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July 8, 2011

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

DOCKET

11-RPS-01

DATE Jul 08 2011

RECD. Aug 16 2011

Thank you for the opportunity to submit these comments regarding the June 17, 2011, workshop on the California Energy Commission's (CEC) Renewables Portfolio Standard (RPS) regulations for publicly-owned electric utilities (POUs). The California Municipal Utilities Association (CMUA) is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA membership includes electric distribution systems and other public agencies directly involved in the electricity industry. CMUA members own and operate significant local and interregional transmission facilities for the benefit of their customers and all of California. In total, CMUA members provide electricity to approximately 25 percent of the population in California. CMUA members look forward to working with CEC staff on developing this important rule.

CMUA provides our initial comments on scope, schedule, prioritization of issues, and other matters mentioned at the June 17 CEC workshop. At the outset, CMUA admits that several provisions of SB 2 (1X), resulting as they do from several years of legislative negotiating, are not crystal clear. Thus, it is incumbent upon both CMUA and the CEC to work collaboratively to craft common sense rules that reflect the intent of the legislation to achieve cost-effective implementation of the RPS goals. This need for collaboration also supports expeditious delineation of the complementary roles of POU governing boards and the CEC to develop RPS regulations.

A. The Governing Boards for CMUA members are vested with the authority and responsibility to develop and implement RPS policy for POUs. This includes off-ramps and cost limitations.

SB 2 (1X) delineates the roles between the Commission and the local governing boards of POUs in implementing the new RPS requirements. Section 399.30(a) provides that "each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan" This plan must include

procurement content requirements (Cal. Pub. Util. Code § 399.30(c)(3)) and may include banking rules (Cal. Pub. Util. Code § 399.30(d)(1)), compliance deferral rules (Cal. Pub. Util. Code § 399.30(d)(2)), and cost limitations (Cal. Pub. Util. Code § 399.30(d)(3)). In comparison, SB 2 (1X) directs the CEC to certify eligible renewable facilities, design and implement an RPS compliance accounting system, (Cal. Pub. Util. Code § 399.25) and develop regulations for the enforcement of the POU RPS program (Cal. Pub. Util. Code § 399.30(n)-(o)). While the CEC staff is directed to adopt enforcement regulations for POU, the Energy Commission does not have the authority to approve or reject specific program elements adopted by a POU.

Given that each POU governing board will be charged with implementing its procurement plan and managing cost limitations, it is inescapable that the POU governing boards will also have the duty to develop compliance obligations for its respective POU. This overlap of responsibilities points to the need for a partnership between the CEC and POU, to develop appropriate regulations.

B. Absent Statutory changes, the adoption of RPS enforcement programs for individual POU, may precede issuance of any regulations by the CEC.

The current deadline for POU, to adopt programs for the enforcement of SB 2 (1X) is January 1, 2012 (Cal. Pub. Util. Code § 399.30(e)). This means that POU, will need to design and adopt their programs well before the CEC adopts its final enforcement regulations, based on the schedule outlined at the workshop. This poses a challenge to POU, particularly in light of the significant shift from the previous statutory and regulatory framework for POU RPS programs. CMUA believes that the CEC should adopt regulations with sufficient flexibility to accommodate the variety of different programs that will be adopted by the POU. Among the issues that will need to be considered is how POU program development and the CEC's current regulatory schedule affect enforcement in the first compliance period. Flexible compliance rules could include deferral or minimum thresholds for finding a violation, as well as providing an opportunity to cure any finding of non-compliance before it is referred to the Air Resources Board (ARB). In light of the CEC's schedule for adoption of enforcement regulations, CMUA recommends that the CEC not treat a POU's failure to adopt its own RPS enforcement program by January 1, 2012, as a failure to comply with SB 2 (1X).

C. Existing data collection mechanisms should be used to gather necessary data from POU.

CMUA and other commenters at the workshop urged the CEC staff to utilize existing data collection mechanisms to the fullest extent possible, to minimize administrative burdens for both CEC staff and to CMUA member utilities.

A quick review of existing data collection mechanisms reveals several existing forms under which POU, submit information to the CEC for various purposes. Many data forms have historically collected a wealth of relevant data from POU. Supply Form S-2, for example, includes energy demand calculations, energy supply resource information, and renewable energy accounting information. Supply Form S-3 covers small POU hourly load information. Supply Form S-4 addresses wind resource

capacity. Supply Form S-5 delves into power purchase agreements and other bilateral contracts. With specific reference to RPS information, the CEC gathers information on the status of POU program implementation through Form CEC-RPS-POU. The CEC also gathers metered renewable generation from Certified RPS Facilities through Form CEC-RPS-GEN.

As such, it seems reasonable to start from the proposition that there is considerable and sufficient data discovered by the CEC in existing supply forms to enable development of a compliance program. The CEC staff and CMUA members have worked cooperatively over the past several years to streamline data reporting and collection. Similar efforts will be called for during RPS regulation development to ensure that new reporting requirements are not needlessly created in duplication of existing data provided by POUs, helping to also reduce administrative costs.

D. “Consistent with” CPUC Regulations does not mean “Identical to.”

As noted above, SB 2 (1X) requires POUs to adopt procurement content requirements “consistent” with the statute directing the CPUC to adopt procurement content requirements, found in section 399.16. Similarly, POUs may also adopt banking rules “in the same manner as” Section 399.13, deferral rules “consistent with” Section 399.15(b), and cost limitations “consistent with” Section 399.15(c). CMUA notes that these provisions do not direct POUs to adopt their program elements consistent with the regulations adopted by the CPUC. Rather, the POUs are directed to comply with the statutes enabling these regulations. This means that POUs have the same level of discretion to adopt these program elements that the CPUC does. Since POUs are numerous and diverse, program elements adopted by POUs may be different from those adopted by the CPUC.

With that said, CMUA anticipates active participation on certain issues at the CPUC. As noted in the Administrative Law Judge’s Ruling issued June 27, 2011, “it is reasonable to anticipate that certain issues to be resolved in implementing SB 32 and SB 2 (1X) for investor owned utilities (IOU) may benefit from coordination with local publicly owned electric utilities. This ruling anticipates addressing these issues by the end of 2011.” CMUA agrees.

Going forward, it is important for the CEC rulemaking effort to reflect the fundamental differences between the governance of POUs’ and IOUs’ respective activities for planning and acquisition of renewable resources. At POUs, both resource procurement and ratemaking authority are consolidated within the same entity. All of the costs that a POU incurs when acquiring renewable resources must be recovered from the POU’s customer-owners. For IOUs, the procurement and ratemaking functions are separated, with the CPUC exercising separate ratemaking authority. While the CPUC has regulatory authorities for resource procurements made by IOUs in compliance with SB 2 (1X), the corresponding oversight authorities exist within the local governing bodies of POUs and do not need to be replicated.

Further, the phrases “consistent with” and “in the same manner as” do not mean that the program elements must meet the exact requirements of those statutes. CMUA believes that for some elements it may make sense for there to be consistency between the CPUC-jurisdictional entities and the POUs, whereas other elements should be

tailored to the local conditions and characteristics of the POU. CMUA plans to work with CEC staff and participate in the CPUC's RPS proceeding to assist the POUs in determining where greater consistency is advantageous.

CMUA supports the coordination between the CEC and the CPUC both in this proceeding and in the CPUC's RPS proceeding. However, as discussed above, SB 2 (1X) does not envision uniform statewide application of the RPS requirements. Instead, the local governing boards of the POUs are entrusted with a great deal of discretion to implement the requirements of the bill. This is in recognition of the structural and operational differences between POUs and CPUC-jurisdictional entities. With this in mind, while the decisions made by the CPUC may inform the development of CEC's enforcement regulation, they should not dictate the ultimate regulations adopted by the CEC.

E. Specific issues mentioned at the CEC workshop

1. *There is no need for POU procurement plan information to mirror statutory requirements for electrical corporations under Section 399.13(a)(1).*

The CEC staff presentation distributed and reviewed at the June 17 workshop asked specific questions regarding whether certain granular elements of procurement plans applicable to electrical corporations should be mirrored by POUs. Specifically, CEC staff asked whether procurement plan information applicable to electrical corporations under Section 399.13(a)(1) should be applicable to POUs. The short answer to this question is "No," for several reasons.

First, it is worth noting that the Legislature declined to provide the specificity applicable to electrical corporations to POUs. This distinction, which must be presumed to be a conscious choice, reflects the intent of the Legislature to allow flexible program implementation by POUs.

Second, for elements addressing operational characteristics of a power portfolio delineated in Section 399.13(a)(1), many POUs are simply too small for this information to be significant. While POUs are certainly cognizant of operational characteristics of their power portfolios, to undertake an examination of peaking, ramping, and other characteristics on an individual POU basis will do little to further the understanding of how the fleet of renewable and non-renewable resources will be integrated on a grid-wide basis.

Third, for POUs in the California Independent System Operator Corporation (CAISO) Balancing Authority, the CAISO is undertaking substantial market reforms that are designed to identify and elicit the products necessary to provide reliable integration of renewables. This Balancing Authority-wide approach also belies the efficacy of a POU-by-POU examination of the operational characteristics of individual portfolios.

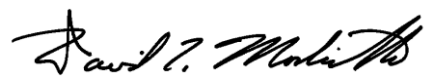
2. *Priority Issues*

Based on our initial thoughts, CMUA and its members believe that the following issues are first priority:

- Identification of Grandfathered Resources: SB 2 (1X) contains grandfathering provisions in Section 399.16(d) and 399.12(e)(1)(C). Section 399.12(e)(1)(C) states that “a facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.” Section 399.16(d) states in relevant part, “any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward the procurement requirements established pursuant to this article, if all of the follow conditions are met ... (1) the renewable energy resource was eligible under the rules in place as of the date when the contract was executed.” Working through these elements to determine what resources are grandfathered will be a priority issue for CMUA members.
- Transition between Current and New RPS Paradigm: The CPUC has identified transitional issues between the current and the new RPS paradigm to be a priority implementation issue of SB 2 (1X) for the IOUs. The CEC should also consider this issue to be a priority issue for the POUs. Due to the diversity of POUs, the RPS paradigms currently established by the individual POU Boards are the result of careful and extensive planning and reflect the load, resource, and customer characteristics of individual POUs. Thus, the transition to the SB 2 (1X) RPS paradigm will be a non-trivial undertaking. It is important that the CEC recognize this fact early on and provide guidance and maximum flexibility consistent with the statutory requirements. This will help to ensure a seamless and cost-effective transition to the end-state as envisioned in the statute.
- Portfolio Content Category Definitions: Clearly, the portfolio content category definitions have been identified by CEC staff, and the CPUC, as a priority issue. While some provisions of Section 399.16 are more self-evident (e.g., first point of interconnection to a California Balancing Authority Area), others present further technical and definitional challenges. Furthermore, because of the diversity of POUs, the structure of commercial arrangements may be more varied as compared to electrical corporations. It will be important to craft product content definitions that not only to recognize the standard RPS products that currently exist in the marketplace, but also to recognize the more specialized RPS products used by the POUs and the new RPS products that are likely to become available in the future. This will allow the most cost-effective arrangements to be pursued consistent with the statutory requirements. Early guidance on these definitions will be important because procurement efforts are ongoing.

CMUA and our members look forward to working cooperatively with the CEC to craft practical and flexible regulations that allow cost-effective RPS compliance.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Modisette". The signature is fluid and cursive, with a large initial 'D' and 'M'.

David L. Modisette
Executive Director