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

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

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

**AMENDED SCOPING MEMO AND RULING  
OF ASSIGNED COMMISSIONER**

**Summary**

This amended scoping ruling identifies the issues for consideration in the balance of this proceeding, adopts a procedural schedule, designates the presiding officers, affirms the categorization and need for hearing, and sets the time of 24 months from the date of this ruling as the deadline for the conclusion of this proceeding.

**Procedural Background**

The Order Instituting Rulemaking (OIR) for this proceeding was adopted by the Commission on May 5, 2011. A prehearing conference was held on June 13, 2011. The Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) was issued July 8, 2011.

**This Proceeding**

This OIR is the vehicle for the Commission's continuing administration and oversight of the renewables portfolio standard (RPS) program, whose

history is summarized in the OIR at 2-7.<sup>1</sup> Through this proceeding the Commission is also implementing major changes in the RPS program resulting from the enactment of Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1.

### **Scope of Issues**

The Scoping Memo set out the four issues on which it found that there was “consensus among the parties that the Commission should address a limited number of critical issues in this proceeding first.” (Scoping Memo at 2.)<sup>2</sup> The first three issues relate to the rules for the RPS program, as modified by SB 2 (1X); the fourth, to the procurement of RPS-eligible resources. These initially identified issues fall into the two broad categories of work for this proceeding: setting the rules for the RPS program; and developing processes that will enable retail sellers and other RPS market participants to provide the greatest value to ratepayers and all Californians from the RPS program.

In the Scoping Memo, I concluded that it would make sense to defer more specific scoping and scheduling of issues that are not given the highest priority until further work has been done

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<sup>1</sup> The RPS statute is codified at Pub. Util. Code §§ 399.11-399.30. All further references to sections are to the Public Utilities Code, unless otherwise noted.

<sup>2</sup> These issues were:

- Implementing the new portfolio content categories, set out in new Section 399.16;
- Setting new RPS procurement targets mandated by new Section 399.15(b)(2)(A);
- Implementing the most urgent new compliance rules and resolving initial “seams” issues between compliance rules for the 20% RPS program and new 33% RPS program compliance rules set by SB 2 (1X); and
- Implementing new Section 399.20, expanding the prior feed-in tariff provisions for RPS-eligible generation.

on the highest priority issues. This will allow parties and the Commission to have a clearer understanding of the interactions among the many elements of SB 2 (1X) and the current RPS program when setting the next portion of the schedule for this proceeding.

Most of the work on rules has been completed, through Decision (D.) 11-12-052, D.11-12-020, and D.12-06-038. As noted in D.12-06-038, however, further work is needed to complete the framework for enforcement of the new RPS requirements. This task will be completed before the end of the first compliance period.<sup>3</sup>

With D.12-05-035, the Commission implemented changes made by several statutes, including SB 2 (1X), to the RPS feed-in tariff program. This decision also represents the beginning of work in the second category of tasks for this proceeding, improving RPS administration and the RPS procurement process to maximize the value of the program. Most of the balance of this proceeding will be directed to issues in this category.

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<sup>3</sup> The first compliance period ends December 31, 2013. (Section 399.15(b)(1).)

After reviewing the work to date in this proceeding,<sup>4</sup> I identify the following topics as most significant to address in improving the administration of the RPS program and the value it brings to Californians.

1. Consideration, approval, and relevant revisions of 2012 RPS procurement plans submitted in response to the Procurement Plans ACR.
2. RPS procurement issues more generally, including but not limited to:
  - procurement process improvements identified with respect to the 2012 RPS procurement plans;
  - additional procurement process improvements identified by staff and parties;
  - methodology for calculating the “renewable net short,” taking into consideration utility portfolio planning assumptions in the long-term procurement plan (LTPP) proceeding (Rulemaking (R.) 12-03-014);
  - review and possible extension of the Renewable Auction Mechanism set up by D.10-12-048;
  - review and possible refinement, for RPS purposes, of the Commission's rules on confidentiality of procurement-related documents and information set forth in

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<sup>4</sup> This work includes, but is not limited to:

- party comments on the OIR;
- the decisions identified above;
- party comments on cost limitation in response to the Administrative Law Judge's (ALJ) Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program (January 24, 2012);
- procurement plans and comments in response to the Assigned Commissioner's Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on New Proposals (April 5, 2012) (Procurement Plans ACR);
- consideration of standard feed-in tariff contracts pursuant to D.12-05-035.

D.06-06-066, as modified by D.07-05-032 and D.08-04-023.<sup>5</sup>

3. Improvements to least cost best fit (LCBF) methodology and evaluation of bids for RPS procurement, including but not limited to:
  - implementation of new LCBF requirements set by SB 2 (1X);<sup>6</sup>
  - review of resource adequacy value, integration cost adders, congestion cost adders, time of delivery factors, and similar elements potentially affecting evaluation of RPS bids;

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<sup>5</sup> Parties to R.05-06-040 (now closed) will be notified by ALJ ruling or other appropriate means of any action in this proceeding that could lead to a proposed modification of any part of D.06-06-066, as modified by D.07-05-032 and D.08-04-023.

<sup>6</sup> Pub. Util. Code §399.13(a)(4)(A) provides that the Commission shall adopt:

A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall take into account all of the following:

- (i) Estimates of indirect costs associated with needed transmission investments and ongoing electrical corporation expenses resulting from integrating and operating eligible renewable energy resources.
- (ii) The cost impact of procuring the eligible renewable energy resources on the electrical corporation's electricity portfolio.
- (iii) The viability of the project to construct and reliably operate the eligible renewable energy resource, including the developer's experience, the feasibility of the technology used to generate electricity, and the risk that the facility will not be built, or that construction will be delayed, with the result that electricity will not be supplied as required by the contract.
- (iv) Workforce recruitment, training, and retention efforts, including the employment growth associated with the construction and operation of eligible renewable energy resources and goals for recruitment and training of women, minorities, and disabled veterans.

- development of a more robust relationship between RPS procurement evaluation methodology and elements of the determination of system need through the LTPP proceeding.
- 4. Implementation of statutory requirements for a procurement expenditure limitation methodology<sup>7</sup> for RPS procurement of investor owned utilities (IOUs), including but not limited to:

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<sup>7</sup> Pub. Util. Code § 399.15(c)-(g) provides:

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

- (1) The most recent renewable energy procurement plan.
- (2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.
- (3) The potential that some planned resource additions may be delayed or canceled.
- (d) In developing the limitation pursuant to subdivision (c), the commission shall ensure all of the following:
  - (1) The limitation is set at a level that prevents disproportionate rate impacts.
  - (2) The costs of all procurement credited toward achieving the renewables portfolio standard are counted towards the limitation.
  - (3) Procurement expenditures do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.
- (e) (1) No later than January 1, 2016, the commission shall prepare a report to the Legislature assessing whether each electrical corporation can achieve a 33-percent renewables portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations. If the commission determines that it is necessary to change the limitation for procurement costs incurred by any electrical corporation after that date, it may propose a revised cap consistent with the criteria in subdivisions (c) and (d). The proposed modifications shall take effect no earlier than January 1, 2017. Section 399.15 (e)(2) and (3), (f) and (g)
- (2) Notwithstanding Section 10231.5 of the Government Code, the requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2021.

*Footnote continued on next page*

- a methodology consistent with cost resource assumptions utilized in the resource portfolios developed in the LTPP proceeding, as practicable;
  - a methodology for monitoring whether an IOU's expenditure limitation is likely to be exceeded.
5. Continued implementation of Pub. Util. Code § 399.20 (feed-in tariff).

Additional issues related to the fair and efficient administration of the RPS program will be addressed as and when they arise.

As discussed in the Scoping Memo, it is reasonable to include all issues identified in the OIR in the scope of this proceeding, and I continue to do so

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

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

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

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

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

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

here.<sup>8</sup> The issues of greatest importance are those identified in this discussion, including completion of the enforcement rules.

Some of the issues in this proceeding (e.g., procurement expenditure limitation and revisions to LCBF methodology) are related to work in other proceedings, especially the LTPP proceeding (R.12-03-014) and the resource adequacy proceeding (R.11-10-023). While the OIR makes clear that this proceeding will not duplicate work in other proceedings, work to date suggests that there may be benefits associated with harmonizing RPS procurement authorization, RPS procurement expenditure limitations, and RPS LCBF methodology with LTPP portfolio design and system need authorization. Parties to this proceeding that are interested in the detailed work of the other proceedings may wish to participate in those proceedings, and are encouraged to identify related issues in this proceeding.

### **Categorization, Designation of Presiding Officers, Need for Hearings**

In the OIR for this proceeding, the Commission preliminarily categorized this matter as ratesetting and preliminarily determined that hearing is needed. The categorization of this proceeding was confirmed as ratesetting in the Scoping Memo. Although no parties have yet requested evidentiary hearings on any issues, it is still too early in the course of this proceeding to conclude that no hearings will be needed. The need for hearing, confirmed in the Scoping Memo, is therefore maintained in this Amended Scoping Memo.

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<sup>8</sup> The list of issues included as Attachment A to the Scoping Memo is reproduced as Attachment A to this Amended Scoping Memo.



Commissioner Mark J. Ferron is the assigned Commissioner for this proceeding. ALJs Regina DeAngelis and Anne E. Simon are the presiding officers for this proceeding.

## **Documents**

### **Format and Service**

All paper documents filed with the Commission or served in this proceeding must be printed on both sides, unless doing so is infeasible or will confuse the reader of the document. All documents must be served on the assigned ALJs and the office of the assigned Commissioner by electronic mail in accordance with Rule 1.10 of the Commission's Rules of Practice and Procedure.

Paper copies of documents should not be provided to the office of the assigned Commissioner. Paper copies of documents must be provided to the assigned ALJs unless an ALJ expressly requests that no paper copies be provided.

### **Verification**

Consistent with requirements in previous RPS proceedings, all compliance reports, other reports, comments, briefs, motions, or other substantive documents filed in this proceeding must be verified. (See Rule 1.11.) In the case of a corporation, verification for the purposes of Rule 1.11 may be in the form of a declaration under penalty of perjury and adopted by an employee or agent at the manager level or above. The employee or agent shall be knowledgeable of the involved matters, such as the employee or agent who would adopt the contents of the filing as testimony in the event of an evidentiary hearing. The declaration may be in a form substantially as provided by Commission Rule 18.1.

## **Schedule**

The schedule below reflects a workable approach to the many issues in this proceeding. With respect to each issue or group of issues, ALJ rulings or ACRs will be issued requesting comments on particular topics. Workshops may be held by Energy Division staff as part of the consideration of these issues.

Pursuant to the authorization conferred by Pub. Util. Code § 1701.5(b), I conclude that this proceeding should extend for 24 months beyond the date of this amended scoping memo. This will allow the proceeding to be open through August, 2014, encompassing the August 1, 2014 date by which compliance reports for the first compliance period must be filed by all retail sellers. (D.12-06-038, Ordering Paragraph 36). Further, the issues identified in the OIR and this amended scoping memo will require some additional time to develop and resolve.

The following schedule reasonably identifies the work ongoing in this proceeding, and is adopted. The schedule below may be adjusted by the presiding officers as necessary to promote the fair and efficient adjudication of this proceeding, so long as the proceeding is concluded within the 24-month time frame from the date of this amended scoping memo.

ACR on further procurement reform issues, including initial scope of LCBF revisions	Third quarter 2012
ALJ ruling seeking comment on new compliance spreadsheet	Fourth quarter 2012
ALJ ruling seeking further comment on procurement expenditure limitations	Fourth quarter 2012
Proposed decision (PD) on 2012 procurement plans	Fourth quarter 2012
ALJ ruling seeking comment on possible refinement of confidentiality rules applied to RPS	Fourth quarter 2012
Staff proposal on procurement expenditure limitations	First quarter 2013
PD on standard contracts and other feed-in tariff issues	First quarter 2013
PD on initial procurement process improvements	First quarter 2013
ALJ ruling seeking comment on further enforcement issues	First quarter 2013
PD on procurement expenditure limitations	Third quarter 2013
PD on further enforcement issues	Third quarter 2013
PD on LCBF reform	Fourth quarter 2013
PD on further procurement process improvements	First quarter 2014
Additional work as needed	As determined by assigned Commissioner and/or ALJs

**IT IS RULED** that:

1. The scope of issues and the schedule set forth above are hereby adopted for the balance of this proceeding, with the understanding that additional issues may need to be addressed and additional scheduling may be necessary to conclude this proceeding.

2. The duration of this proceeding is 24 months from the date of this amended scoping memo and ruling.

3. Rulemaking 11-05-005 is categorized as ratesetting.

4. Hearing is determined to be needed.

5. Commissioner Mark J. Ferron is the assigned Commissioner.

Administrative Law Judge (ALJ) Regina DeAngelis and ALJ Anne E. Simon are the presiding officers for this proceeding.

Dated September 12, 2012, at San Francisco, California.

          /s/ MARK J. FERRON          

Mark J. Ferron  
Assigned Commissioner

## ATTACHMENT A

### PRELIMINARY LIST OF ISSUES FOR THIS PROCEEDING

1. Modify Renewables Portfolio Standard (RPS) compliance rules
  - Adopt new RPS compliance targets by January 1, 2012;
  - Modify flexible compliance rules, including implementing different banking rules for different types of RPS contracts;
  - Modify annual compliance reporting requirements;
  - 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;
2. Modify renewable energy credit (REC) trading rules
  - Modify the definition of a renewable energy credit to eliminate delivery requirement and other changes;
  - 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.
3. Implement new portfolio content rules
  - Define new terms, e.g., “firmed and shaped,” “incremental energy” and “unbundled” RECs;
  - Implement usage limitations on REC transaction;
  - Develop rules for contracts executed prior to June 1, 2010, including determining what it means for a contract to “count in full” toward RPS procurement requirement;
  - Develop a methodology for evaluating whether “procurement content requirements” (e.g., REC usage limits) should be reduced at the request of a retail seller;
  - Adopt rules for evaluating, and possibly auditing, the portfolio content category of RPS transactions.

4. Modify RPS procurement rules

- Review and modify the bid evaluation methodology (i.e., least-cost best-fit (LCBF)) to:
  - include evaluations of project viability and workforce recruitment;
  - consider topics such as integration cost adders; REC-only transactions; resource adequacy value; congestion cost adders; appropriate allocation of risk.
- Adopt minimum margins of over-procurement;
- Modify annual RPS procurement plan requirements to include potential compliance delays, a status update on projects' development schedules, price adjustment mechanisms and risk assessments;
- 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;
- Integrate unbundled REC transactions into all aspects of RPS procurement;
- Revise fast-track advice letter procedure to:
  - include REC-only transactions;
  - make other modifications based on experience with process and anticipated needs.
- Implement new requirements for approving utility-owned renewable energy generation facilities.
- Develop a methodology for giving preference to "California-based projects," including defining this term.
- Interpret and implement provision that RPS transactions must be submitted for CPUC review "unless previously preapproved by the commission";
- Address RPS contracts using firm transmission.

5. Develop RPS cost containment mechanism
  - Develop a methodology for calculating and administering an RPS cost limitation for each large and each multi-jurisdictional utility.
6. Implement Pub. Util. Code § 399.20, as amended
  - Establish methodology to determine market price for standard tariffs;
  - Set up process for expedited interconnection procedures;
  - Complete other tasks for introduction of standard tariff.
7. Modify RPS enforcement rules
  - Establish the process and rules for implementing new RPS enforcement regime, including review of penalty rates and caps.
8. Modify and develop new rules for small and multi-jurisdictional utilities
  - Revise RPS rules for multi-jurisdictional utilities and qualifying successor entities in accordance with SB 2 (1x);
  - Implement new RPS rules for very small utilities.
9. Revise Standard Terms and Conditions of RPS procurement contracts.
  - Green attributes;
  - Eligibility;
  - Whether or not to add a term that provides for ongoing Commission jurisdiction over contract terms and conditions.
10. Develop need assessment methodology to determine RPS resource need and integration into RPS procurement plans.

**(END OF ATTACHMENT A)**