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DOCKET

11-RPS-01

DATE Jul 08 2011

RECD. Aug 16 2011

July 8, 2011

California Energy Commission
Docket Office, MS-4
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814
(submitted via email to: docket@energy.state.ca.us)

Re: Docket No. 03-RPS-1078

Docket Office:

Please find the enclosed comments from the Union of Concerned Scientists regarding 33% RPS implementation and the June 17th, 2011 staff workshop on implementation rules and procedures for the 33% RPS program.

If you have any trouble viewing this material, please contact us using the information listed below.

Sincerely,

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COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON PROPOSED CHANGES TO THE RPS GUIDEBOOK AND THE OVERALL PROGRAM GUIDEBOOK

The Union of Concerned Scientists (“UCS”) thanks the California Energy Commission (“CEC”) for holding the June 17th, 2011 workshop and providing the opportunity to submit initial comments on issues pertaining to the 33 percent Renewables Portfolio Standard (“RPS”) program as they apply to publically-owned utilities (“POUs”) in California. UCS has been engaged for several years in proceedings at the California Public Utilities Commission (“CPUC”) to implement the 20 percent RPS program on investor-owned utilities (“IOUs”) and energy service providers (“ESPs”) and is a formal party to R.11-05-005. So far, parties in this proceeding have had two opportunities to identify the highest priority issues to resolve as soon as possible.

Preliminary Schedule and Meetings

UCS supports the CEC’s ambitious preliminary schedule, presented at the June 17th workshop, to develop rules and regulations for the POU RPS program. Since the CPUC will be developing rules and regulations for a 33 percent RPS program on the load-serving entities (“LSEs”) regulated by the CPUC, UCS urges the CEC to coordinate efforts with CPUC staff as much as possible. This includes holding joint workshops as much as possible to ensure the exchange of ideas is equally as robust in both venues. Close coordination does not mean that *all* rules and regulations pertaining to the RPS should be developed in identical ways for all LSEs. In fact, SBX1 2 clearly contains implementation requirements for the CPUC and CPUC-regulated LSEs that are not similarly required for the POUs and CEC. That said, in the spirit of consistency and market certainty, implementation rules and regulations should be developed as similarly as possible. Certainly, issues pertaining to product category definitions, RPS-eligibility, and verification methods should be closely coordinated if not completely identical for all LSEs.

The preliminary schedule that was shared at the June 17th workshop identifies “meetings with focus groups” in July 2011. UCS urges the CEC to reach out to non-POU stakeholders that have experience with renewable energy markets and California RPS policies as they will provide an important and unique perspective to this issue.

POU Procurement Plan Requirements

Public Utilities Code section 399.30(a) requires each POU to “adopt and implement a renewable energy procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources...to achieve the targets of subdivision (c).”¹ Since the CEC is authorized to determine whether a POU has failed to comply with its RPS compliance obligations, UCS suggests that the CEC use annual procurement plans as a data point in their analysis of whether a POU has made reasonable and sufficient efforts to successfully achieve its RPS obligations.

UCS submits that procurement plans should lay out the utility’s path to meeting the next compliance obligation and provide evidence that the utility is making “reasonable progress” towards RPS obligations in the years between compliance obligations. Since it’s highly possible that not all signed contracts will result in built

¹ Pub. Util. Code §399.30(a)



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projects, or deliver power exactly when initially planned, procurement plans should contain assessments of potential compliance delays and status updates for development schedules on signed contracts. Procurement plans should also contain strategies to compensate for potential project delays, such as plans to procure more than the minimum amount of delivered energy needed to meet a compliance obligation. UCS believes that procurement plans should be made publically available through each POU's website or on a CEC webpage that consolidates all POU plans.

RPS Eligibility and Product Content Categories

The statute requires the CEC to certify renewable energy generation facilities that are eligible to supply energy and/or RECs for the California RPS compliance purposes. In 2007, the CEC announced the launch of the Western Renewable Energy Generation Information System ("WREGIS") which verifies and tracks the generation of electricity from RPS-eligible generation units. UCS believes that the CEC should maintain a publically available database of all generation facilities that have been certified RPS-eligible by the Commission and require that all such generation units be certified by WREGIS. A utility should not be able to receive RPS credit from a facility that is not tracked by WREGIS.

Defining the "eligible renewable energy resource products" as stated in Public Utilities Code Section 399.16(b) is critical to establishing certainty for renewable energy market participants. Defining these products will clarify the types of RPS-eligible transactions that fall into each portfolio content category, which will enable procurement activities to take place. This issue should be considered a high priority, and closely coordinated with implementation efforts at the CPUC. The CPUC issued a scoping ruling on July 8, 2011 that plans for comments and workshops dealing with the highest priority areas, including product content categories, for "third quarter 2011." In addition, any product category definitions should be uniform for all LSEs.

One of the most important issues to resolve quickly is how to define the second product category: "firmed and shaped eligible renewable energy resource products providing incremental electricity and scheduled into a California balancing authority."² UCS believes that "firmed and shaped" contracts should (1) support new western renewable energy development that will serve California RPS requirements in the long-run; and (2) deliver an incremental electricity import, which in turn reduces the need to generate electricity from non-RPS facilities inside the state.

To encourage the development of new renewable energy generation facilities (and therefore establish long-term compliance strategies for California utilities and their ratepayers) UCS believes that the firmed and shaped contracts should include a plan for selling the electricity generated by the RPS facility into the local market. This way, the renewable energy generator is not left with the additional risk of finding a buyer for variable, null power once it has been stripped of its REC. If a firmed and shaped contract is simply a REC deal from an RPS-eligible facility combined with a completely unrelated power import, the renewable energy developer who is supposed to be supplying the REC must still find a buyer for its energy, which significantly increases risk and transaction costs. This type of contract only provides a long-term REC revenue stream for

² Pub. Util. Code §399.16(b)(1)(B)



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the developer and is much less likely to result in the construction of new renewable energy facilities. Iberdrola Renewables and Horizon Wind Energy, two renewable developers with experience building renewable generation facilities outside the state, echo this belief in their comments on a CPUC proposed decision on tradable RECs: “However, no renewable generation investment with which the Companies are familiar would stand on their own purely on REC values. The sale of energy is critical to project viability and ultimate development.”³

UCS also believes that firm and shaped contracts should deliver electricity that is additional to any power imports that would have entered California irrespective of the RPS program. SBX1 2 deliberately distinguishes between firm and shaped transactions and REC-only transactions. UCS believes that unless California energy users are receiving an electricity import that is incremental to imports they would have otherwise received, the net result of the transaction is a REC, and therefore should be categorized as a transaction described in Public Utilities Code section 399.16(b)(3). For instance, UCS does not believe that bundling a REC with a pre-scheduled energy import from a facility that has a long-term contract with a utility should be considered “incremental.” UCS suggests utilities specify up-front where they plan to firm and shape the renewable energy, reducing the ability to simply attach a REC to a pre-scheduled energy import that would have entered the system anyway.

Reporting

Public Utilities Code section 399.30 establishes interim compliance obligations for the POU and requires each POU governing board to ensure that procurement in the years between the compliance years reflects “reasonable progress.”⁴ While ensuring “reasonable progress” is the duty of the governing boards, not the CEC, publically tracking POU progress towards RPS compliance requirements is under the CEC’s purview: “a local publically owned electric utility shall annually submit to the Energy Commission documentation regarding eligible renewable energy resources procurement contracts that it executed during the prior year...”⁵ UCS urges the CEC to make these annual reports publically available, similar to the RPS database the CPUC maintains on their website.⁶ UCS also suggests that each signed contract that has not yet begun delivering energy be preliminarily categorized into one of the three product content categories established in Public Utilities Code section 399.16. Additionally, UCS believes that these reports should contain information on renewable energy deliveries that occurred during the reporting year, and into which product content category these deliveries fall, the source of the electricity, and the contract length.

Submitting complete and timely reports is critical to the success of the RPS program. The quality of the 2010 RPS reporting spreadsheets submitted by POU differ widely. Some reports leave out information needed to identify individual deliveries, and some leave out critical information about individual deliveries including vintage, location and ID numbers of the power facilities, and length and dates of the contracts. Timely

³ Comments of Iberdrola Renewables, Inc. and Horizon Wind Energy on the Proposed Decision of ALJ Simon Authorizing use of Renewable Energy Credits for RPS Compliance, April 15, 2009, p.3, available at: <http://docs.cpuc.ca.gov/efile/CM/99861.pdf>

⁴ Pub. Util. Code §399.30(b)(2).

⁵ Pub. Util. Code §399.30(g).

⁶ See <http://www.cpuc.ca.gov/PUC/energy/Renewables/>



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reporting should be enforced by the CEC and any issues that threaten to prevent a utility from submitting comprehensive and clear data should be identified and resolved as quickly as possible.

Compliance and Enforcement

The RPS statute currently requires the CEC to adopt “regulations specifying procedures for enforcement” by July 1, 2011.⁷ Obviously, that date has passed, and UCS supports the CEC adopting these regulations by July 1, 2012.

The first step in assessing whether enforcement actions are necessary is verifying that the data submitted in fact represents actual energy deliveries (or REC-only transactions) from RPS-eligible facilities in quantities that sufficiently meet the obligations specified in statute. The CEC should verify these deliveries in as timely of a manner as possible, in order to preserve the ability to assess what went wrong if a POU falls short of its compliance obligation. If too much time passes between reporting and verification and enforcement, information about the details of the RPS contracts may not be as readily available, and corrections and adjustments might not be made in a timely manner in subsequent years of RPS compliance. UCS realizes that verification is a time-intensive process and that CEC staff will be verifying deliveries of all LSEs with compliance obligations, not just the POUs. UCS urges the CEC to apply the same verification procedures and standards to all LSEs with RPS compliance requirements. Hopefully, the use of WREGIS will alleviate some of the verification burden. Again, it is the responsibility of the LSE to provide the CEC with adequate information and enforcing this responsibility will reduce the verification burden on CEC staff.

The code is clear that if a compliance obligation is not met, the matter shall be resolved at the Air Resources Board. The CEC should not issue penalty waivers. Since the statute allows each POU to develop rules for delaying obligations, the CEC should develop some high-level criteria to guide the POUs as they develop these rules. For instance, the criteria the CEC develops for the contents of procurement plans will provide useful information on a utilities long-term compliance strategy, and how that has affected actual compliance results. UCS suggests the CEC adopt criteria to guide the POU implementation efforts regarding banking and cost limitations as well.

Conclusion

UCS thanks the CEC for the opportunity to submit these initial comments and looks forward to future participation in this proceeding.

Sincerely,

Laura Wisland
Senior Energy Analyst

⁷ Pub. Util. Code §399.30(n)