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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development of, California Renewables Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENT ON IMPLEMENTATION OF ELEMENTS OF SENATE BILL 350 RELATING TO PROCUREMENT UNDER THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD

Background

Senate Bill (SB) 350 (De León), Stats. 2015, Ch. 547, enacted wide-ranging changes to California's energy policies. A number of these changes are directed to the renewables portfolio standard (RPS) program.¹ Because the statutory changes affect many different aspects of the RPS program, it would contribute to the fair and efficient administration of the RPS program, as well as of this proceeding, to address the changes by grouping related provisions together. This ruling seeks comment on one set of statutory changes.

This ruling requests comments on changes to RPS procurement requirements with respect to:

¹ The RPS program is codified at Pub. Util. Code §§ 399.11-399.32. All further references to sections are to the Public Utilities Code unless otherwise specified.

- New compliance periods for years after 2020 (Section 399.15(b)(1));
- Changes to the procurement quantity requirements² for the new compliance periods (Section 399.15(b)(2));
- New requirements for RPS-eligible short- and long-term contracts and/or using utility-owned generation (UOG) or other ownership agreements for compliance periods after 2020 (Section 399.13(b));
- Changes to excess procurement rules for all compliance periods beginning January 1, 2021 (Section 399.13(a)(4)(B)); and
- Changes to the rules governing excess procurement related to early compliance with the new requirements for long term contracts (Section 399.13(a)(4)(B)(iii)).

1. Comments

Comments should address each question presented. It is not necessary to reproduce the question, but responses should be numbered to match the questions addressed, or otherwise clearly identify the issue being discussed.

Comments should be as specific and precise as possible. Legal arguments should be supported with specific citations. Where appropriate and useful, quantitative examples should be provided.

Comments should be complete in themselves and should not incorporate by reference any other materials. Other materials necessary to the response should be attached, or, if the materials are available on a web site, the link to the materials should be given. All comments should use publicly available materials. All comments should specifically identify, with respect to each

² Terminology follows that adopted in Decision (D.) 11-12-020 and D.11-12-052.

question, whether any potential sources of information addressed in the response to the question are confidential.

Attached to this ruling as Attachment A is one of the illustrative tables in the text of D.12-06-038. It is Table 6: Example Excess Procurement Calculation (Compliance Period 1), D.12-06-038 at 66. A redlined version of Table 6 that shows how interpretations of SB 350 mandates that are proposed in comments would be carried out in practice, should be included with the comments.

Parties may identify and comment on issues that are not addressed in the questions below. Commenters doing so should clearly identify and explain the relevance of the additional issue(s).

Comments of not more than 25 pages may be filed and served not later than May 5, 2016. Reply comments of not more than 10 pages may be filed and served not later than May 16, 2016.

2. Questions for Comments

2.1. Compliance Periods

Section 399.15(b)(1) adds three specified compliance periods in the years after 2020: 2021-2024; 2025-2027; and 2028-2030. It also requires the California Public Utilities Commission (Commission) to "establish appropriate three-year compliance periods for all subsequent years."

1. Is there any reason for the Commission to treat the three specified compliance periods differently from the multi-year compliance periods established by SB 2 (1X) and implemented by the Commission in D.11-12-020 (i.e., 2011-2013; 2014-2016; 2017-2020)? If yes, please provide a method and a rationale for any proposed difference in treatment.
2. Should the Commission establish additional three-year compliance periods subsequent to 2030 now? Why or why not?

3. If the Commission should establish additional compliance periods now, how many compliance periods (or how far into the future) should be established? Please provide a rationale for your choice.

2.2. Procurement Quantity Requirements

New procurement quantity requirements (PQR) for the compliance periods after 2020 are added in Section 399.15(b)(2)(B): 40 percent of retail sales in the compliance period ending December 31, 2024; 45 percent in the compliance period ending December 31, 2027; 50 percent in the compliance period ending December 31, 2030; and "not less than 50 percent of retail sales" in all compliance periods after 2030.

4. Is there any reason for the Commission to treat the PQRs for the three compliance periods through 2030 differently from the PQRs established for the compliance periods through 2020? If yes, please provide a method and a rationale for any proposed difference in treatment.
5. Should the Commission establish PQRs for any compliance periods subsequent to 2030 now? Why or why not?
6. Is there any reason for the Commission to treat the PQRs for any compliance periods subsequent to 2030 differently from the PQRs established for earlier compliance periods? If yes, please provide a method and rationale for any proposed difference in treatment.
7. If the Commission should establish PQRs for compliance periods subsequent to 2030, should any of the future PQRs exceed 50 percent of retail sales? Please provide a rationale for your choice.

2.3. Long-Term Contracts and UOG or Other Ownership Agreements

Section 399.13(b) sets new requirements for procurement using long-term contracts (10 years or longer in duration) and/or UOG or ownership agreements for generation for all retail sellers, beginning January 1, 2021.³

8. Should the Commission require that the long-term contracts, UOG, or ownership agreements used to comply with Section 399.13(b) be signed, or entered into commercial operation, on or after January 1, 2021 (i.e., be new contracts or UOG)? Why or why not?
9. If the Commission should not require that the contracts, UOG, or ownership agreements be new, how should retail sellers demonstrate that a sufficient proportion of the renewable energy credits (RECs) they are claiming for compliance with RPS procurement requirements are associated with long-term contracts for RPS-eligible electricity generation?
10. Should the Commission require documentation of the contractual or other arrangements that could show compliance with Section 399.13(b) requirements that is different from the documentation currently required to demonstrate compliance with RPS procurement requirements? Why or why not?
11. If the Commission should require different documentation, what should be required? Please provide a rationale for your choice.

³ Section 399.13(b) provides:

A retail seller may enter into a combination of long-and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.

12. Should the Commission set rules for compliance with Section 399.13(b) now? Why or why not? In your response, please take account of Section 399.13(a)(4)(B)(iii), discussed below.⁴

2.4. Procurement Eligible to be Counted as Excess Procurement

Section 399.13(a)(4)(B) adds new rules for excess procurement for all compliance periods, beginning with the compliance period that starts January 1, 2021, and continuing indefinitely. This section expressly maintains the existing rules related to excess procurement established by the Commission in D.12-06-038 for compliance periods through December 31, 2020. For later compliance periods, the statute mandates several changes.⁵

⁴ Section 399.13(a)(4)(B)(iii) provides:

If a retail seller notifies the commission that it will comply with the provisions of subdivision (b) [of Section 399.13] for the compliance period beginning January 1, 2017, the provision of clauses (i) and (ii) [of Section 399.13(a)(4)(B)] shall take effect for that retail seller for that compliance period.

⁵ Section 399.13(a)(4)(B) provides in relevant part that the Commission must establish:

Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall retain the rules adopted by the commission and in effect as of January 1, 2015, for the compliance period specified in subparagraphs (A) to (C), inclusive, of paragraph (1) of subdivision (b) of Section 399.15. For any subsequent compliance period, the rules shall allow the following:

- (i) For electricity products meeting the portfolio content requirements of paragraph (1) of subdivision (b) of Section 399.16, contracts of any duration may count as excess procurement.
- (ii) Electricity products meeting the portfolio content requirements of paragraph (2) or (3) of subdivision (b) of Section 399.16 shall not be counted as excess procurement. Contracts of any duration for electricity products meeting the portfolio content requirements of paragraph (2) or (3) of subdivision (b) of Section 399.16 that are credited towards a compliance period shall not be deducted from a retail seller's procurement for purposes of calculating excess procurement.

13. Should the Commission interpret the statutory distinction between compliance periods through 2020 and those in later years to mean that the Commission's treatment of RECs associated with contracts signed prior to June 1, 2010 (see D.12-06-038, section 3.3.2 and Ordering Paragraphs (OP) 12-14) will no longer apply in compliance periods after 2020? Why or why not?
14. If you take the position that the Commission's current treatment of RECs associated with contracts signed prior to June 1, 2010 will not apply after December 31, 2020, please explain how RECs from such contracts should be treated. Provide quantitative examples if relevant.
15. With respect to "electricity products meeting the portfolio content requirements of [Section 399.16(b)(1)], contracts of any duration may count as excess procurement" that can be applied to subsequent compliance periods. Should the Commission interpret this language to mean, in practice, that for "electricity products meeting the portfolio content requirements of [Section 399.16(b)(1)], RECs retired for RPS compliance that otherwise meet RPS procurement and compliance requirements from contracts of any duration may count as excess procurement"? Why or why not?
16. Should the Commission interpret this statutory directive to include UOG and other ownership agreements, as well as contracts? Why or why not?

17. Should the Commission require that the contracts, and/or UOG and/or other ownership agreements meeting the requirements of Section 399.16(b)(1)⁶ be signed, or enter into commercial operation, on or after January 1, 2021 (i.e., be new contracts)? Why or why not?
18. Should the Commission impose any limitation on the contracts that may be used pursuant to Section 399.13(a)(4)(B)(i)? Provide a detailed rationale for your choice. In your response, consider and discuss the example below, at the end of Question 26.
19. "[E]lectricity products meeting the requirements of [Section 399.16(b)(2) or (3)] shall not be counted as excess procurement."⁷ Should the Commission interpret this language to mean, in practice, that for "electricity products meeting the portfolio content requirements of [Section 399.16(b)(2) or (3)], no RECs retired for RPS compliance may count as excess procurement"? Why or why not?
20. How should the Commission implement the new requirements of Section 399.13(a)(4)(B)(ii)? For example, should the Commission simply add RECs associated with PCC 2 procurement to the language that expresses the restrictions related to RECs associated with PCC 3 procurement in OP 29 of D.12-06-038?⁸

⁶ For convenience, Energy Division staff and parties often refer to these requirements as "portfolio content category (PCC) 1," a phrase that may be used in this ruling as well.

⁷ See Section 399.13(a)(4)(b)(ii). For convenience, Energy Division staff and parties often refer to these requirements as "PCC 2," or "PCC 3," phrases that may be used in this ruling as well.

⁸ Note that the extension of the restrictions in OP 29 to years after 2020 is negated by new Section 399.13(a)(4)(B).

21. Should RECs associated with PCC 2 procurement that have been counted as excess procurement in compliance periods prior to January 1, 2021 be allowed to carry over as excess procurement in the 2021-2024 compliance period and later compliance periods? Why or why not?

2.5 Early Compliance with New Long-Term Contracting Provisions

Section 399.13(a)(4)(B)(iii) provides that:

If a retail seller notifies the Commission that it will comply with the provisions of subdivision (b) [regarding long-term contracts] for the compliance period beginning January 1, 2017, the provisions of clauses (i) and (ii) shall take effect for that retail seller for that compliance period.

22. When should a retail seller provide such notice to the Commission? For example, before the start of the 2017-2020 compliance period? At some point during the compliance period? Please provide a rationale for your choice.
23. How should a retail seller provide such notice to the Commission; for example, advice letter; application; letter to Director of Energy Division?
24. If a retail seller states its intention to comply with Section 399.13(b) during the compliance period 2017-2020, should the requirements related to short-term contracts set out in D.12-06-038, OP 15, continue to apply to that retail seller? Why or why not?
25. If a retail seller states that it intends to comply with Section 399.13(b) during the compliance period 2017-2020, but less than 65 percent of the RECs it counts toward RPS compliance in that compliance period are associated with long-term contracts, how should the Commission treat that compliance showing? (e.g., should the ordinary compliance rules for the 2017-2020 compliance period be applied? Should the Commission impose a penalty?)

26. Should the Commission interpret Section 399.13(a)(4)(B)(iii) as allowing a retail seller to count as excess procurement in the compliance period beginning January 1, 2017 RECs associated with short-term contracts that had not been allowed to provide excess procurement in the compliance period 2014-2016? Why or why not? Consider the following example; provide other quantitative examples if relevant.

Example: Retail seller (RS) signs a contract for PCC1 procurement of 7 years duration in 2013. RS receives RECs from that contract in 2014, 2015, and 2016 and retires all of them for RPS compliance in the compliance period 2014-2016. In accordance with D.12-06-038, OP 27, all of these RECs are subtracted from the total quantity of RECs retired in that compliance period before any excess procurement is calculated. If RS receives RECs from this same contract in 2017, 2018, and 2019, and retires all of them for RPS compliance, may RS include the RECs retired for compliance in the 2017-2020 compliance period in its excess procurement calculation?

IT IS RULED that:

1. Comments of not more than 25 pages may be filed and served not later than May 5, 2016, in accordance with the instructions in this ruling.
2. Reply comments of not more than 10 pages may be filed and served not later than May 16, 2016.

Dated April 15, 2016, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

ATTACHMENT A

Table 6: Example Excess Procurement Calculation (Compliance Period 1)

Note: Category 1, 2 and 3 RECs meet the criteria of Sections 399.16(b)(1), 399.16(b)(2) 399.16(b)(3), respectively; Short-term contracts are less than 10 years in length

Data Table	Quantity of RECs	Portfolio Content Category Requirements for Compliance Period 1
Procurement Quantity Requirement	2,500	N/A
RECs from contracts executed prior to June 1, 2010	1,000	N/A
RECs from contracts executed after June 1, 2010	2,000	N/A
Long-Term Category 1	900	Minimum Category 1 is 1,000 RECs (2,000 * 50%)
Short-Term Category 1	100	
Long-Term Category 2	400	N/A
Short-Term Category 2	0	
Long-Term Category 3	600	Maximum Category 3 is 500 RECs (2,000 * 25%)
Short-Term Category 3	0	
Total RECs Retired in Compliance Period 1 (2011 - 2013)	3,000	N/A
Example Excess Procurement Calculation for Compliance Period 1	Quantity of RECs	Calculation
Total RECs Retired in the Compliance Period	3,000	
<i>minus</i> All RECs from Short-Term Contracts Signed after June 1, 2010	- 100	
<i>minus</i> Portion of RECs from Category 3 Contracts above the Maximum Limit	- 100	Total Category 3 RECs minus Maximum Allowed (600 - 500 = 100)
<i>equals</i> RECs Eligible for Excess Procurement	= 2,800	
<i>minus</i> Procurement Quantity Requirement for the Compliance Period	- 2,500	
<i>equals</i> Excess Procurement from the Compliance Period	= 300	

(END OF ATTACHMENT)