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September 12, 2011

California Energy Commission
Dockets Office – MS-4
Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET	
11-RPS-1	
DATE	<u>Sept 12 2011</u>
RECD.	<u>Sept 12 2011</u>

Re: Island Energy Comments on the 33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper (CEC Docket No. 11-RPS-01)

Dear Commissioners:

Island Energy appreciates the opportunity to provide comments on the Concept Paper discussing the 33 Percent Renewables Portfolio Standard (RPS) regulations for Publicly Owned Electric Utilities (POUs). Of primary importance to Island Energy is the lack of recognition of the issues and concerns of small POUs and the uncertainty regarding the role of the Energy Commission in the review of POU governing boards' actions taken to comply with the requirements of Senate Bill (SB) 2 (1x).

Island Energy is a very small POU providing electricity (and natural gas) to less than 500 retail customers on the former Mare Island Naval Base, located just west of the City of Vallejo in the San Francisco bay, pursuant to a franchise service agreement with the U.S. Navy. Island Energy's average load is approximately 2 megawatts, with a peak load of approximately 4 megawatts. Island Energy has an existing Solar Incentive Program under which customers may install photovoltaic systems on their premises.

Island Energy manages the existing distribution infrastructure and purchases all of its electricity needs through a long-term "full requirements" contract with the Western Area Power Administration (WAPA). This long-term contract is very cost-effective for Island Energy insofar as WAPA provides an attractive mix of lower-cost hydroelectric generation and other resources. Pursuant to the contract, WAPA provides all necessary procurement, scheduling and delivery services for Island Energy's loads. Therefore, to the extent that WAPA cannot or will not provide Island Energy with California RPS-eligible power, Island Energy currently has no independent means of procuring RPS-eligible power.

Further, consistent with the small size of Island Energy's service territory and loads, only eight employees are needed to oversee and maintain the system: one Manager, one Office Manager, one Field Supervisor and five Utility Technicians. As a result, Island Energy does not have the necessary in-house expertise needed to independently implement and operate a RPS program similar to what is envisioned for the much larger IOUs or POU's.

Therefore, we urge the Energy Commission to recognize and appropriately tailor its proposed regulations in consideration of small POU's. Unless Island Energy's situation and limitations are recognized, Island Energy will be forced to decide between (i) maintaining its currently cost-effective and advantageous full requirements contract with WAPA as it is presently implemented and paying penalties for non-compliance imposed by the State Air Resources Board (ARB), pursuant to Section 399.30(o)(1), or (ii) incurring substantial costs in an effort to secure exceedingly small volumes of RPS products in a way that will not conflict with its WAPA contract (if possible). The most problematic result would be a situation where the Energy Commission's RPS program would force Island Energy to procure RPS-eligible power in addition to complying with its WAPA contractual requirements (i.e., contracting and paying for renewables for 20% - 33% more power than needed to meet its loads and then reselling the surplus null power back to the market to meet the RPS compliance accounting requirements).

For these reasons, Island Energy believes that the Energy Commission must adopt, for very small POU's like Island Energy, RPS requirements responsive to their unique size and financial status, and/or adopt an alternative compliance mechanism that satisfies the spirit of SB 2 (1x). For example, the Energy Commission could allow Island Energy to meet the 20 - 33% renewable energy requirement through a combination of load reductions resulting from energy efficiency and demand response (that, according to the energy resource loading order, are more valuable even than renewable resources), or by lifting the product content category requirements in favor of an unbundled REC product alone. Failure to recognize the unique issues and concerns associated with very small POU's will all but ensure that entities like Island Energy will be subject to significant administrative expenses and/penalties, which provide no benefit to Island Energy or California.

With these concerns in mind, Island Energy provides the following comments on specific issues raised in the Concept Paper. Island Energy's silence on other issues in the Concept Paper should not be taken as agreement with staff's recommendations, merely that Island Energy currently does not have a position on these issues, but reserves the right to comment on them in the future.

I. Foundational Issues

- A. New issue: what is the scope of the Energy Commission's jurisdiction over POU compliance with SB 2 (1x)?

SB 2 (1x) imposes a variety of new requirements on POU governing boards in Section 399.30. Some of these new requirements are mandatory (governing boards "shall" do), while

some are permissive (governing boards “may” do). While, as will be discussed later, staff seems to believe that the Energy Commission’s role is to judge the reasonableness of POU governing boards’ actions in satisfying the new Section 399.30 requirements, there is nothing in SB 2 (1x) providing the Energy Commission with that authority. Rather, the Energy Commission’s jurisdiction over POU compliance with SB 2 (1x) requirements is limited simply to: (1) adopting regulations specifying procedures for enforcement of these requirements (Section 399.30(n)); and (2) upon determining that a POU has failed to comply with these requirements, to refer the POU to the ARB for possible penalties (Section 399.30(o)).

For example, if, pursuant to section 399.30(d)(3), a POU governing board adopted cost limitations for procurement expenditures consistent with Section 399.15(c), the Energy Commission’s only responsibility is to verify that the POU’s action complied with Section 399.15(c). The Energy Commission has no authority to also consider whether the POU’s actions were reasonable, because the reasonableness of that action remains solely within the POU’s discretion. As the Legislature described in the intent language of SB 2 (1x), implementation of RPS requirements, as they pertain to POUs, are the responsibility of the POU’s governing board, “instead of the PUC.”¹ In other words, the intent of SB 2 (1x) is to give both implementation and reasonableness determination of RPS-requirements applicable to POUs to POU governing boards, not to the Energy Commission. Therefore, the Energy Commission should not adopt regulations requiring it to review POU governing boards’ actions for reasonableness or for referral to the ARB for possible penalties.

B. Meaning of “consistent with” and “in the same manner as” (Public Utilities Code Sections 399.30 (c)(3), 399.30 (d) (1), 399.30 (d) (2), 399.30 (d)(3))

Staff recommends that these terms be interpreted to mean that some rules for POUs should be the same as for other retail sellers, while other rules should apply to POUs only “in the spirit of” how those rules apply to other retail sellers. In general, Island Energy agrees, since SB 2 (1x) provides a large degree of flexibility for POUs to comply with the requirements of SB 2 (1x), unlike the far more restrictive and mandatory rules applicable to IOUs.² Therefore, the Energy Commission should implement more flexible rules and requirements for POUs that, while “in the spirit of” those applicable to IOUs, reflect the unique governance and physical and operating circumstances of POUs.

For the same reasons, the Energy Commission should not arbitrarily exclude POUs from qualifying for RPS program exemptions provided to IOUs. Instead, the Energy Commission should consider whether the reasons for the IOU exemptions -- to encourage RPS participation by small and/or differently situated IOUs that otherwise might be unable to comply with the

¹ SB 2 (1x), pdf, p.4.

² For example, Sections 399.30(d)(1), (d)(2) and (d)(3) do not impose mandatory requirements on POUs. Rather, POU governing boards have the discretion to decide whether to adopt rules, conditions or cost limitations “consistent with” or “in the same manner as” other Sections of SB 2 (1x)

stricter rules and requirements applicable to large IOUs -- also apply and should be made available to POUs.

For example, Section 399.17 permits an electrical corporation, serving less than 60,000 customers, that is not under the operational balancing authority of CAISO or another California balancing authority, to satisfy its RPS requirements with electricity products from ERERs “notwithstanding any procurement content limitation in Section 399.16.” It makes little sense that an IOU serving 60,000 customers can qualify for this benefit, while a small POU like Island Energy, serving less than 500 customers, under a full requirements contract with WAPA that does not permit the POU easy or reasonably priced access to California-eligible ERERs, cannot. Therefore, Island Energy recommends that the Energy Commission extend to POUs exemptions similar to those offered to IOUs. Otherwise, any “in the spirit of” interpretation of the requirements of SB 2 (1x) has no real meaning.

II. Classification of procurement products

a) Portfolio content categories

Current Energy Commission rules permit conveyance of RPS-eligible quantities into California from locations not subject to transmission constraints, which can result in deliveries of the environmental attributes with energy produced at a later time by another facility. Section 399.16 revises these rules depending upon which of the three Portfolio Content Categories the RPS-eligible quantities fall within.

Basically, qualification for Section 399.16(b)(1), Portfolio Content Category 1, requires *contemporaneous* delivery of the energy from the out-of-state Balancing Authority Area (BAA) into the California BAA (CBAA) and precludes any temporal shifting between time of production of the RPS-eligible quantities and delivery of the energy.

For example, if the renewable energy is scheduled for delivery into a CBAA (which can be verified through e-tags) contemporaneously with its production, then those deliveries should count for RPS compliance as Product 1. Any production for which the scheduling shows deliveries into California that are not contemporaneous with the production, namely through the use of substitute resources, would be permissible as a Section 399.16(b)(2), Portfolio Content Category 2 product.

This interpretation of the statutory language leads to two important conclusions: (1) all production that occurs within the state should *always* be considered Product 1 because all such production is, by definition, contemporaneously delivered into California; and (2) a transaction from an out-of-state renewable resource and a buyer could cover both types of products. For instance, counterparties to a contract may specify that when deliveries from the resource are scheduled contemporaneously, those deliveries will be treated as Category 1 product, but when contemporaneous deliveries are not possible then the deliveries would be categorized as Category 2 product.

It also is important to note that there is nothing in the language of section 399.16(b)(1) that precludes the use of firming and shaping to effectuate the delivery, as long as the firming and shaped RPS-eligible generation is contemporaneously delivered to the CBAA. Indeed, it would be correct to characterize *all* types of imported power from an outside balancing authority as firming and shaped transactions since the source balancing authority will honor the scheduled quantities and provide reserves if needed. Further, all product deliveries meeting the Category 1 definitions should be deemed delivered into California consistent with the 399.16(b)(1) definitions irrespective of whether the initial or a downstream transaction reflects only a transfer of a REC.

Finally, verification of the Category 1 status would be made by the Energy Commission in conjunction with WREGIS tracking. For in-state eligible renewable energy resources (ERERs), the RECs associated with their output always would be categorized as Category 1. For resources scheduled into a CBAA or covered through dynamic transfers, some additional verification work will be required to show a timely energy flow consistent with those provisions.

III. Compliance and verification

- b) *Non-compliance triggers*
 - i) *Options (one or more of the following):*
 - (1) *Does not meet procurement target requiring the utility to procure a minimum quantity of eligible renewable energy resources for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance*
 - (2) . . .

As discussed previously, SB 2 (1x) does not authorize the Energy Commission to determine whether a POU's actions were reasonable, but only to determine if the POU performed all relevant actions required by SB 2 (1x). Therefore, while a POU is required to "demonstrate" that conditions beyond its control prevented compliance with procurement targets, pursuant to section 399.15(b)(5), the Energy Commission's role, pursuant to section 399.30, only is to verify that the POU did demonstrate that such conditions occurred, not whether the POU's determination that such conditions occurred was reasonable.

- c) *Criteria and process for determining whether POUs have met procurement requirements*
 - i) *Procurement targets for each compliance period*

In making its recommendations, staff completely disregarded the key modifier for the entire section dealing with POU procurement targets, that is, the initial phrase of section 399.30(a): "In order to fulfill unmet long-term generation resource needs, . . .". Regardless of how the CPUC has interpreted this phrase, the Legislature has, for the first time in SB 2 (1x), introduced this qualifying requirement for RPS procurement regulations, *as they pertain to*

*POUs.*³ The Energy Commission cannot simply ignore this qualifying language as it is a statutory pre-requisite – POU procurement targets only are applicable to a POU’s “unmet long-term generation resource needs.”

As a result, if a POU does not have any unmet long-term generation resource needs, section 399.30(a) does not apply, and by extension, because they do not make sense without section 399.30(a) compliance, neither do sections 399.30(b) and (c).

Island Energy expects that staff may decide to disagree with this conclusion. However, the burden is on the Energy Commission to define and defend any alternative interpretation since the statutory language is clear and unambiguous on its face. Island Energy believes this qualifying language provides a reasonable method of phasing in mandatory RPS requirements for POUs, especially when the requirements of section 399.30 represent a significant alteration of jurisdiction and control of POU governing boards’ discretion over the way resource planning will occur over time. Further, there are benefits associated with the phase in of RPS requirements for POUs as their long-term generation needs change over time due to changes in loads or resource mix. Primarily, it allows the construction of and/or contracting with new ERERs to grow in concert with increasing POU demand and helps POUs to manage their rates. This also minimizes the financial impacts on small POUs, like Island Energy, which does not have the financial resources or necessary expertise to immediately replace 20% or more of its current procurement (if even possible under its current full requirements WAPA contract) with RPS-eligible electricity.

- d) *Conditions allowing waiver of enforcement*
 - i) *Reasonable conditions that allow for delay of timely compliance (including inadequate transmission, unanticipated curtailment of resources, and permitting, interconnection or other circumstances that delay procurement), for those POUs that adopt such conditions (Public Utilities Code Sections 399.15 (b)(5)-399.15 (b)(9) and 399.30 (d)(2))*

As Island Energy previously has discussed, staff’s recommendation that the Energy Commission “establish criteria in regulations by which Energy Commission will determine reasonableness of timely compliance delays” is incorrect because there is nothing in Section 399.30 giving the Energy Commission the authority to “determine reasonableness” of POU actions. Section 399.30(d)(2) allows POU governing boards to adopt conditions allowing for delaying timely compliance if such conditions are consistent with Section 399.15(b). Section 399.30 only allows the Energy Commission to verify that POU governing boards have adopted conditions that comply with Section 399.15(b). The Legislature did not grant the Energy Commission the same authority it granted to the CPUC, in Section 399.15(b)(5), to “find” whether a retail seller has “demonstrated” compliance. The Energy Commission’s authority emanates solely from Section 399.30, not, as staff seems to believe, any other section of SB 2 (1x) to which, by reference, the Legislature describes POU governing board authority.


³ In fact, the language for POUs is slightly different than for IOUs (section 399.15(a)), further demonstrating that the Legislature deliberately considered and included this new and revised language for POUs.

IV. Conclusion

Fundamentally, the staff's recommendations for the Energy Commission's implementation of SB 2 (1x) requirements are flawed to the extent that the staff believes that the Energy Commission has authority to review and judge the reasonableness of POU governing boards' actions to comply with the RPS requirements of SB 2 (1x). As Island Energy has explained, SB 2 (1x) does not provide the Energy Commission with this authority over POUs, in contrast to the Legislature's specific grant of such authority to the PUC, in its governing role over IOUs and retail sellers. The Energy Commission's jurisdiction under SB 2 (1x) is limited to verifying POU compliance with SB 2 (1x) requirements and referring non-compliant POUs to the ARB for potential penalties.

More importantly, the Energy Commission must consider the unique circumstances of very small POUs, like Island Energy, and provide reasonable alternative pathways to RPS compliance for such entities. Otherwise, very small POUs will be forced to choose between the lesser of significant financial expenditures for RPS compliance that exceed the expected benefits of such compliance or the payment of penalties for non-compliance. Neither outcome furthers the goals of SB 2 (1x) or provides any benefits to Island Energy or California.

Respectfully submitted,



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