

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

**Implementation of Renewables Portfolio
Standard Legislation (Public Utilities Code
Sections 381, 383.5, 399.11 through 399.15,
and 445; [SB 1038], [SB 1078])**

**Docket No. 03-RPS-1078
RPS Proceeding**

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
CONCERNING RENEWABLE PORTFOLIO STANDARD PHASE II
IMPLEMENTATION**

In its ruling dated May 2, 2003, the California Energy Commission (“Commission”) announced that staff workshops would be held on May 12 and May 13, 2002, to seek input from interested parties on Phase II implementation issues under California's Renewables Portfolio Standard (“RPS”), established by Senate Bill 1078 (SB 1078, Sher, Chapter 516, Statutes of 2002) and for the New Renewable Facilities Program, established by Senate Bill 1038 (SB 1038, Sher, Chapter 515, Statutes of 2002). The Alliance for Retail Energy Markets (“AReM”)¹ hereby respectfully provides its comments with regard to Phase II implementation issues.

AReM is mindful of, and highly appreciative of the fact that the Commission and the California Public Utilities Commission (“CPUC”) have established a collaborative process to develop rules to implement the state’s RPS. Such cooperation is likely to lead to a coordinated

¹ AReM is a regulatory alliance of ESPs that serve most of the State’s direct access load. AReM members are also active in community choice aggregation efforts, and several AReM members provide renewable energy options to their customers and participate in the Energy Commission’s Renewable Energy Program.

and effective plan that neatly sidesteps any delays that could occur through separate review and analysis of RPS implementation issues.

In the May 2 Ruling, the Commission asked that parties provide input regarding several topics. AReM understands that the Renewables Committee (“Committee”) will use information from this workshop, along with input from collaborative staff and technical consultants, to develop recommendations for addressing RPS issues related to the distribution of supplemental energy payments, the process for certifying electricity generation facilities, and developing the tracking system for the RPS.

I. Introduction

This proceeding concerns implementation of the RPS Program created by Senate Bill (“SB”) 1078. Under the RPS Program, electric utilities, energy service providers (“ESPs”) and community choice aggregators (“CCAs”), collectively referred to in SB 1078 as “retail sellers,” are required to increase the renewable content of their energy deliveries by one percent per year, subject to the availability of Public Goods Charge (“PGC”) funds to cover above-market costs of such resources and certain other conditions, until renewable energy comprises 20 percent of the retail seller’s energy portfolio.

AReM understands that the issues relating to ESP and CCA participation in the RPS Program may be addressed in a subsequent phase of this proceeding. At the same time, however, AReM anticipates that the implementation rules to be adopted in this phase of the proceeding for the utilities will serve as the basis for rules to be adopted for ESPs and CCAs. Accordingly, AReM will use this opportunity to comment on implementation matters, specifically the distribution of supplemental energy payments. In addition, AReM provides comments in support

of proposals to develop a program for the tracking and trading of Renewable Energy Credits (“RECs”).

II. All RPS Program Participants Should Be Treated Fairly and Equally.

While the focus of the implementation plans is necessarily implementation of the RPS program with respect to the state’s investor-owned utilities (“IOUs”), it is important to not lose sight of the fact that the state’s ESPs and CCAs eventually will also be program participants. AReM appreciates that the initial draft workplan specified that the Commission and CPUC staffs are “acutely aware of the need to develop RPS compliance rules for entities such as ESPs and Community Choice Aggregators, and will begin this process soon.”² However, the workplan also made it clear that rules for ESP and CCA participation in the RPS program will not be in place until after such rules are already adopted for the IOUs.³

AReM is concerned that with the initial focus being on the IOUs, decisions could be made that inadvertently discriminate against ESPs and CCAs. Given that Senate Bill (“SB”) 1078 expressly provides that ESPs and CCAs shall participate in the RPS program “subject to the same terms and conditions” as the IOUs,⁴ AReM believes that the Commission and the CPUC are obligated to implement and administer the RPS program in a manner that does not provide the IOUs with any unfair advantage or preference. Stated another way, all program participants should be treated fairly and equally. AReM offers a few examples of where this equality is required:

² See Workplan, fn. 2.

³ See Workplan, pp. 8-9.

⁴ Pub. Util. Code § 399.12(b).

A. ESPs and CCAs should not be required to begin compliance with RPS program requirements within the service territory of an IOU until such time as the IOU has done so.

The initial workplan suggests that one or more of the IOUs may be allowed to defer compliance with RPS program requirements.⁵ If any such deferral is adopted, a commensurate deferral should be granted to ESPs and CCAs for the service territory of an IOU whose obligation is deferred. Otherwise, ESPs and CCAs could be placed at a competitive disadvantage, because they would be required to dedicate a portion of their portfolio to renewable power in order to serve their customers, while the competitive alternative to direct access service, the IOU, would not yet have done so.

It is not clear that there will be adequate Public Goods Charge funds to make ESPs whole for the higher costs of renewable power. As renewable energy is customarily more expensive than traditional sources of power, this could lead to ESPs being uncompetitive with an IOU whose compliance obligation was deferred. This could in turn cause customers to elect to return to bundled service and cause the customer base of ESPs to atrophy. Therefore, AReM strongly recommends that an ESP or CCA not be required to implement the RPS program requirements in an IOU's service territory until such time as the IOU has done so. This is required as a simple matter of competitive parity.

B. Public Goods Charge funds should not be disproportionately encumbered by IOU renewable contracts.

SB 1078 provides for the CEC to allocate and award supplemental energy payments funded by the Public Goods Charge ("PGC") to cover the above-market costs of renewable contracts entered into by the IOUs in accordance with RPS program requirements.⁶ In

⁵ For example, Pub. Util. Code § 399.14 provides that the utilities shall not be required to comply with RPS program requirements until they are deemed creditworthy by the CPUC.

⁶ See Pub. Util. Code §§ 399.13, 399.15.

administering this element of the RPS program, it is imperative that PGC funds not be disproportionately encumbered by IOU renewable contracts. Both DA and bundled customers pay the PGC. It would be inherently unfair, to both DA customers and the ESPs and CCAs that serve them, if the money that DA customers contribute to the state's public energy programs is used solely to subsidize purchases of renewable power for bundled customers, leaving no funds to subsidize other program elements, including purchases of renewable power to serve ESP and CCA customers. Accordingly, AReM urges the CPUC and CEC to take action to ensure that PGC funds are not disproportionately encumbered by IOU renewable contracts. For example, PGC funds should be allocated proportionally among the UDCs, ESPs and CCAs, based on their respective percentages of load served. This would be a very simple methodology that could be easily adopted to ensure a fair allocation among those parties who will be entering into renewable energy contracts and providing renewable energy to California consumers.

III. RENEWABLE ENERGY CREDITS

There has been considerable discussion about the use of RECs to demonstrate and track RPS compliance (i.e., the use of RECs as an accounting tool), as well as unbundling RECs from the energy product to allow RECs to be sold and traded as a separate product (i.e., the use of RECs as a flexible tool for RPS compliance). Several parties also advocated the use of RECs in their prepared testimony at the CPUC in Docket R.01-10-024.⁷

AReM members are very familiar with RECs, which are a central feature of the RPS programs adopted in Texas and elsewhere, and support the use of RECs as both an accounting tool and a compliance tool in California. Accordingly, AReM urges the Commission to work with the Energy Commission to develop a system for the certification and tracking of RECs as

⁷ See, e.g., Ex. RPS-25 (TURN/Marcus), pp. 39-44; Ex. RPS-21 (SDG&E/Bartolomucci), pp. 1-3; Ex. RPS-8 (Ridgewood/Short), pp. 3-5.

soon as possible. In addition, AReM urges the Commission to direct the parties to explore the development of an REC trading system in the upcoming phase of this proceeding, with the goal of implementing such a system by the end of this year.

Senate Bill (“SB”) 1078 directs the Commission to design and implement an accounting system “to verify compliance with the renewable portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewable portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state.”⁸ Although the Commission is ultimately responsible for establishing this accounting system, CPUC ALJ Allen clarified that the CPUC would consider in this proceeding whether the system for verifying and tracking utility RPS compliance should be REC based.⁹ In addition, he invited briefing on “how and when” issues relating to the development of an REC trading system should be addressed.¹⁰

San Diego Gas & Electric Company (“SDG&E”) and the California Wind Energy Association (“CalWEA”) identified in their opening briefs several compelling reasons for adopting an REC-based accounting system. First, an REC-based system is superior to a contract path approach for preventing “double counting” of renewable energy output.¹¹ In contrast to a contract path approach, which would rely primarily on buyer and seller certifications and manual audits, an REC-based accounting system would enable regulators and, importantly for AReM members, potential buyers to easily and conclusively determine whether or not the output of a given renewable resource has been counted toward a retail seller’s RPS obligations.¹²

⁸ See Pub. Util. Code § 399.13(b).

⁹ PHC-6, Tr. at 227.

¹⁰ Tr. at 2468.

¹¹ See SDG&E Opening Brief, p. 24.

¹² See Tr. at 3129 (Rader/CalWEA).

Second, an REC-based accounting system would provide a simple means of tracking renewable procurement surpluses and deficits, thereby facilitating verification of RPS compliance by the Commission.¹³ A central clearinghouse for verification and tracking of RECs, as envisioned by CalWEA, would be far more efficient than the paper-based, contract path accounting system advocated by PG&E and SCE.¹⁴ Moreover, it should be no more expensive to implement an REC-based accounting system than it would be to administer a manual, audit-based contract path tracking system.¹⁵

Third, and perhaps most importantly to AReM members, REC trading will not be possible until an REC-based accounting system is established.¹⁶ RECs play a key role in enabling ESPs to comply with RPS requirements in other states in a cost-effective manner. This is because, unlike utilities, most ESPs have little certainty concerning the amount of load they will be serving in future years. Moreover, ESPs generally do not enjoy the same economies of scale as utilities in terms of their procurement activities. Thus, few ESPs are in a position to enter into long-term contracts for renewable energy and capacity. As a result, many ESPs rely primarily on RECs purchased in the open market to satisfy their RPS obligations. AReM members hope to have the same option in California. For all of these reasons, AReM urges the Commission to endorse and work with the CPUC to establish an REC-based accounting system.

IV. CONCLUSION

AReM urges the CPUC and the CEC to be mindful of the need to ensure that their implementation and administration of the RPS program does not provide the IOUs with any unfair advantage or preference. For example, if one or more of the IOUs are allowed to defer

¹³ CalWEA Opening Brief, p. 17.

¹⁴ Ex. RPS-12 (Rader/CalWEA), Chp. 3, p. 1.

¹⁵ Tr. at 2539 (Roberts/CEERT).

¹⁶ See CalWEA Opening Brief, p. 16.

compliance with RPS program requirements for any reason, a commensurate deferral should be granted to ESPs and CCAs for the service territory of an IOU whose obligation is deferred. It is also important to make sure that PGC funds are not disproportionately encumbered by IOU renewable contracts. This could be accomplished easily by having PGC funds allocated proportionally among the UDCs, ESPs and CCAs based on their respective percentages of load served. AReM also requests that the Commission explore the development of an REC trading system in the upcoming phase of this proceeding, with the goal of implementing such a system by January 1, 2004. AReM appreciates this opportunity to present its views to the Commission and looks forward to participating in the upcoming phase of this proceeding.

Respectfully submitted,

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