

Braun Blaising McLaughlin P.C.

Attorneys at Law

DOCKET

3-RPS-1078

DATE JUL 08 2011

RECD. JUL 08 2011

July 8, 2011

California Energy Commission
Docket Office, MS-4
Re: Docket No. 03-RPS-1078
1516 Ninth Street
Sacramento, CA 95814-5512

Opening Comments of the Cities of Cerritos, Corona, Moreno Valley and Victorville On the Renewables Portfolio Standard Regulations – Docket # 03-RPS-1078

The cities of Cerritos, Corona, Moreno Valley and Victorville (“Cities”) appreciate the opportunity to submit opening comments on the California Energy Commission’s (“CEC”) implementation of the Renewables Portfolio Standard (“RPS”) in Senate Bill 2 (1X) (“SB 2X”) as it applies to Publicly Owned Utilities (“POUs”). The Cities are included among the smallest California POUs (generally, POUs serving 30 megawatts or less, “Smallest POUs”¹).

The Cities agree with the positions advanced by the California Municipal Utilities Association in its comments and will not repeat those positions here. Rather, the Cities are submitting these comments to explain how the Smallest POUs are distinguishable in certain respects from other load-serving entities, and to request that the CEC apply a minimum amount of regulation proportionate to the contribution that the Smallest POUs may be required make under SB 2X.

1. It is appropriate for the CEC to weigh the administrative burden on the Smallest POUs as the CEC crafts its regulations.

Simply stated, most of the Smallest POUs will find it extremely difficult to absorb the administrative and resource cost associated with timely compliance with SB 2X. This is particularly so for the Cities. There are relatively substantial costs the Smallest POUs will incur upfront in even attempting to comply, for example, in developing procurement processes, assessing rate impacts, participating in the various regulatory proceedings and drafting policies and programs. These costs, combined with the near-term higher costs of renewable resources, could replace important municipal safety and infrastructure investment.

¹ See, e.g., *An Assessment of Resource Adequacy and Resource Plans of Publicly Owned Utilities in CA.* (CEC-200-2009-019), November 2009 (“CEC Report”), at 16-17. See also CEC Report at 1 (“These 17 small publicly owned utilities comprise only 1 percent of all publicly owned utilities’ peak loads in California.”).

The Cities understand and appreciate that SB 2X gives deference to the POU governing bodies to set cost limitation caps and choose resource criteria, among other things.² SB 2X also clearly allows the POU governing bodies to adopt measures that have the effect of delaying timely compliance with the RPS.³ These and other provisions in SB 2X evince the Legislature's intent to allow POU's to implement the RPS in a manner consistent with SB 2X but reflective of each POU's unique situation and circumstance. These provisions in SB 2X provide necessary flexibility for the Smallest POU's.

These provisions in SB 2X also serve as a two-fold reminder to the CEC. First, in crafting its regulations, the CEC should not put itself in the place of a POU's governing body with respect to matters over which the governing body has authority. For example, it would be contrary to SB 2X for the CEC to second-guess or usurp the determination by a governing body that its POU has sufficiently demonstrated conditions that prevent the POU from timely compliance with the RPS, consistent with subdivisions (b) and (c) of Public Utilities Code section 399.15. Second, it is also important in this proceeding for the CEC to remember that it has administrative flexibility, together with the California Air Resources Board ("CARB"), in shaping implementation regulations and, in the case of the CARB, deciding what, if any, penalties would be assessed. In this regard, the CEC can, and in some cases should, make distinctions as to which of the CEC's regulations apply to the Smallest POU's.

The Cities believe that the CEC and the CARB should give the Smallest POU's the maximum amount of deference accorded POU governing bodies under SB 2X. Moreover, in crafting its regulations, the CEC should make reasonable accommodations to reflect the disproportionate administrative burden borne by the Smallest POU's. Such accommodation is consistent with, and reflective of, the recent finding by the CARB that "[i]n evaluating the impacts of the proposed [Renewable Electricity Standard], [CARB] staff found that regulated parties at or below the 200,000 MWh threshold would typically experience twice the administrative costs relative to their costs of compliance compared to retail providers above this threshold."⁴ In further explaining its basis for accommodations under its regulations, CARB noted that small POU's "that qualify for the partial exemption are so small that they do not have the staffing or budget to absorb the administrative burden of compliance.... Requiring these entities to

² See, e.g., Pub. Util. Code § 399.30(m)(1-2).

³ See Pub. Util. Code § 399.30(d)(2-3).

⁴ *CARB Staff Report: Initial Statement of Reasons; Proposed Regulation for a California Renewable Electricity Standard*, June 3, 2010 ("CARB RES Report"), at ES-7.

spend additional funds to procure renewable energy or RECs would create a disproportionate use of resources relative to the environmental benefits.”⁵

The Cities welcome the opportunity to work with the CEC in developing these accommodations. During the focus group meetings planned for later this month, the Cities will present further information supporting the need for flexible and accommodating regulations for the Smallest POUs. Additionally, the Cities are prepared to work with the CEC to explore and work to clarify the lines of demarcation between the authority granted to POUs’ governing bodies under SB 2X, on the one hand, and the authority granted to the CEC, on the other hand.

2. The CEC should tailor its regulation of the Smallest POUs to be proportionate to, and along a timeline consistent with, the value of contributions the Smallest POUs may be required to make under SB 2X.

Since SB 2X is a continuation of a longstanding State policy to encourage and support the development of renewable resources, the large utilities in California are already making substantial progress toward meeting overall State RPS goals.⁶ As investment in renewable technology continues and the industry matures, renewable resources should become relatively lower in cost and risk, and can be purchased in significant quantities by all load-serving entities, including the Smallest POUs. In the near term, however, larger entities have the resources and scale to more easily absorb the risk of development of new technologies. By contrast, newer renewable resources would more likely have a significant impact on the Smallest POUs’ rates in the near term and would add a disproportionate level of risk for these entities.

It would be helpful if the CEC, based on its own information of the market and understanding of the risk, could acknowledge this situation upfront. Specifically, the CEC should acknowledge that marketplace risks may cause some of the Smallest POUs to apply the cost limitation cap under SB 2X in the earlier years of implementation. This is consistent with SB 2X, which provides deference to the governing bodies of the POUs to determine a reasonable cost limit for renewable resources.⁷ Moreover, this acknowledgement is consistent with the realization that, for the most part, the Smallest POUs are likely to be *late adopters* or followers of technology, consistent with their risk profile. Such acknowledgment by the CEC, based on its own resource licensing databases and knowledge of resource costs, could potentially mitigate disproportionate costs that the Smallest POUs would otherwise incur in participating in this and related regulatory proceedings, as well

⁵ CARB RES Report at VII-5.

⁶ CPUC Renewables Portfolio Standard Quarterly Report, 1st Quarter 2011.

⁷ See Pub. Util. Code § 399.30(d)(3) and (m)(2).

as the rate studies which might be required for the Smallest POU's to make findings of facts that are generally known by the CEC. This acknowledgement will more efficiently allow the Smallest POU's to implement SB 2X, shaping their future resource plans to replace their current resources with newer technologies as they become less risky and more cost effective.

3. Interpretation should leave room for entrepreneurial and creative solutions which will meet the statutory intent.

As noted above, investment in newer, large-scale renewable technologies may be difficult for the Smallest POU's. To the extent they can find ways to pay for them, the Smallest POU's can more easily justify investment in projects that provide energy, jobs, and other *local* improvements in their cities and service areas. For example, Cerritos has constructed a solar photovoltaic ("PV") facility atop a water reservoir at its corporate yard and is working on other distributed generation PV options, including a project at its local mall. The Cities look forward to working with the CEC to develop flexible regulations that can more easily accommodate *local* renewable resources.

The Cities respectfully request that the CEC recognize the limited resources of the Smallest POU's and tailor the CEC's regulations to be proportional to the relatively small contribution that the Smallest POU's will be making to the State's renewable resource efforts. Additionally, the Cities urge the CEC to be mindful of the role assigned to POU governing bodies under SB 2X to make various determinations as to circumstances and conditions that may prevent a POU's timely compliance with the RPS.

Respectfully,



Linda Johnson

Scott Blaising

BRAUN BLAISING McLAUGHLIN, P.C.

Attorneys for the Cities of Cerritos, Corona, Moreno Valley and Victorville