

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
AUGUST 21, 2008
SAN FRANCISCO, CALIFORNIA
RULEMAKING 08-08-009

**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.¹ As a successor docket to Rulemaking (R.) 06-05-027, this proceeding involves ongoing oversight, including review of RPS procurement plans, reporting, compliance, and enforcement. It also includes consideration of limited policy issues related to ongoing implementation and administration. We coordinate this proceeding with several others addressing related matters.² R.06-05-027 is closed.

¹ 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.*, chaptered September 12, 2002, effective January 1, 2003). It has been amended several times, including SB 107 (Stats. 2006, Ch. 464) and Assembly Bill (AB) 1969 (Stats. 2006, Ch. 731). Unless noted otherwise, all statutory references herein are to the Public Utilities Code.

² For example, R.08-03-009 and Investigation (I.) 08-03-010 (to actively promote the development of transmission infrastructure to provide access to renewable energy

Footnote continued on next page

2. Background

2.1. Program Background

Within the larger obligation to provide safe and reliable electricity at just and reasonable rates, the RPS Program seeks to increase the amount of California's electricity generated from renewable resources. We do this to meet several purposes including, but are not limited to: increasing the diversity of generation resources, enhancing electric reliability, protecting public health, improving environmental quality and benefits, promoting stable electricity prices, stimulating economic development, creating new employment opportunities, and reducing reliance on foreign fuels. (§ 399.11.)

To achieve RPS Program objectives, each California retail seller is required to procure a minimum quantity of electricity from eligible renewable energy resources as a specific percentage of total retail energy sales. Each retail seller is also required to increase its total procurement of electricity from eligible renewable resources each year by 1% of total sales, reaching 20% by 2010. The Governor, Commission, and California Energy Commission (CEC) have each endorsed a further goal of reaching 33% by 2020.

Eligible renewable resources are determined by the CEC, and may include some or all of the following: photovoltaic, wind, geothermal, solar thermal, biomass, digester gas, landfill gas, small hydroelectric, in-conduit hydroelectric,

resources), R.06-02-012 (to develop additional methods to implement the RPS program, including the applicability of using renewable energy credits (RECs) for compliance with RPS requirements), R.08-02-007 (integrating and refining procurement policies underlying long-term procurement plans), and R.08-03-008 (regarding policies, procedures and rules for the California Solar Initiative, the self-generation incentive program and other distributed generation issues).

hydroelectric incremental generation from efficiency improvements, ocean wave, ocean thermal, tidal current, fuel cells using renewable fuels, and use of municipal solid waste. A retail seller is an entity engaged in the retail sale of electricity to an end-use customer located in California. Retail sellers include electrical corporations, community choice aggregators (CCAs) and electric service providers (ESPs).

In collaboration with the CEC, the Commission must implement and administer the RPS Program. We do so by requiring each retail seller to meet five minimum standards.³ We monitor RPS goals and results. This includes directing the calculation of annual procurement targets (APTs), and setting dates for periodic reports. We conduct compliance reviews and enforcement, as necessary. We also require a limited number of electrical corporations to prepare a comprehensive renewable energy procurement plan.⁴ We review these RPS plans; accept, modify or reject each plan; and oversee electrical corporation solicitations.

2.2. Procedural Background

On August 22, 2001, in anticipation of the passage of SB 1078, the Commission ordered the three major utilities to solicit electricity generated by

³ These include (a) increasing annual procurement by at least 1% each year, (b) achieving 20% by 2010, (c) reporting progress to the Commission, (d) utilizing flexible compliance mechanisms, and (e) being subject to uniform penalty procedures and potential penalties. (*See*, D.05-11-025, Ordering Paragraph 1.)

⁴ A procurement plan must be filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). An Integrated Resource Plan (IRP), or a Supplement to an IRP, must be filed by PacifiCorp and Sierra Pacific Power Company.

renewable resources in an amount of at least an additional one percent of the utility's actual energy and capacity needs. (Decision (D.) 02-08-071.) We began specific implementation of the RPS legislation in R.01-10-024 upon SB 1078 becoming effective. As required by the Legislature, within six months we adopted the first of several decisions to set initial parameters and requirements.⁵ (D.03-06-071.)

In April 2004, we opened R.04-04-026 to continue implementation of the RPS program. We addressed many issues.⁶ We closed R.04-04-026 in May 2006.⁷

In anticipation of closing R.04-04-026, we opened R.06-02-012 in February 2006. This permitted continuing work on specific RPS matters, such as implementation of the RPS Program for other retail sellers (e.g., SMJUs, ESPs and CCAs), exploration of the use of contracts of less than 10 years' duration, and examination of RECs.

We also needed a vehicle for more generalized ongoing implementation and administration. To do that, in May 2006, we opened R.06-05-027. We have

⁵ 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.

⁶ These included: adoption of a market price referent (MPR) methodology; adoption of standard contract terms and conditions; adoption of criteria for selection of LCBF renewable resources; conditional approval of RPS plans and requests for offers for the 2005 solicitations; conditional approval of long-term RPS plans; establishing the basic parameters for participation by small and multi-jurisdictional utilities (SMJUs), ESPs and CCAs; adoption of the 2005 MPR methodology; and conditional approval of RPS plans for the 2006 solicitations.

⁷ R.04-04-026 was closed by D.06-05-039.

addressed several matters in R.06-05-027.⁸ Today we close R.06-05-027 and open this proceeding as its successor. We transfer the record from R.06-05-027 to this new proceeding and bring forward limited remaining issues.

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.) As discussed in the sections below, this is composed of the issues, preliminary determination of category, preliminary determination of need for hearing, and schedule.

4. Issues

The issues for this proceeding include continuing oversight of RPS procurement, reporting, compliance, enforcement, and other elements of ongoing implementation and administration. We list the issues:

1. **Procurement Plans:** oversight of procurement plans and cycle for PG&E, SCE and SDG&E; overview of IRP or Supplement to IRP for PacifiCorp and Sierra Pacific Power Company.
2. **Reporting, compliance and enforcement:**
 - Consideration of periodic renewables procurement reports (e.g., APT compliance reports) with compliance and enforcement as necessary.
 - Determinations of compliance using data verified by CEC.
3. **Other ongoing implementation and administration,** such as, but not limited to:

⁸ These have included: reporting and compliance methodology, conditional acceptance of 2007 and 2008 procurement plans, modifications to standard terms and conditions, plus granting and denial of various intervenor compensation requests.

- Ongoing or unresolved matters brought forward from R.06-05-027, including, for example:
 - Implementation of AB 1969 (tariffs and standard contracts for public water and wastewater agency customers), with limited extension to other customers.
 - Review of 2009 RPS Procurement Plans and transmission ranking costs reports.
 - Pending motions.
 - Consideration of cost-containment mechanisms.⁹
- Implementation of decisions from R.06-02-012, and coordination with other proceedings.¹⁰
- Review of LCBF methodology in the RPS bid evaluation process.
 - Determine whether the current LCBF methodology adequately values project viability in a manner that minimizes costs associated with project delays or failure. For example, assess the degree to which project viability factors (site control, transmission needs, permitting status, resource quality, technological maturity, and developer experience) should be weighed relative

⁹ All stakeholders share a responsibility to do everything reasonably possible to meet or exceed program goals while minimizing total program costs. The Commission may continue to examine whether there are additional contract terms, contract or program incentives, or other contract or program features that should be considered in order to promote a robust market while minimizing costs to ratepayers. (See, for example, June 20, 2008 Amended Scoping Memo and Ruling of Assigned Commissioner Regarding 2009 RPS Procurement Plans, page A-7, item 12.)

¹⁰ As policies are decided in R.06-02-012 and other related or successor proceedings we intend to implement and enforce these policies in this proceeding, and its successor or other proceedings, as necessary.

to a project's proposed commercial online date and bid price.

- Facilitate coordination with Commission proceedings on long-term procurement plans (R.08-02-007) and transmission for renewables (I.08-03-010/R.08-03-009) to align renewable procurement with resource and transmission planning.
- Other specific proposals that might be made by parties or identified as otherwise necessary to implement and administer the RPS program (e.g., to increase transparency, reduce complexity, facilitate equal treatment).

We will not address issues here that are being addressed elsewhere. This includes but is not limited to, for example, specific issues stated in the Scoping Memos in other proceedings (e.g., definition and possible tradability of RECs which is being addressed in R.06-02-012).

5. Preliminary Determination of Category

We must preliminarily determine the category of the proceeding. (Rule 7.1(d).) As a preliminary matter, we determine this proceeding is ratesetting. (Rule 1.3(e).) This is based on our ongoing implementation and administration of the RPS Program, particularly as part of the larger procurement process, which impacts respondents' rates. This is consistent with our categorizations of the same or similar work in R.04-04-026, R.06-02-012 and R.06-05-027.

6. Preliminary Determination of Need for Hearing

We must also 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 hearing will be needed, at least on some issues.

7. Comments and Schedule

Comments on this OIR may be filed, and shall be filed and served within 10 days of the date this order is mailed. Comments shall state any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered, or schedule. (Rule 6.2.) Comments shall also address any matter a party believes should be considered for scoping at this time, and anything else necessary for the efficient, effective and equitable conduct of this proceeding.

A prehearing conference (PHC) does not appear necessary since this is a continuation of an existing proceeding. Further, written comments appear to provide sufficient opportunity to address all matters that would otherwise be raised at a PHC. Any party believing otherwise should file a motion seeking PHC.

The assigned Commissioner or the assigned Administrative Law Judge (ALJ) may alter the date for the filing of comments to promote efficient and fair administration of this proceeding. The assigned Commissioner will issue a ruling after considering comments on the OIR. The assigned Commissioners' Scoping Memo and Ruling will rule on the category, need for hearing, issues 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 and other similar matters.¹¹ 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 proceedings, the processes and role of the CEC (e.g., verify RPS deliveries and adopt Verification Reports) and the existence of pending legislation intended to alter some or all of the approaches used in this program.¹² We also recognize that this is an ongoing program with implementation and administration details not yet fully developed. This will likely take further active Commission policy-making involvement through 2010 or beyond. As such, we will most likely need to issue a successor OIR after this OIR is closed.

8. Respondents

With limited exceptions noted herein, we name as respondents all retail sellers now named in R.06-05-027. This includes large electric utilities, small electric utilities, multi-jurisdictional electric utilities, ESPs and one CCA.

We release two current respondents: City of Chula Vista (CCV) and City and County of San Francisco (CCSF). CCV and CCSF were named respondents in R.06-05-027 consistent with their being “named respondents in R.06-02-012 based on their self-identification as potential CCAs.” (R.06-05-027, p. 9.) In the over two years since initiation of R.06-02-012, neither has become a CCA. We

¹¹ See, for example, R.08-02-007, R.08-03-008, R.08-03-009, and I.08-03-010.

¹² In the 2007-2008 regular session, for example, there is AB 1807, SB 380 and SB 1714.

now release them as respondents, but retain them as parties. We add one CCA: San Joaquin Valley Power Authority (SJVPA).¹³

As we stated in R.06-05-027, 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 upon such registration. Any ESP withdrawing its registration should notify the assigned ALJ within five days of effectuating the withdrawal of its registration. On July 3, 2008, we were notified that APS Energy Services Company, Inc. (APSES) discontinued sales of electricity to customers within California as of July 31, 2008, and sought permission to withdraw its registration as an ESP. Therefore, we do not include APSES as a respondent. We also do not include New West Energy. (D.08-05-029, Ordering Paragraph 22.)

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 upon such registration. All entities considering becoming CCAs, even if they are at the early stages of their consideration, are encouraged to participate in this proceeding.

We state our expectation of the degree of respondents' participation, and repeat our view regarding micro utility respondents, as also stated in R.06-05-027. All large respondents shall fully participate in all matters and all

¹³ Effective April 30, 2007, SJVPA became a CCA. (See D.08-05-029, page 37 and Ordering Paragraph 23.)

phases of this proceeding. In addition, all respondents shall fully comply with orders of the assigned Commissioner or ALJ regarding specific participation.

We are also mindful that some micro utilities may be overwhelmed by our proceedings. We will not expect their participation on any but core issues which concern micro utilities. (Pub. Util. Code §§ 2780 and 2780.1.) These issues, for example, might include, but are not necessarily limited to, the five minimum obligations required of all retail sellers. They do not include the filing of draft RPS procurement plans for Commission consideration. Failure of a small entity or micro utility to participate on an issue does not excuse that entity or utility from compliance with any subsequent order of the ALJ, assigned Commissioner or the Commission.

9. Parties and Service List

This proceeding is a successor to R.06-05-027. Therefore, we continue the service list from R.06-05-027. 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.06-05-027 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 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 be a party, stating necessary information (e.g., name, organization, address, phone, e-mail). 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.¹⁴

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; 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. Parties must use the latest service list for service of each pleading over the course of this proceeding.

Any party 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.

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).)

10. Intervenor Compensation

A party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent (NOI) to claim intervenor compensation in accordance with Rule 17.1. Since no PHC is

¹⁴ For the necessary information (and for consistency and ease of use), please refer to the Commission's new form to request addition to the service list, which is on-line at: ftp://ftp.cpuc.ca.gov/static/documents/practitioner_alert.pdf.

anticipated at this time, the NOI should be filed within 30 days of the date this OIR is mailed. 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.06-05-027. 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.06-05-027 to remain eligible in this proceeding. (Rules 1.2 and 17.2.¹⁵) The party should update its planned participation, potential compensation request, or other relevant information, however, if different than as stated in R.06-05-027.

Today's order closing R.06-05-027 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 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.)

11. Collaborative Process with the California Energy Commission

The Commission and its staff have successfully worked in a collaborative relationship with the CEC and its staff in several proceedings, including R.01-10-024 (RPS Phase), R.04-04-026, R.06-02-012 and R.06-05-027. This has

¹⁵ 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."

promoted good communication between agencies sharing responsibilities for several matters, including the RPS Program. That collaborative relationship will continue in this proceeding. 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.

12. *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.).

Findings of Fact

1. The 24 months allotted for R.06-05-027 will soon toll, but RPS Program issues continue.
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.05-06-027 into this proceeding.
5. In view of the 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 subsequent assigned Commissioner's Scoping Memo in this proceeding.
6. Neither CCV nor CCSF is a currently registered CCA; SJVPA is a currently registered CCA; and neither APSES nor New West Energy are currently registered ESPs.

Conclusions of Law

1. A new rulemaking should be opened to continue RPS Program implementation and administration.
2. The record in R.06-05-027 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. CCV and CCSF should be removed as respondents, but remain as parties; SJVPA should be included as a respondent; while APSES and New West Energy should not be included as respondents.
5. R.06-05-027 should be closed.
6. This order should be effective immediately to promote a smooth continuation and transition of matters from R.06-05-027 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 (R.) 06-05-027 is incorporated into the record in this proceeding.
3. With limited exceptions, respondents to this proceeding are the same as identified in R.06-05-027. Respondents are all electrical corporations subject to Pub. Util. Code §§ 399.11 et seq., all currently registered electric service providers and all current community choice aggregators. City of Chula Vista and City and County of San Francisco are released as respondents, but remain as parties. San Joaquin Valley Power Authority is a community choice aggregator, and is a respondent. APS Energy Services Company, Inc. and New West Energy are no longer registered electric service providers and are, therefore, not included as respondents.

4. Except to the extent modified by the ordering paragraph above, the service list shall be all persons and entities now on the service list for R.06-05-027 and in the same category (i.e., party, state service, information only).

5. Persons 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 (OIR); 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.

6. The Executive Director shall cause this OIR to be served on all respondents, and on the service list for this proceeding.

7. The category of this proceeding is preliminarily determined to be ratesetting, and evidentiary hearing is preliminarily determined to be necessary.

8. Comments on this OIR shall be filed and served within 10 days of the date this OIR is mailed. 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 OIR, along with anything else relevant to the scope or efficient handling of this proceeding.

9. This OIR may extend up to 24 months from the date of the assigned Commissioner's Scoping Memo.

10. A party that expects to request intervenor compensation for its participation in this rulemaking shall file and serve its notice of intent (NOI) to claim intervenor compensation in accordance with Rule 17.1. Such filing shall be within 30 days of the date this OIR is mailed. A party found eligible for intervenor compensation in R.06-05-027 remains eligible for intervenor compensation in this OIR, and need not file a new NOI, but shall file and serve an amendment to its original NOI if it's planned participation, potential

compensation request, or other relevant information, is different than as stated in R.06-05-027.

11. *Ex parte* communications are governed by Rule 8.1 et seq.

12. The assigned Commissioner or the assigned Administrative Law Judge may issue rulings as needed to change the schedule for comments on this OIR or otherwise appropriately manage this proceeding.

13. R.06-05-027 is closed.

This order is effective today.

Dated August 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners