

**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)

**RESPONSE OF THE CALIFORNIA WIND ENERGY ASSOCIATION
TO MOTION OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION
SEEKING ADDENDA TO 2018 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS**

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***On behalf of the California Wind
Energy Association***

September 20, 2018

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I. INTRODUCTION & SUMMARY

In accordance with Rule 11.1(e) of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the California Wind Energy Association (“CalWEA”) submits this response to the September 5, 2018, Motion of the Independent Energy Producers Association (“IEP”) (the “Motion”). In its Motion, IEP requests that the Commission direct each jurisdictional retail seller to submit within 30 days an Addendum to its 2018 Renewables Portfolio Standard (“RPS”) Procurement Plan presenting information on how it plans to address the long-term contracting obligations prescribed by California Public Utilities (PU) Code Section 399.13(b).¹

CalWEA supports IEP’s Motion and recommends that the Commission additionally require each Energy Service Provider (“ESP”) and Community Choice Aggregator (“CCA”) to address whether the Commission’s establishment of a procurement entity (“PE”) may be

¹ 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.”

necessary to ensure compliance with the long-term contracting requirement and the achievement of the state's RPS goals.

On September 19, 2018, Administrative Law Judge Robert Mason issued an e-mail ruling directing all investor-owned utilities ("IOUs"), CCAs and ESPs to file and serve updates to their Draft 2018 RPS Procurement Plans to address Senate Bill 100, which was recently signed into law by Governor Brown. The Commission could expand the scope of the update to address these additional issues.

II. COMMENTS

A. **IEP's Motion is Justified, and the Commission Should Require Retail Sellers to Provide RPS Plan Addenda Describing Compliance with Long-Term Contracting Requirements**

IEP explains at pages 2-3 of the Motion that the Commission's July 10, 2018, ruling in R.15-02-020 required the 2018 RPS Procurement Plans to "[d]escribe the overall plan for procuring RPS resources for the purposes of satisfying the RPS program requirements", of which the 65 percent long-term contracting requirement is one. IEP demonstrates in Attachment A to the Motion that the majority of 2018 RPS Procurement Plans (apart from the IOUs) "fail to acknowledge the looming long-term contracting obligation, let alone describe a plan or schedule for how they propose to meet the obligation." (IEP at p. 4.)

CalWEA supports IEP's Motion and its request that the Commission direct each jurisdictional retail seller to submit within 30 days an addendum to its 2018 RPS Procurement Plan addressing how it plans to address their statutory long-term contracting obligations. In adopting this requirement, the Legislature appropriately recognized that long-term contracts will be required to truly make a difference in decarbonization because long-term contracts foster new renewable energy projects and the major capital investments necessary to maintain aging, existing renewable energy projects. Likewise, the Commission has long recognized the important role that long-term contracting plays in fostering new renewable resources and achieving California's RPS goals.²

² See, e.g., CPUC D.07-05-028 (May 2007), Findings of Fact 1 and 2: "New sources of RPS-eligible generation will be necessary to meet the goal of 20% of retail sales from eligible renewable energy resources by December 31, 2010" and "Long-term contracts are an important tool in developing new RPS-eligible generation." See also CPUC D.06-10-019 (October 2006), Finding of Fact 16:

In the Integrated Resource Planning (“IRP”) proceeding, the California Community Choice Association (“CalCCA”) provided a summary of the CCAs’ individual resource plans.³ This summary indicates that only 14 percent of current CCA contracts with existing renewable resources are long-term contracts.⁴ CalCCA’s filing states that the CCAs are *planning* to meet the long-term contracting requirement with existing and new-build renewable resources, as indicated by the compiled data.⁵ These data show that CCAs collectively plan to support 6,725 MW of new-build renewable resources by 2022.⁶ However, CalCCA’s combined IRP data show that the CCAs presently have just 4 MW of “new build” resources expected to be operating in 2018.⁷ Other CalCCA data recently presented to the Commission show that the CCAs have only about 1,014 MW of new-build renewable resources supported by long-term contracts of more than 10 years.⁸ Based on these projections, the CCAs will need to enter into long-term contracts for more than 5,000 MW of new-build renewable resources, and most of those projects will need to complete development, construction, and commissioning, in little more than the next two years. Given the multiple-year typical development lead-times required for projects to become operational after signing PPAs, the CCAs have very little time to act before the long-term contract requirement takes effect. The Commission should require the RPS Procurement Plans to describe the steps that will be taken to ensure compliance.

“Substantially all new RPS-eligible generation in California has been built after the developer has secured a contract of at least 10 years in duration for the entire output of the project.”

³ R.16-02-007, Comments of the California Community Choice Association on Integrated Resource Plans of Load Serving Entities (September 12, 2018).

⁴ *Id.* at Table 1. The table shows 3,970 MW of existing renewable energy resources (excluding large hydro) are under contract to CCAs in 2018. The figure drops to 906 MW in 2022 and 583 MW in 2026, indicating that no more than 14 percent (583 MW/3970 MW) of 2018 contracts are 10 years in length or more.

⁵ *Id.* at Tables 2 and 3; statement at p. 20.

⁶ *Id.* at Table 3.

⁷ *Ibid.*

⁸ CalCCA’s June 11, 2018, Comments on the Commission staff’s Customer Choice White Paper (a.k.a. “Green Book”) at p. 3. (Available at <https://cal-cca.org/wp-content/uploads/2018/06/CalCCA-comments-on-Green-Book-11June18.pdf>).

Further, while several CCAs have recently signed a number of long-term contracts with renewable energy developers,⁹ signed contracts do not guarantee that these projects will be financed or that additional projects will be able to obtain financing.¹⁰ Past experience with newly formed CCAs is not encouraging with regard to more recent and future CCAs' ability to supply their needs from new facilities under long-term contracts. The oldest CCA, MCE, obtained approximately five percent or less of its energy from renewable energy projects constructed to meet its demand in its fourth, fifth and six years of operation.¹¹ Lancaster Choice Energy and Sonoma Clean Power obtained no energy from renewable energy projects constructed to meet their demand in their first two and three years of operation, respectively.¹² If these track records are applied to the 13 newly operational CCAs and CCAs that plan to launch in the next few years, most (if not all) would not meet their 65 percent long-term contracting requirements and therefore be out of compliance with the RPS. Likewise, the CCAs would not meet their stated plans for new, operational resources in 2022, and the state could fail to meet its numerical RPS goals in the 2021-2024 timeframe – now substantially higher due to the adoption of SB 100.¹³

A significant concern with CCAs presently is that they do not possess the same level of creditworthiness as the utilities and there is uncertainty surrounding when and whether most CCAs, which are relatively new or yet to become operational, will obtain the level of creditworthiness needed to support financing for new or repowered renewable resources.¹⁴ A

⁹ See CalCCA's "Community Choice Aggregation: Creditworthiness," September 2018 (available at: <https://cal-cca.org/wp-content/uploads/2018/09/Creditworthiness-5.pdf> as of 9/18/18).

¹⁰ Renewable energy companies may be able to bundle CCA projects with non-CCA projects in order to obtain financing, or they may have a limited appetite to build contracts under contracts with sub-creditworthy entities.

¹¹ See "Correction to Comments of Sempra Services in Response to Questions Regarding Customer Choice Workshop" (January 8, 2018).

¹² *Ibid.*

¹³ SB 100 raises the RPS requirement in the 2021-2024 time period from 40% to 44%. This represents an annual energy increase by 2024 on the order of 3,000 MW of renewable resources at a 35% capacity factor.

¹⁴ Only one CCA, eight-year-old MCE, has achieved a credit rating, having relatively recently been awarded a Baa2 rating from Moody's. See *California Energy Markets*, "Marin Clean Energy Assigned Moody's Credit Rating," p. 10. (May 18, 2018.)

lack of creditworthiness will impede the financing of capital-intensive renewable energy facilities. While one CCA has received a credit rating, that rating could be downgraded if the Commission’s imminent decision on the Power Charge Indifferent Adjustment (“PCIA”) results in raising that transition fee.¹⁵

While some or all CCAs could ultimately develop the financial strength necessary to shoulder – and even exceed – the state’s ambitious climate change goals, it is not at all clear that all, or even most, of the CCAs scheduled to become operational over the next few years will establish sufficient creditworthiness in time to foster the long-term contracting necessary to support new renewables development in the near-term and meet the RPS long-term contracting requirements, given the multi-year development lead times that renewable energy projects require. Moreover, a stable and sustained market in long-term contracts is necessary to keep existing renewable resources operational in the face of exceedingly low wholesale market prices.

Finally, as CalWEA noted in its comments on the draft Integrated Resource Plans of load-serving entities, only a few CCAs acknowledged the long-term contracting requirement in their draft plans,¹⁶ one flagged financial status as a challenge,¹⁷ one stated that it will not even begin entering into long-term PPA agreements until 2021,¹⁸ and one ESP appeared to contemplate not meeting the long-term contracting requirement.¹⁹ No CCA provided any detail regarding how they expect to be able to establish sufficient creditworthiness to enable them to accomplish these related requirements within two or three years of formation.²⁰ In the case of ESPs, it is not clear how the short-term nature of ESP customer contracts will enable ESPs to

¹⁵ *Ibid.* Moody’s noted that, among other factors, having to pay higher “transition fees” (i.e., an increase in the PCIA) could lead to a credit downgrade.

¹⁶ R.16-02-007, Valley Clean Energy Draft IRP at p. 27; Redwood Coast at pp. 3-4; Silicon Valley at p. 2; Solana Energy Alliance at p. 4.

¹⁷ R.16-02-007, Valley Clean Energy Draft IRP at p. 27.

¹⁸ R.16-02-007, EBCE IRP at p. 9.

¹⁹ R.16-02-007, Direct Energy Draft IRP at pp. 10, 13 and 14 (“The majority of DEB’s RPS contracts are currently short-term in nature, so changes to DEB’s portfolio may be occurring in the coming years.” “DEB feels that having short-term contracts and not locking in existing resources for an extended period is a prudent strategy in this dynamic market.” “Greater consideration will be made for signing long-term contracts to meet future RPS obligations.”)

²⁰ See, e.g., the IRPs of Monterey Bay, San Jacinto Power, Rancho Mirage, Pico Rivera (PRIME), Lancaster Choice, Pioneer, Silicon Valley, MCE and Sonoma Clean Power.

meet the long-term contracting requirement. If even a handful of LSEs prove unable to sign long-term contracts in the near-term, California could fail to achieve its near-term RPS goals.

Because there is a reasonable basis to be concerned that the CCAs and ESPs may not meet the 65 percent long-term contracting requirement that takes effect beginning in 2021, IEP's Motion should be granted so that the Commission has greater visibility into the situation to inform next steps.

B. The Commission Should Additionally Require ESPs and CCAs to Address Whether Establishment of a Procurement Entity May Be Necessary to Ensure Compliance with the Long-term Contracting Requirement

To inform the Commission of the next steps that may be required to ensure that the state meets its RPS goals, CalWEA recommends that the Commission further direct each ESP and CCA²¹ to indicate in its addendum whether a PE may be necessary to ensure its compliance with the long-term contracting requirement and the development of new renewable energy facilities. California Public Utilities Code Section 399.13(f) provides that the Commission “may 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.” The PE is then able to “recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity.”²²

The Commission should require each CCA and ESP that states that a PE is not necessary to ensure its RPS compliance to provide evidence that it will be able to sign sufficient long-term contracts that will carry sufficient creditworthiness to support its new-build goals for 2022 as stated in its IRP.²³ For those CCAs and ESPs that cannot make a convincing case that they will

²¹ The IOUs have a long and strong track record in supporting long-term RPS contracts. Therefore, they should be invited, but not required, to submit comments regarding their ability to fulfill the long-term contracting requirement and the need for a procurement entity for themselves or other retail sellers.

²² Cal. Pub. Util. Code §399.13(f)(2).

²³ While the year 2022 was used in IRP filings to match the Commission’s IRP analysis-years, a sufficient number of facilities should be on line in 2021, consistent with the 65 percent long-term contracting requirement.

be able to meet all of their RPS requirements in the near-term, the Commission should inform each CCA's governing body and each ESP of the options available to meet these obligations and the consequences of failing to do so, including the potential levy of penalties.²⁴

Based on the results of this inquiry, the Commission should then determine whether its authorization of one or more PEs will be necessary to ensure that the state's RPS goals are met. If it is, the Commission should then invite all interested persons to submit proposals to serve as a procurement entity on behalf of CCA and/or ESP customers and provide this information to CCA governing bodies and ESPs as an option for meeting their RPS requirements in the near-term. If the procurement entity can be established and commence procurement in 2019, CCA ratepayers and ESP customers will also benefit from capturing imminently declining federal tax credits.

Respectfully submitted,

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²⁴ See D. 18-05-026 at p. 9 (“Long-term procurement is at the core of RPS program and a central legislative mandate, and the current enforcement scheme is carefully designed to promote long-term procurement. Lower (differential) penalties for not meeting the long-term procurement goals would undermine the core mandate of the RPS program.”).

VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of “Response of the California Wind Energy Association to the Motion of The Independent Energy Producers Association Seeking Addenda to 2018 Renewables Portfolio Standard Procurement Plans” are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on September 20, 2018, at Berkeley, California.

/s/ Nancy Rader _____
Nancy Rader
Executive Director
California Wind Energy Association