

**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 18-07-003  
(Filed July 12, 2018)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION ON 2018 RENEWABLES PORTFOLIO  
STANDARD (RPS) PROCUREMENT PLANS**

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Consistent with the e-mail ruling of Administrative Law Judge Mason dated September 13, 2018, granting parties an extension of time to and including September 21, 2018, to file and serve their comments on the proposed 2018 Renewables Portfolio Standard (RPS) Procurement Plans, the Independent Energy Producers Association (IEP) provides these comments on the 2018 RPS Procurement Plans submitted by jurisdictional retail sellers on August 20, 2018. At least 36 retail sellers submitted 2018 RPS Procurement Plans, including five from utilities, twelve from Electric Service Providers (ESPs), and nineteen from Community Choice Aggregators (CCAs).

**I. Executive Summary**

Essentially, the 2018 RPS Procurement Plans submitted to the Commission indicate that the development of additional renewable resources is at a standstill in California. Collectively and individually, retailer sellers' 2018 RPS Procurement Plans highlight the fact that little procurement of additional renewable resources is planned over the next couple of years. A few retail sellers indicate some project development may take place now or over the next year, yet

the amount of new additional capacity planned totals only 1,319 MWs, based on IEP's calculation assuming a 100% success rate for new project development. Importantly, the planned development of new additional renewable resources is woefully inadequate to meet statewide planning objectives. For example, modelling suggests the need for 10,000 MWs of new additional renewable resources by 2022 to help achieve California's environmental and carbon reduction goals.<sup>1</sup>

The Commission has the authority to change this situation. Specifically, the Commission has the authority under the RPS statute to direct procurement to ensure that the state stays on pace to achieve its policy objectives in a timely and cost-effective manner. For example, the Commission has the authority to establish a renewables procurement standard requiring all retail sellers to procure a minimum quantity of RPS electricity products from eligible renewable resources (as a percent of retail sales).<sup>2</sup> The Commission has the authority to establish minimum RPS procurement quantities that exceed the minimum quantities prescribed in statute.<sup>3</sup> The Commission has the authority to allocate RPS-related procurement costs (and benefits) in order to ensure that bundled retail customers do not experience any cost increases due to load departing to retail sellers<sup>4</sup> or to community choice aggregators.<sup>5</sup> The Commission has the authority to authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for electricity products from eligible renewable energy resources to satisfy the retail seller's renewables portfolio standard procurement requirements.<sup>6</sup>

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<sup>1</sup> Presentation: *Proposed Reference System Plan (Executive Summary)*, CPUC Energy Division, September 18, 2017, p. 9.

<sup>2</sup> PU Code Section 399.15(a).

<sup>3</sup> PU Code Section 399.15(a)(3).

<sup>4</sup> PU Code Section 365.2.

<sup>5</sup> PU Code Section 366.3.

<sup>6</sup> PU Code Section 399.13(f).

In the context of the 2018 RPS Procurement Plans proceeding, the Commission should assume a leadership role and direct the procurement of RPS-eligible resources to compensate for the lack of needed procurement in the retail sellers' plans. Specifically, the Commission should direct the electrical corporations (or, alternatively, designate a centralized procurement entity) to procure in 2019 at least 3,000 MWs of capacity from RPS-eligible resources to ensure that the state's renewable procurement objectives do not languish over the next few years.

In support of this recommendation, IEP discusses below the 2018 RPS Procurement Plans filed by retail sellers; we address the Commission's authorities to direct procurement to meet statutory obligations and planning forecasts; and we recommend next steps.

## **II. 2018 RPS Procurement Plans Typically Fail to Meet Minimum Standards for Planning**

Adhering to state law should be a given when considering the sufficiency of retail sellers' RPS Procurement Plans. If a retail seller's RPS Procurement Plan simply states a commitment to adhere to state law, as do many of the 2018 RPS Procurement Plans submitted by jurisdictional retail sellers, then the Commission should find these plans insufficient for purposes of planning and procurement.

With the notable exception of the utilities, the majority of 2018 RPS Procurement Plans submitted to the Commission do not constitute anything equivalent to a *Plan* as to how an individual retail seller proposes to comply with pending RPS obligations.<sup>7</sup> An actual *Plan*, for example, should describe what the individual retail seller proposes to do over the next few years to achieve all of its near-term RPS obligations prescribed in statute, including PU Code Section

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<sup>7</sup> The American Heritage Dictionary defines a "Plan" as follows: (1) Any detailed scheme, program, or method worked out beforehand for the accomplishment of an object; *a plan of attack*. (2) a proposed or tentative project or goal: *Do you have any plans for the evening?* (3) A systematic arrangement of details; an outline or sketch: *the plan of a story*.

399.13(b) related to long-term contracting;<sup>8</sup> Section 399.15(b), related to minimum quantities of eligible renewable resources for each compliance period;<sup>9</sup> and Section 399.16(c)(1), related to minimum quantities of portfolio content category 1 (i.e., bundled and/or dynamically scheduled energy and Renewable Energy Credits (RECs)).<sup>10</sup>

Many retail sellers, on the other hand, simply commit to adhere to state law and/or regulation. For example, it is common to see the following language in the plans submitted by ESPs:

[Retail seller X] plans to meet its RPS obligations for the 2017-2020 compliance period and future compliance periods through a similar mix of bundled and REC-only transactions; the exact portfolio mix for the current and future compliance periods will reflect the applicable portfolio content categories and will largely be dependent on the pricing that the various RPS-eligible products available [sic].<sup>11</sup>

Similarly, it is common to see the following language in the plans submitted by CCAs:

[Retail seller X] expects to meet pertinent RPS compliance obligations during the coming twenty-year timeframe by entering into a variety of other renewable supply agreements of varying lengths and structures. The exact portfolio characteristics selected may vary depending on legislative and policy changes, technological improvements, preferences of the community, or other developments. To manage this future uncertainty, ... [Retail seller X] examines and estimates supply and customer demand,

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<sup>8</sup> PU Code Section 399.13(b): “Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of ten years or more induration or in its ownership or ownership agreements for eligible renewable resources.”

<sup>9</sup> PU Code Section 399.15(b)(1): “Each retail seller shall procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:”

<sup>10</sup> PU Code Section 399.16(c): “In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement credited toward each compliance period: ((1) ... 75 percent for each compliance period thereafter [i.e., beginning January 1, 2017], ... shall meet the product content requirements of paragraph (1) of subdivision (b) [i.e., bundled and/or dynamically scheduled].”

<sup>11</sup> See, for example, *2018 Renewables Portfolio Standard Procurement Plan of 3 Phases Renewables, Inc.*, p. 2; *Renewables Portfolio Standard Procurement Plan of Commercial Energy of California*, p. 3; *2018 Renewables Portfolio Standard Procurement Plan of EDF Industrial Power Services (CA), Inc.*, p. 2; and *Renewables Portfolio Standard Procurement Plan of Just Energy Solutions, Inc.*, p. 4.

and will structure its future procurement efforts to balance customer demand and requisite resource commitments.<sup>12</sup>

A commitment to adhere to state law and regulation is not a plan on how to adhere to state law and regulation. The 2018 RPS Procurement Plans, at a minimum, should specify how each retail seller plans to comply with state law and its obligations, i.e., something resembling a detailed scheme, program, or method for adhering to its obligations to achieve compliance with laws and regulations. Typically, the non-utility 2018 RPS Procurement Plans fail to meet this standard.

### **III. 2018 RPS Procurement Plans Typically Fail to Address Long-term Contracting Obligation**

The failure of many retail sellers to address in their 2018 RPS Procurement Plans the steps that they propose to take to comply with the long-term RPS contracting obligation is concerning, because this obligation relates directly to the pace of development of new RPS-eligible resources (which often take years to develop, site, and construct). Specifically, PU Code Section 399.13(b) states, “Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable resources.”

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<sup>12</sup> See, for example, *2018 Renewables Portfolio Standard Procurement Plan of Apple Valley Choice Energy*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of the Clean Power Alliance of Southern California*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of Desert Community Energy*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of East Bay Community Energy*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of Lancaster Choice Energy*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of Pico Rivera Innovative Municipal Energy*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of Pioneer Community Energy*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of Rancho Mirage Energy Authority*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of the Redwood Coast Energy Authority*, p. 2; *2018 Renewables Portfolio Standard Procurement Plan of San Jacinto Power*, p. 2; and *2018 Renewables Portfolio Standard Procurement Plan of Valley Clean Energy Alliance*, p. 2.

The Commission already has highlighted the significance of Section 399.13(b). The Commission has pointed out that Section 399.13(b) shifts the RPS focus away from a “minimum quantity” requirement to a minimum percentage of procurement that must be shown at the end of a compliance period.<sup>13</sup> In addition, the Commission noted that Section 399.13(b) does not provide any method for waiver or reduction, or indeed for any other alteration or adjustment of the long-term contracting requirement.<sup>14</sup> Moreover, the Commission clarified that if the RECs associated with long-term contracts add up to less than 65 percent of retail sales that must be supplied by eligible renewable resources in each compliance period (i.e., the procurement quantity requirement (PQR)), then all the RECs counted for compliance in the compliance period must be adjusted so that the RECs from long-term contracts equal 65 percent of the RECS used for compliance.<sup>15</sup> In sum, the Commission concluded that the failure to meet the long-term contracting requirement prescribed in Section 399.13(b) forces failure to meet the PQR.<sup>16</sup>

One might anticipate that in their 2018 RPS Procurement Plans retail sellers would propose a program for meeting the obligations prescribed therein, given the importance of Section 399.13(b) to new RPS resource development. Yet, most retail sellers fail to even mention the Section 399.13(b) obligation, let alone present a plan for how and when they propose to contract with eligible renewable resources on a long-term basis to ensure compliance with Section 399.13(b). *Attachment A* presents the results of IEP’s review of retail sellers’ 2018 RPS Procurement Plans. The table identifies the individual plans subject to IEP’s review, and then the table depicts (a) whether the individual RPS Procurement Plan addresses the long-term

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<sup>13</sup> Decision 17-06-026, p. 9.

<sup>14</sup> *Ibid*, p. 10.

<sup>15</sup> *Ibid*, p. 11.

<sup>16</sup> *Ibid*, p. 11.

contracting obligation and (b) whether the RPS Procurement Plan specifies any procurement in 2019/2020.

#### **IV. 2018 RPS Procurement Plans Reveal Insufficient Project Development**

The Energy Division estimates that approximately 10,000 MWs of *additional renewables* will be needed as early as 2022 to help meet the 42 MMT Planning Target for greenhouse gas (GHG) emissions.<sup>17</sup> Yet, the 2018 RPS Procurement Plans submitted to the Commission suggest that retail sellers collectively plan to procure by 2020/2021 (or have recently procured) only 1,319 MWs of new, additional renewables. (See *Attachment A, Column D.*) Moreover, the extent to which these retail sellers have incorporated a project development success/failure rate is unclear. For example, a relatively experienced retail seller such as Southern California Edison (SCE) assumes a 70% success rate when it plans new development.<sup>18</sup> If the retail sellers planning on developing new renewables fail to incorporate a project success/failure rate in their Plans, then one might expect (based on SCE's experience) that the 2018 RPS Procurement Plans likely will result in only 923 MWs of new, additional renewable supply online by 2020/2021, i.e., less than 10% of the need described by the Energy Division in its Integrated Resource Plan modeling.

#### **V. 2018 RPS Procurement Plans Typically Miss Opportunities to Lower RPS Procurement Costs**

To the extent that retail sellers prefer to lower the cost of renewable power on behalf of their customers, one might anticipate a plan to renewable resources that can take advantage of existing, yet declining, federal tax credits. Notably, the 2018 RPS Procurement Plans

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<sup>17</sup> Presentation: *Proposed Reference System Plan (Executive Summary)*, CPUC Energy Division, September 18, 2017, p. 9.

<sup>18</sup> See *Southern California Edison Company's 2018 Draft Renewables Portfolio Standard Procurement Plan, Volume 1*, p. 38.

collectively and individually exhibit little awareness of existing federal tax credits and the pace at which their value to ratepayers/customers declines between now and 2021. Based on the 2016 RPS Calculator, an analysis performed for IEP suggests that federal tax incentives reduce the levelized cost of energy (LCOE) for solar and wind resources significantly. For example, for projects qualifying in 2019, a 34% reduction in solar PV levelized costs and a 15% reduction in wind levelized costs would be anticipated. Even when accounting for declines in future technology cost, the analysis shows higher costs of solar and wind in 2022 than in 2019 (25% and 13% higher, respectively). As a result, the analysis estimates that for every 1,000 MW of resources contracted at the 2022 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).<sup>19</sup>

From a planning perspective, the availability of the federal tax credits is dependent on the start date of eligible project construction. To start construction, a project typically needs to be financed. To finance a project, renewable developers typically require a power purchase agreement (PPA). To obtain a PPA, renewable developers typically must either negotiate bilaterally or participate in a competitive procurement process. All this takes time: yet retail sellers' 2018 RPS Procurement Plans typically are silent on conditions such as these that drive project development and lower costs to consumers.

## **VI. The Commission Has the Authority to Direct Procurement to Maintain the Pace of Planned RPS Development**

As noted above, 2018 RPS Procurement Plans typically are deficient in describing what, when, and how retail sellers plan to procure the resources needed to comply with Section

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<sup>19</sup> See *Comments of the Independent Energy Producers Association on the Renewables Portfolio Standard Procurement Plans Submitted by the Load-serving Entities*, Rulemaking 15-02-020, August 18, 2017.

399.13(b) related to long-term contracting obligations beginning January 1, 2021. Moreover, the 2018 RPS Procurement Plans indicate a pace and scale of additional renewable development that risks undermining the goal of developing 10,000 MWs of additional renewable resource by 2022 as envisioned in the Integrated Resource Plan Recommended Reference System Portfolio.<sup>20</sup>

On the other hand, the Commission has the authority under the RPS to direct procurement of its jurisdictional electrical corporations to procure renewable resources to match IRP planning and GHG reduction objectives while fairly allocating the costs (and benefits) to customers. For example, the Commission has the authority to establish a minimum quantity of RPS electricity products from eligible renewable resources (as a percent of retail sales).<sup>21</sup> The Commission has the authority to establish minimum RPS procurement quantities that exceed the minimum quantities prescribed in statute.<sup>22</sup> The Commission has the authority to allocate RPS-related procurement costs and benefits to all benefitting customers<sup>23</sup> in a manner that prevents cost shifts between bundled and unbundled load customers.<sup>24</sup> The Commission has the authority to authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for electricity products from eligible renewable energy resources to satisfy the retail seller's renewables portfolio standard procurement requirements.<sup>25</sup>

## **VII. Recommended Next Steps**

The Commission must assume leadership with regards to 2019 procurement to compensate for the lack of real plans for the procurement of additional renewables at the pace and scale needed to meet planning goals and statutory obligations. Accordingly, considering the

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<sup>20</sup> IEP notes the Governor's recent signing of SB 100 hastens the pace and scale of renewable development from what otherwise would have occurred.

<sup>21</sup> PU Code Section 399.15(a).

<sup>22</sup> PU Code Section 399.15(a)(3).

<sup>23</sup> PU Code Section 365.2.

<sup>24</sup> PU Code Section 366.2(a)(4), 366.3.

<sup>25</sup> PU Code Section 399.13(f).

pending standstill in the procurement of RPS-eligible resources if retail sellers are left to their own devices, the Commission should do the following:

- Establish a minimum RPS procurement quantity for jurisdictional retail sellers to support 3,000 MWs of additional RPS-eligible renewable resources in the 2021-2024 RPS Compliance Period and beyond;
- Assess the need for contacting with existing eligible renewable resources in 2019/2020, particularly baseload renewables, to ensure availability to meet statutory obligations and Commission RPS policy objectives;
- Direct one or more jurisdictional electrical corporations to procure in 2019 at least 3,000 MWs of additional RPS-eligible resources, including baseload RPS-eligible resources, using the Commission's Least-Cost/Best-Fit (LCBF) bid evaluation methodology;
  - Alternatively, designate a jurisdictional electrical corporation to serve in the role as an RPS Central Procurement Entity (CPE) to procure in 2019 the requisite RPS-eligible resources identified in this sub-section; and
- Allocate all costs *and* benefits associated with the RPS-eligible resources procured by an electrical corporation (or, alternatively, by a CPE) consistent with the Commission-adopted Power Charge Indifference Adjustment (PCIA) methodology.

Respectfully submitted September 21, 2018 at San Francisco, California.

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

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**Attachment A**

[A]	RPS Plan Acknowledges LT RPS Contracting Obligation (Beginning January 1, 2021)	Plan Specifies Procurement in 2019/2020	Long-term Contracting/ New Project Development: 2017-2021 (MWs)
	[B]	[C]	[D]
<b><u>Utilities</u></b>			
PG&E	Y	N	0
SDG&E [1]	Y	N	99.2
SCE [2]	Y	N	16.3
Bear Valley Electric Service		Not Clear	8
Liberty Utilities		Yes	60
<b><u>ESPs</u></b>			
3 Phases Renewables, Inc	No	No	
Calpine Energy Solutions	No	No	
Calpine Power America - CA	No	No	
Commercial Energy of CA	No	No	
Constellation NewEnergy	Yes	No	
EDF Industrial Power Services	No	No	
Direct Energy Business, LLC [3]	No	No	*
Just Energy Solutions	NO	No	
Pilot Power Group	Yes	No	
Regents of the University of CA	Yes	Presumed to Be Satisfied	
Shell Energy North America	Yes	No	
Tiger Natural Gas, Inc.	No	No	
<b><u>CCAs w LT Contracts</u></b>			
Cleans Power SF	Yes	Presumed to Be Satisfied	37
Marin Clean Energy	No	Presumed to Be Satisfied	512
Monterey Bay Community Power Auth.	No	Presumed to Be Satisfied	90
Peninsula Clean Energy	No	Presumed to Be Satisfied	300
Silicon Valley Clean Energy Authority	No	Presumed to Be Satisfied	110
Sonoma Clean Power Authority	Yes	Presumed to Be Satisfied	86
<b><u>CCAs w/o LT Contracts</u></b>			
Apple Valley Choice Energy	No	No	0
Clean Power Alliance of Southern CA	Yes	Yes	0
Desert Community Energy [4]	No	No	0
East Bay Community Energy [6]	No	No	0
King City Community Power m [5]	No	No	0
Lancaster Choice Energy	No	No	0
Pico Rivera Innovative Municipal Energy	No	No	0
Pioneer Community Energy	No	No	0
Rancho Mirage Energy Auth.	No	No	0
Redwood Coast Energy Auth.	No	No	0
San Jacinto Power	No	No	0
San Jose Clean Energy [7]	No	No	0
Valley Clean Energy Alliance [8]	Yes	No	0
<b>TOTAL Additional MWs</b>			1,319

- [1] SDG&E Reports its GTSR Interim Pool Contracts will result in 99.20 MWs.
- [2] SCE indicates that in 2017 and in 2018, it has signed ReMat, QF SOC, and BioMat contracts totaling 16.30 MWs.
- [3] Direct Energy provides evidence of executing one long-term contract.  
Resource is expected to reach COD in 2018. Contact amount is unstated
- [4] Desert Community Energy has a revised "launch" date of 2020.
- [5] King City Community Power began operations July 2, 2018.
- [6] East Bay Community Energy began operations June 2018.
- [7] San Jose Clean Energy will enroll customers starting in September 2018.
- [8] Valley Clean Energy Alliance initiated customer service on June 1, 2018.