead representative. The other persons will then be moved to the information only category.<sup>25</sup>

Any person interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

Electronic service of documents in Commission proceedings is governed by Rule 1.10. All participants are encouraged to use electronic service. In addition, a paper copy must be served on the ALJ. (Rule 1.10(d).)

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<sup>25</sup> We did not fully enforce this practice over the course of the RPS proceedings, from R.04-04-026 forward. We use this opportunity, however, to bring the service list into

*Footnote continued on next page*

## **7. Service of this OIR**

We direct service by the Executive Director of a copy of this OIR on each respondent. We also direct service on the service lists for all prior RPS-related proceedings. These proceedings are R.01-10-024, R.04-04-026, R.06-02-012, R. 06-05-027, and R.08-08-009. We direct service on the prior service lists because implementation of SB 2 (1X) may require modification of practices, protocols, procedures or rules that we considered in prior proceedings and, if modified, will be adopted for present and future application.<sup>26</sup> Persons on prior service lists may not now be active on a current service list (because their issue was resolved) but may be interested again.

We also direct service of a copy of this OIR on local publicly owned utilities (POUs). We do this because our implementation of SB 2 (1X) may affect POU's. POU's are affected, for example, by our allocation between electric corporations and POU's of the 750 MW to be procured under feed-in tariffs. (§ 399.20(f) and § 387.6.) POU's may also wish to consider whether or not to adopt the same approach we adopt for several RPS program elements (e.g., application of excess procurement from one period to another, cost limitations). (§ 399.30.) Therefore, we direct service of this OIR so POU's are informed of our proceeding. We invite their participation.

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alignment with present Commission practice. There currently are about 19 parties out of about 109 parties that list more than one person in the party category.

<sup>26</sup> This may affect, for example, any or all of the decisions listed in the Issues section above.

## 8. Intervenor Compensation

A party that expects to request intervenor compensation for its participation in this rulemaking shall file its NOI to claim intervenor compensation in accordance with Rule 17.1. Because no PHC currently is set in this order, the NOI should be filed within 30 days of the date this OIR is mailed.<sup>27</sup> The NOI may be amended within 15 days after the issuance of the Scoping Memo. (Rule 17.1(b).)

This OIR is a continuation of R.08-08-009. While it is formally a separate proceeding, it is substantially similar to the continuation of a phased proceeding. A party found eligible for an award of compensation in one phase of a proceeding remains eligible in later phases. (Rule 17.2.) We permit a party found eligible in R.08-08-009 to remain eligible in this proceeding. (Rules 1.2 and 17.2.<sup>28</sup>) The party should update its planned participation, potential compensation request, or other relevant information, however, if different than as stated in R.08-08-009. The party should do this in the form of an amendment to its previously filed NOI, and do so within 30 days of the date this OIR is mailed<sup>29</sup> (and further amended, if necessary, within 15 days after the issuance of the Scoping Memo).

Today's order closing R.08-08-009 is not "the decision closing the proceeding" for the purposes of filing a request for an award. (Rule 17.3.) That is, an eligible intervenor may, but is not required to, file a request now for work

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<sup>27</sup> If a PHC is held, the NOI may be filed within 30 days of the date of the PHC. (Rule 17.1(a)(1).)

<sup>28</sup> Rule 1.2 provides in relevant part that, "These rules may be liberally construed to secure just, speedy, and inexpensive determination of the issues presented."

performed to date. Alternatively, an eligible intervenor may subsequently file a request within 60 days of the issuance of a decision that resolves an issue on which the intervenor believes it made a substantial contribution, or the decision that finally closes this matter. (Rule 17.3.)

## **9. Collaborative Process with the California Energy Commission**

The Commission and its staff have successfully worked in a collaborative relationship with CEC and its staff in several proceedings, including R.01-10-024 (RPS Phase), R.04-04-026, R.06-02-012, R.06-05-027, and R.08-08-009. This has promoted good communication between agencies sharing responsibilities for several matters, including the RPS Program. We will continue that collaborative relationship in this proceeding, to the extent allowed by the limited resources at each agency. As has been the case in the past, the Commission's Executive Director may work with the CEC's Executive Director to review and refine the terms of the staff collaboration, as necessary.

## **10. Ex Parte Communications**

*Ex parte* communications in this proceeding are governed by the requirements for a ratesetting proceeding. (Article 8 of the Commission's Rules, Rules 8.1 et seq.)

## **11. Close R.08-08-009 for Purposes of § 1701.5**

The decisions issued in R.08-08-009 have resolved all issues in the Scoping Memo (September 26, 2008), Amended Scoping Memo (November 2, 2009), Second Amended Scoping Memo (March 25, 2010), and Further Amended Scoping Memo (August 24, 2010), except to the extent issues are carried forward

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<sup>29</sup> If a PHC is held, the update may be filed within 30 days of the date of the PHC.

herein. (See Issues section above.) As a result, R.08-08-009 is resolved for the purpose of compliance with § 1701.5. However, R.08-08-009 remains open, but only to the extent necessary to address pending petitions for modification, applications for rehearing, and requests for intervenor compensation.

### **Findings of Fact**

1. The deadline for closing R.08-08-009 is May 30, 2011, but RPS program issues will continue beyond that date.
2. A successor proceeding is necessary to continue efficient implementation and administration of the RPS Program.
3. It is reasonable to continue implementation and administration of the RPS Program through a new rulemaking.
4. It is reasonable to incorporate the record from R.08-08-009 into this proceeding.
5. In view of the number and complexity of the items in this and related proceedings, it is reasonable to have this proceeding extend for 24 months from the date of the upcoming assigned Commissioner's Scoping Memo and Ruling in this proceeding.

### **Conclusions of Law**

1. A new rulemaking should be opened to continue RPS program implementation and administration.
2. The record in R.08-08-009 should be incorporated into this proceeding.
3. This proceeding should extend for 24 months from the date of the assigned Commissioner's Scoping Memo.
4. R.08-08-009 should be closed for purposes of § 1701.5.
5. This order should be effective immediately to promote a smooth continuation and transition of matters from R.08-08-009 to this proceeding.

**IT IS ORDERED** that:

1. This rulemaking is opened to continue implementation and administration of the California Renewables Portfolio Standard Program.
2. The record in Rulemaking 08-08-009 is incorporated into the record in this proceeding.
3. The issues are as stated in the body of this order and Attachment A.
4. The category of this proceeding is preliminarily determined to be ratesetting.
5. Evidentiary hearings are preliminarily determined to be necessary.
6. The schedule is as stated in the body of this order, and may be modified or further specified by the assigned Commissioner or assigned Administrative Law Judge. The assigned Commissioner or assigned Administrative Law Judge may set a date and time for a prehearing conference. Any party recommending that the Commission hold a prehearing conference shall file and serve a motion for prehearing conference within 21 days of the date this order is mailed. The motion shall identify the items the party would seek to address at the prehearing conference, and any other relevant information to assist with the setting and conduct of an efficient and productive prehearing conference.
7. This Order Instituting Rulemaking may extend up to 24 months from the date of the assigned Commissioner's Scoping Memo.
8. Comments on this Order Instituting Rulemaking shall be filed and served within 21 days of the date this Order Instituting Rulemaking is mailed, and reply comments within nine days of the date of comments. Any person objecting to the preliminary scoping memo (including issues, categorization, need for hearing, or schedule) shall state the objection in its comments on the Order Instituting Rulemaking, along with anything else relevant to the scope or

efficient handling of this proceeding. Comments shall clearly state and describe the issues the party recommends be considered by the Commission in this proceeding, the recommended priority for taking up these issues, and the proposed schedule for addressing the substance of the issues over 24 months.

9. Active parties in Rulemaking 08-08-009 shall coordinate with other active parties to determine whether or not there is agreement on the issues, priorities, schedule and any other matters to be considered in this proceeding. If there is agreement, parties shall use reasonable efforts to seek to file and serve one joint comment statement reflecting consensus on issues, priorities, schedule and related matters, along with separate comments on other matters to the extent necessary.

10. Respondents are all electrical corporations subject to Public Utilities Code Sections 399.11 et seq., all currently registered electric service providers and all current community choice aggregators.

11. Any electric service provider that, subsequent to the date of this Order Instituting Rulemaking, becomes registered to provide service through direct access transactions within the service territory of one or more of the respondent electrical corporations shall automatically, as a result of that registration, become a respondent to this proceeding effective upon such registration, and must also seek party status if it wishes to actively participate in the proceeding. Any electric service provider withdrawing its registration should notify the assigned Administrative Law Judge within five days of effectuating the withdrawal of its registration.

12. Any community choice aggregator that, subsequent to the date of this Order Instituting Rulemaking, becomes registered to provide service within the service territory of one or more of the respondent electrical corporations through

community choice aggregator transactions shall automatically, as a result of that registration, become a respondent to this proceeding effective upon such registration, and must seek party status if it wishes to actively participate in this proceeding. Any community choice aggregator withdrawing its registration should notify the assigned Administrative Law Judge within five days of effectuating the withdrawal of its registration.

13. The service list shall be all respondents, persons and entities now on the service list for Rulemaking (R.) 08-08-009, and in the same category (i.e., party, state service, information only). Respondents, persons or entities now on the service list for R.08-08-009 do not need to take any further action, but shall check the service list and notify the Commission's Process Office of necessary changes or corrections.

14. Persons, including additional respondents, who are not now in, but wish to be added to, the party category of the service list may do so by filing comments on this Order Instituting Rulemaking; making a request at the prehearing conference, if held; or filing and serving a motion. Persons wishing to be added to the state service or information only category may do so by letter to the Process Office. Within 10 days of the date this order is mailed, a party with more than one person listed in the party category of Rulemaking 08-08-009 shall notify the Administrative Law Judge of the one person who shall be the party's representative in the party category.

15. The Executive Director shall cause this Order Instituting Rulemaking to be served on:

- a. All respondents (see Ordering Paragraph 10 above);

- b. All persons on the service list for each of the following proceedings: Rulemaking (R.) 01-10-024, R.04-04-026, R.06-02-012, R.06-05-027, and R.08-08-009; and
- c. All local publicly owned electric utilities.

16. A party that expects to request intervenor compensation for its participation in this rulemaking shall file and serve its notice of intent to claim intervenor compensation in accordance with Rule 17.1. of the Commission's Rules of Practice and Procedure (Rules). Such filing shall be within 30 days of the date this Order Instituting Rulemaking is mailed (or 30 days from a prehearing conference, if held). The notice of intent may be amended within 15 days of the date of issuance of the Scoping Memo, if necessary. (Rule 17.1(b).) A party found eligible for intervenor compensation in Rulemaking (R.) 08-08-009 remains eligible for intervenor compensation in this Order Instituting Rulemaking, and need not file a new notice of intent, but shall file and serve an amendment to its original notice of intent if its planned participation, potential compensation request, or other relevant information, is different than as stated in R.08-08-009. Such amendment, if any, shall be filed within 30 days of the date this Order Instituting Rulemaking is mailed (or 30 days from a prehearing conference, if held), with additional amendment within 15 days of the date of issuance of the Scoping Memo, if necessary.

17. *Ex parte* communications are governed by Rule 8.1 et seq., of the Commission's Rules of Practice and Procedure specific to ratesetting proceedings.

18. The assigned Commissioner or the assigned Administrative Law Judge may issue rulings as needed to change the schedule for notification to the Administrative Law Judge regarding the name of the lead representative (when more than one is listed in the party category), motions for prehearing conference,

comments on this Order Instituting Rulemaking, reply comments, notices of intent (NOI) to claim intervenor compensation, amendments to NOIs, or any other date as necessary and appropriate to efficiently manage this proceeding.

19. The issues stated in the Scoping Memos and Rulings of the assigned Commissioner in Rulemaking (R.) 08-08-009 have been resolved in R.08-08-009, or are transferred to this successor Order Instituting Rulemaking to the extent stated in the preliminary Scoping Memo in this Order Instituting Rulemaking. Therefore, R.08-08-009 is resolved and closed for the purpose of compliance with Public Utilities Code Section 1701.5. However, R.08-08-009 remains open, but only to the extent necessary to address pending petitions for modification, applications for rehearing, and requests for intervenor compensation.

This order is effective today.

Dated May 5, 2011, at San Francisco, California.

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

## ATTACHMENT A

### PRELIMINARY LIST OF RPS PROGRAM CHANGES REQUIRED BY SENATE BILL 2 (2011-12 FIRST EXTRAORDINARY SESSION)

Senate Bill 2 (2011-12 First Extraordinary Session; Stats. 2011, ch. 1) requires the implementation of a higher RPS target and modifies several aspects of program implementation. The bill requires the Commission to (all citations are to the Public Utilities Code as amended by SB 2 (1X)):

1. Modify Renewables Portfolio Standard (RPS) compliance rules
  - Adopt new RPS compliance targets by January 1, 2012. (§ 399.15(b).)
  - Modify flexible compliance rules, including implementing different banking rules for different types of RPS contracts. (§ 399.13(a)(4)(B).)
  - Modify annual compliance reporting requirements. (§ 399.13(a)(3).)
  - Resolve seams issues between the 20% RPS and 33% RPS compliance requirements, including implementing the provision that any retail seller procuring RPS eligible energy for at least 14% of retail sales in 2010 shall not have its RPS procurement deficits, if any, added to future procurement requirements. (§ 399.15(a).)
  
2. Modify renewable energy credit (REC) trading rules
  - Modify the definition of a renewable energy credit to eliminate delivery requirement and other changes. (§ 399.12(g), § 399.21(4-5).)
  - Modify REC trading rules to provide that, in order to count for RPS compliance, RECs must be retired in the tracking system within 36 months from the initial date of generation of the associated electricity. (§ 399.21(a)(6).)
  - Adopt rules for evaluating, and possibly auditing, the portfolio content category of all RPS transactions. (§ 399.16(b).)

- Define new terms, e.g., “firmed and shaped”, “incremental energy” and “unbundled” RECs. (§ 399.16(b).)
- Implement usage limitations on REC transactions. (§ 399.16(c).)
- Develop rules for REC contracts executed prior to June 1, 2010, including determining what it means for a contract to “count in full” toward RPS procurement requirements. (§ 399.16(d).)
- Develop a methodology for evaluating whether “procurement content requirements” (e.g., REC usage limits) should be reduced at the request of a retail seller. (§ 399.16(e).)

### 3. Modify RPS procurement rules

- Modify the bid evaluation methodology (i.e., least-cost best-fit) to include evaluations of project viability and workforce recruitment. (§ 399.13(a)(4)(A)(iii).)
- Adopt minimum margins of over-procurement. (§ 399.13(a)(4)(D).)
- Modify annual RPS procurement plan requirements to include potential compliance delays, a status update on projects’ development schedules, price adjustment mechanisms and risk assessments. (§ 399.13(a)(5).)
- Implement requirement that retail sellers must procure minimum quantity of long-term contracts prior to counting short-term contracts with existing facilities for RPS compliance, in place of requirement in D.07-05-028 setting minimum quantity of long-term contracts and/or short-term contracts with new facilities prior to counting short-term contracts with existing facilities. (§ 399.13(b).)
- Develop a methodology for giving preference to “California-based projects,” including defining this term. (§ 399.13(a)(7).)
- Interpret and implement provision that RPS transactions must be submitted for CPUC review “unless previously preapproved by the commission.” (§ 399.13(d).)

4. Develop RPS cost containment mechanism

- Develop a methodology for calculating and administering an RPS cost limitation for each large and multi-jurisdictional utility. (§ 399.15(c-d, f), § 399.17(f).)
- \*Prepare report to Legislature by January 1, 2016 assessing whether each utility can achieve RPS targets within the adopted cost limitation. (§ 399.15(e).)<sup>1</sup>
- \*Develop a methodology to determine, and continuously monitor, whether utilities may be close to exceeding the cost limitation. (§ 399.15(g).)

5. Modify RPS enforcement rules

- Establish the process and rules for implementing new RPS enforcement regime. (§ 399.15(b)(5).)

6. Modify and develop new rules for small and multi-jurisdictional utilities

- Revise RPS rules for multi-jurisdictional utilities and qualifying successor entities. (§ 399.17.)
- Implement new RPS rules for very small utilities. (§ 399.18.)

7. Other requirements

- \*Receive annual reports from utilities that own electrical transmission facilities which identify electrical transmission facilities and upgrades that are reasonably necessary to achieve the RPS. (§ 399.13(a)(2).)
- Implement new requirements for approving utility-owned renewable energy generation facilities. (§ 399.14.)

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<sup>1</sup> Items marked by an asterisk will not be addressed in this proceeding. They will be addressed in other proceedings or by staff, as appropriate.

- \*Issue annual cost report and biennial project development report (in consultation with the CEC). (§ 910, §399.19.)
- \*Re-determine effective load carrying capacity requirements for resource adequacy purposes. (§ 399.26(d).)
- \*Implement new rules for reviewing applications for a certificate of public convenience and necessity for building or upgrading an electrical transmission line. (§ 1005.1.)

**(END OF ATTACHMENT A)**