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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)

**SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER**

Summary

This ruling sets out the scope of the issues, adopts an initial procedural schedule, determines the categorization and need for hearing, and designates the presiding officers in the above-referenced rulemaking, pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.¹ This ruling is appealable only as to categorization, pursuant to Rule 7.6.

Procedural Background

The Order Instituting Rulemaking (OIR) for this proceeding was adopted by the Commission on May 5, 2011. Comments on the OIR were filed and served by more than 40 parties on May 31; reply comments were filed and served by 13 parties on June 9, 2011.² A prehearing conference (PHC) was held on June 13, 2011.

¹ All subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

² Several parties are associations composed of multiple members.

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. Through this proceeding the Commission will also implement major changes in the RPS program resulting from the enactment of Senate Bill (SB) 2 (1x) (Simitian), Stats. 2011, ch. 1. SB 2 (1X) makes numerous changes to the RPS program, most notably extending the RPS goal from 20% of retail sales of all California investor owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs) by the end of 2010, to 33% of retail sales of IOUs, ESPs, CCAs and publicly owned utilities (POUs) by the end of 2020.³ SB 2 (1x) also modifies many details of the current RPS program.

Scope of Issues

There is consensus among the parties that the Commission should address a limited number of critical issues in this proceeding first, recognizing that many important issues will not be in this “highest priority” group.⁴ Based on the parties’ written comments and on discussion at the PHC, I conclude that it is reasonable to consider the following topics in the highest priority group:

1. Implementing the new portfolio content categories, set out in new § 399.16.

³ The Commission has jurisdiction, for RPS purposes, over the first three groups of retail sellers; it does not have jurisdiction over POUUs. See Pub. Util. Code §§ 399.12(j); 399.30(p). Unless otherwise noted, all further citations to sections are to the Public Utilities Code.

⁴ The Administrative Law Judge’s Ruling Setting Prehearing Conference (May 23, 2011) asked parties to identify their initial and secondary priorities for this proceeding in their comments and reply comments on the OIR.

2. Setting new RPS procurement targets mandated by new § 399.15(b)(2)(A).
3. 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).
4. Implementing new § 399.20, expanding the prior feed-in tariff provisions for RPS-eligible generation.

I am also persuaded that it is important to address the new cost limitation methodology for utilities mandated by new § 399.15(c) as soon as feasible. The initial stages of the work to develop a record on cost limitation issues may overlap with work on the four issues set forth above.

Parties showed much less agreement on the urgency and ordering of the other issues identified by the OIR. It is reasonable to continue to include all issues identified in the OIR in the scope of this proceeding, and I do so here. (A list of issues is included as Attachment A.)⁵ It also makes sense to defer more specific scoping and scheduling of issues that are not given the highest priority until further work has been done 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.

I note one minor exception to this overall plan. Small and multi-jurisdictional utilities (SMJUs) argue in their comments on the OIR that some issues related to the scope of their RPS responsibilities can and should be

⁵ Attachment A is based on the list of issues as set out in the Administrative Law Judge’s Ruling Setting Prehearing Conference (May 23, 2011). It is intended to be used for ease of reference, not as the one and definitive formulation of the issues in this proceeding.

addressed sooner rather than later, even though these issues do not affect most parties to this proceeding. I agree with respect to one particular issue: the application of new § 399.16 to SMJUs.

It is reasonable to conclude that new §§ 399.17 (b)⁶ and 399.18(b)⁷ mean what their plain language states. These provisions allow SMJUs and their successors to use RPS-eligible procurement for RPS compliance “notwithstanding any procurement content limitation in Section 399.16,” so long

⁶ New § 399.17(b) provides, for multi-jurisdictional utilities and their successors, as defined,

. . . electricity products from eligible renewable energy resources may be used for compliance with the renewables portfolio standard procurement requirements notwithstanding any procurement content limitation in Section 399.16 and an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to the WECC transmission system, provided all of the following conditions are met:

- (1) Any portion of the electricity generated by the facility and allocated by the electrical corporation or qualifying successor entity for its California customers, and is not used to fulfill renewable energy procurement requirements in other states.
- (2) The electrical corporation or qualifying successor entity participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.25.
- (3) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the procurement requirements of this article.

⁷ New § 399.18(b) provides, for small utilities, as defined,

. . . electricity products from eligible renewable energy resources may be used for compliance with this article, notwithstanding any procurement content limitation in Section 399.16, provided that both of the following conditions are met:

- (1) The electrical corporation or its successor participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.25.
- (2) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the requirements of Section 399.15.

as certain other conditions are met. Any party disagreeing with this interpretation may file and serve comments directed *only* to the application of new § 399.16 to SMJUs not later than 10 days from the date of this ruling.

All other issues related to SMJUs will be addressed as they arise in the course of considering the many topics in this proceeding.

Categorization, Designation of Presiding Officers, Need for Hearings, and Ex Parte Communications

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 is confirmed as ratesetting in accordance with Rule 7.1, and is appealable pursuant to Rule 7.6. Rule 8.2 (c) and Rule 8.3 apply with respect to ex parte communications. Although no parties have requested evidentiary hearings on any of the immediate, high priority issues, it is too early in the course of this proceeding to conclude that no hearings will be needed. The need for hearing is therefore confirmed.

Commissioner Mark J. Ferron is the assigned Commissioner for this proceeding. Administrative Law Judges (ALJ) Regina DeAngelis, Maryam Ebke, Burton W. Mattson, and Anne E. Simon are the presiding officers for this proceeding.

Service List and Documents

Service List

The current official service list for this proceeding is maintained by the Commission's Process Office and posted on the Commission's web page, www.cpuc.ca.gov. All parties must provide a current valid electronic mail (e-mail) address for the service list. All persons on the service list are responsible for ensuring that the correct information is contained on the service list, and notifying the Process Office of corrections or changes, in accordance with Rule 1.9(f). Persons listed as Information Only are entitled only to e-mail service

of documents; if e-mail service to a person listed as Information Only fails, the serving party is not required to re-serve the document. (Rules 1.9(f) and 1.10(d).) Repeated failure of e-mail service due to inaccurate or outdated e-mail addresses may lead to a person listed as Information Only being removed from the service list.

Requests for party status must be made by motion, in accordance with Rule 1.4.

Documents

Any motions, petitions for modification, or other pleadings with respect to Commission actions in any prior RPS proceedings must be:

1. Filed in this proceeding, Rulemaking (R.) 11-05-005;
2. Served on the service list in this proceeding and on the service list in the proceeding in which the original Commission action was taken. All further pleadings or responses must be filed in this proceeding and will be considered in this proceeding. In the interests of fairness and efficiency, the presiding officers may also direct service of any documents on the service list of any prior proceeding.

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.

All paper documents filed with the Commission in this proceeding must be printed on both sides, unless doing so is infeasible or will confuse the reader of the document.

Collaboration with California Energy Commission

The Commission and its staff have successfully worked in a collaborative relationship with the California Energy Commission (CEC) and its staff in several proceedings, including Rulemaking (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 the RPS program. The collaborative relationship will continue in this proceeding.

The CEC/CPUC collaborative staff is not a party. Collaborative staff may provide written or oral comments to the ALJs, assigned Commissioner, or any Commission decision-maker. That communication is not subject to the ex parte rules, and neither the communication, nor a notice of the communication, needs to be formally filed and served.

On the other hand, collaborative staff may provide written comments or proposals to the ALJs or assigned Commissioner which it would like more widely circulated. Collaborative staff must serve such comments or proposals on the service list of this proceeding. The ALJs will ensure that written comments or proposals served by collaborative staff are included in the record, and that parties have an opportunity to provide comments and reply comments. Collaborative staff's comments and proposals may be discussed at hearing and workshops, if held, in the same way that any party's views are discussed.

Consistent with past practice, the Commission's Executive Director and the CEC's Executive Director may continue to jointly review and refine the terms of the staff collaboration, as necessary.

Intervenor Compensation

As stated in the OIR, a party found eligible for intervenor compensation in R.08-08-009 remains eligible in this proceeding. 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. This update should be in the form of an amendment to the previously filed notice of intent to claim intervenor compensation (NOI). Because a PHC was held on June 13, 2011, any such amendment should be filed within 30 days of the date of the PHC.

All other parties seeking intervenor compensation must file an NOI in accordance with Rule 17.1 within 30 days of the date of the PHC.

Schedule

The schedule below reflects the current consensus on initial priorities for this proceeding. With respect to each issue or group of issues, ALJ rulings will be issued requesting comments on particular topics. Workshops may be held as part of the consideration of these priority issues. No party has requested hearings on any of the highest priority 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 scoping memo. The OIR presents many complex issues with different constraints on the timing of Commission decisions. Many issues may be resolved only after other issues have been addressed. It is therefore reasonable to adopt a 24-month timeframe for this proceeding.

The following initial schedule is adopted. It may be adjusted by the presiding officers as necessary to promote the fair and efficient adjudication of this proceeding.

Prehearing conference	June 13, 2011
Comments and workshops on highest priority issues	Third quarter 2011
Proposed decisions on highest priority issues	Fourth quarter 2011
Initial steps on utility cost limitation issues	Fourth quarter 2011
Amended scoping memo on next round of issues to be addressed	First quarter 2012

IT IS RULED that:

1. The scope of issues and initial schedule set forth above are hereby adopted for this proceeding, with the understanding that additional scheduling will be necessary to address the many issues in this proceeding that are not initially scheduled.

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

3. This proceeding is categorized as ratesetting. This determination is appealable pursuant to Rule 7.6.

4. Rule 8.2 (c) and Rule 8.3 apply with respect to ex parte communications.

5. Hearing is determined to be needed.

6. Any motions, petitions for modification, or other pleadings with respect to Commission actions in any prior RPS proceedings must be filed in this proceeding, R.11-05-005 and served on the service list in this proceeding and on the service list in the proceeding in which the original Commission action was taken. All further pleadings or responses must be filed in this proceeding and will be considered in this proceeding.

7. All compliance reports, other reports, comments, briefs, motions, or other substantive documents filed in this proceeding must be verified.

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)