BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 15-02-020 (Filed February 26, 2015)

REPLY COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS SUBMITTED BY THE LOAD-SERVING ENTITIES

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In response to parties' opening comments on the 2017 Renewables Portfolio Standard (RPS) Procurement Plans submitted by Load-Serving Entities (LSEs) on July 21, 2017, the Independent Energy Producers Association (IEP) offers these reply comments.

After considering parties' opening comments, IEP reiterates its position that (a) if the 2017 RPS Plans are implemented as the LSEs propose, few new RPS resources needed to meet state RPS and greenhouse gas (GHG) emission-reduction goals will come online over the next 3-5 years (and perhaps longer); and (b) California consumers will pay significantly higher costs to achieve the state's RPS and GHG emission-reduction goals if the Commission delays RPS procurement. These observations inform IEP's response below to discrete issues raised in parties' opening comments.

I. RPS PROCUREMENT SHOULD NOT AWAIT COMPLETION OF THE IRP PROCESS

Some parties argue that the Commission's Integrated Resource Planning (IRP) proceeding is the Commission's primary vehicle for determining whether the jurisdictional LSEs are meeting their statutory RPS targets. They suggest that any decision regarding RPS procurement should await completion of the IRP process.[1] These arguments ignore the value of moving forward now with RPS procurement to enable renewable energy developers to access significant federal tax incentives.

A number of parties in their opening comments presented materials demonstrating the value of moving forward to procure renewables while the federal tax incentives are available. For example, the American Wind Energy Association California Caucus (ACC) cited an Energy Information Administration (EIA) analysis indicating that on a dollar per kilowatt-hour basis, the Production Tax Credit (PTC) rate declines by 20% in 2017, 40% in 2018, 60% in 2019, and expires completely in 2020.[2] ACC also presented an analysis by Energy Strategies that demonstrates savings of $23-25/MWh through early procurement of utility-scale wind energy, and relative savings of 44-52% for projects coming online in 2020 versus 2026.[3] The Large-scale Solar Association (LSA) referred to the results from initial RESOLVE modeling (Preliminary Results), used in the Commission's IRP proceeding, that indicate the net cost of waiting to procure the RPS resources is $633 million.[4]

Moreover, parties demonstrated the need to procure resources now to meet future RPS and GHG emission reduction goals. For example, ACC cited a study from the National Renewable Energy Lab (NREL) that anticipates an upward cost curve for wind that will not return to PTC pricing levels until well after 2030, even accounting for baseline technology cost

[1] Opening Comments of the Office of Ratepayer Advocates, p. 2.
[2] Comments of ACC, pp. 6-7, citing EIA, *Levelized Cost and Levelized Avoided Cost of New Generation Resources in the Annual Energy Outlook 2017.*
[3] Comments of ACC, p. 8, Attachment A, *Energy Strategies Memo*, dated August 18, 2017.
[4] Comments of the Large-scale Solar Association, p. 3.

declines.[5] Finally, LSA pointed out that the RESOLVE modeling (Preliminary Results) indicates that in the default case approximately 4,000 MW of additional wind and solar capacity is required to achieve the 50% RPS by 2030.[6]

The studies and analyses submitted by parties in their Opening Comments support findings presented by IEP in its Opening Comments see (IEP's Opening Comments, Attachment A, MRW Analysis – Value of ITC, PTC and Lower-Cost of Capital (August 29, 2016)). The MRW Analysis indicates that, for projects qualifying in 2019, a 34% reduction in solar photovoltaic (PV) levelized costs and a 15% reduction in wind levelized costs would be anticipated. Moreover, the MRW Analysis estimates that for every 1,000 MW of resources contracted at the 2022 levelized cost of energy (LCOE) instead of the 2019 LCOE, annual costs would increase by $54 million per year for solar PV ($1 billion over 20 years) and $30 million per year for wind ($600 million over 20 years).[7]

But federal tax incentives at these levels will not be available much longer. The value of the PTC begins declining in 2016 and is no longer available in 2020. Similarly, the Investment Tax Credit (ITC) phases down from 30% of capital expenditures in 2019 to 10% in 2022.[8] To access federal tax incentives, RPS facilities need only begin construction consistent with guidelines of the Internal Revenue Service (IRS). The earlier they begin construction, the greater the federal tax incentives.

Prudent developers, however, are not likely to begin construction until they possess a Commission-approved, no longer appealable power purchase agreement. This step can take up to 12-24 months, because the developer must successfully complete a competitive RFO

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[5] Comments of ACC, p. 7, citing NREL, *Impacts of Federal Tax Credit Extensions on Renewable Deployment and Power Sector Emissions*.
[6] Comments of the Large-scale Solar Association, p. 2.
[7] Comments of the Independent Energy Producers Association, p. 11.
[8] Comments of ACC, pp. 6-7.

process (3-6 months), negotiate final contract terms (3-6 months), and receive a final, no longer appealable decision from the Commission approving the contract (6-12 months). As a practical matter, this is an extremely tight schedule. Deferring RPS procurement until completion of the IRP process unnecessarily risks developer access to the existing federal tax incentives that can lower the costs of RPS procurement by up to 30%.

II. THE RISK OF FUTURE LOAD DEPARTURE DOES NOT JUSTIFY DELAYING RPS PROCUREMENT

Shell Energy argues that electric utilities should not be directed to procure any RPS products above the statutory minimums because of the risk of stranded investment due to future load departure (*e.g.,* to Community Choice Aggregators (CCAs)).[9] If eliminating the risk of load departure is to be a precondition for authorizing future RPS procurement, then no RPS procurement will ever occur.

The risk of future load departure is always present, and this risk is confronted by all LSEs continuously. Currently, electric utilities face a risk of CCA departure that is unbounded, while CCAs face the risk that their customers will return to the electric utilities. If a precondition to RPS procurement is the elimination of this risk, then RPS procurement will not occur and the state will have little chance of achieving its RPS goals or its GHG emission reduction goals. The Commission must not accede to the argument that the risk of future load departure must be significantly reduced as a precondition for RPS procurement, particularly in light the compelling showing that any RPS procurement that occurs in 2018 and early 2019 will significantly lower costs to customers.

[9] Opening Comments of Shell Energy North America, p. 2.

III. THE RPS FRAMEWORK UNDERMINES ARGUMENTS THAT RPS PRODUCTS REQUIRE A PREMIUM COST

Shell Energy alleges that whenever an LSE purchases RPS products in amounts that exceed the statutory minimums, "excess" procurement is occurring that deters CCA formation due to the Commission's Power Charge Indifference Adjustment (PCIA) mechanism. Moreover, Shell Energy asserts that a "premium" cost is associated with every unit of RPS energy purchased by San Diego Gas & Electric (SDG&E). From this assertion, Shell Energy concludes that the utility should not procure RPS resources in any amount beyond the statutory minimums.[10]

In response, IEP notes the following. First, RPS procurement levels prescribed in statute are simply the minimum RPS energy procurement required to ensure compliance with the statute. The Commission has the authority to require jurisdictional entities to procure RPS products in excess of the minimum quantities specified in statute.[11] Moreover, the legislature explicitly empowered the Commission to require higher levels of procurement when it directed the Commission to adopt an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the RPS to mitigate the risk that renewable projects planned or under contract would be delayed or canceled.[12] In light of the statutes, "excess" procurement occurs only when a jurisdictional LSE procures RPS energy at levels that exceed the levels established by the Commission. These levels may not be lower than those prescribed in statute, but they may be higher.

Second, the assertion that RPS energy carries with it a "premium" price is erroneous. The Commission is directed by statute to implement an RPS program by which

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[10] Opening Comments of Shell Energy, p. 2.
[11] Pub. Util. Code § 399.15(b)(3). All statutory references are to the Public Utilities Code.
[12] § 399.13(a)(4)(D).

electric utilities are authorized to conduct RPS solicitations.[13] More specifically, in soliciting and procuring eligible renewable resources, each retail seller is directed to consider the best fit attributes of the resource types.[14] Moreover, if the Commission determines that the bid prices in an RPS solicitation are elevated due to a lack of effective competition among bidders, the Commission shall direct the electric utility to renegotiate the contract or conduct a new solicitation.[15]

Shell Energy suggests that every unit of RPS procurement above the statutory minimums carries a "premium cost."[16] However, Shell Energy is not clear about how this premium is determined. If the premium cost is derived from a comparison of the cost of the RPS product to the cost of undifferentiated energy in the markets operated by the California Independent System Operator (CAISO), then the comparison is not a comparison of comparable products. The products that are the subject of RPS power purchase agreements are not the same as undifferentiated energy transacted in the energy markets of the CAISO. The product conveyed in RPS power purchase agreements includes multiple attributes in addition to energy: Renewable Energy Credits (RECs) (reflecting a portion of the environmental benefits and values associated with electric generation from eligible renewable resources), the benefit of electric generation that avoids the cost of GHG emission allowances, some degree of Resource Adequacy capacity, and possibly Ancillary Services. Because the products are not the same, there is no reason to presume that the cost of RPS products would be the same as the cost of undifferentiated energy. Consequently, to the extent that the cost of an RPS product exceeds the cost of undifferentiated energy, it does not follow that the RPS product is receiving a premium

[13] § 399.13(a)(1), (a)(5).
[14] § 399.13(a)(8).
[15] § 399.13(d).
[16] Opening Comments of Shell Energy, pp. 2-3.

price. On the other hand, if the premium cost is derived purely from the fact that a utility has procured quantities of RPS energy above the statutory minimums, this argument still fails. As IEP noted above, the mere fact that a retail seller procures quantities above the statutory minimum does not result in a premium cost, particularly if the Commission finds it reasonable to establish a procurement level higher than the statutory minimums.

IV. FORECASTS BY LSEs OF LOAD DEPARTURE APPEAR MISALIGNED

Utilities are deferring RPS procurement based on their forecasts of customer load shifting to CCAs. Parties have raised legitimate concerns about whether CCAs individually or collectively are assuming this shifted load in their own forecasts.[17] The potential for misalignment of load forecasts is a significant problem in RPS implementation.

As noted in IEP's opening comments, the load associated with CCA formation is not departing; it is simply shifting among LSEs. IEP recommended in its opening comments that the Energy Division should conduct a study to assess LSE estimates individually and collectively to ensure they are in fact aligned and mirror estimates of load growth in the latest California Energy Commission (CEC) forecasts. We reiterate that request here.

V. CONCLUSION

The critical question for the Commission is whether to authorize RPS procurement in 2018 or early 2019. The time to procure is now, and it would be reasonable, under the unique conditions that are present today, for the Commission to direct its jurisdictional entities procure additional RPS resources. These unique conditions include the waning availability of existing federal tax incentives that lower the cost of renewable development needed to meet RPS goals and GHG emission-reduction goals by up to 30%.

[17] Comments of ACC, pp. 3-4.

The Commission should increase the minimum procurement levels as a tool to absorb the "excess" procurement that stands as a barrier to RPS procurement needed to achieve RPS and GHG emission-reduction goals. As a practical matter, the "excess" energy reported by LSEs has already served retail load. Yet, due to current rules, the LSEs need not claim this energy against their current compliance obligation because the required procurement level is set so low. Instead, some LSEs are "banking" the RECs associated with the delivered energy for use in future compliance periods. If the Commission raised the minimum requirement, much of this energy would simply be counted against an LSE's current compliance obligation rather than banked for further compliance, and consumers would have a more accurate representation of the amount of RPS energy that their LSE is using to meet retail load in the year in which the delivery occurred.

For the reasons presented above, IEP reiterates the recommendations made in its Opening Comments. Specifically, the Commission should:

- *Direct* the Energy Division to report, no later than October 30, 2017, on whether the draft 2017 RPS Plans individually and collectively (a) reasonably balance expectations of load shift among LSEs and (b) support state policy objectives in light of CEC Demand Forecasts and preliminary IRP modeling.
- *Modify* the 2017 RPS Plans (upon completion of the Energy Division study) as follows:
    - **Direct each LSE to procure RPS-eligible renewable energy resources at levels that exceed the minimum quantities specified in Section 499.15(b)(2).**
    - **Allocate all costs *and* benefits associated with Commission-jurisdictional**

LSE RPS procurement to all beneficiaries on a non-bypassable basis.

Respectfully submitted this day, September 1, 2017 at San Francisco, California.

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By * /s/ Brian T. Cragg*
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Attorneys for the Independent Energy
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VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Reply Comments of the Independent Energy Producers Association on the Renewables Portfolio Standard Procurement Plans Submitted by the Load-Serving Entities," dated September 1, 2017. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of September, 2017, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg

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