

CPUC Issues New Renewables Rulemaking Addressing SB 2X Implementation, RPS Changes, and Renewables Integration

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May 10, 2011

On May 5, 2011, the California Public Utilities Commission (CPUC) issued a new Rulemaking 11-05-005 (RPS Rulemaking) to continue implementation and administration of the California Renewables Portfolio Standard (RPS) Program.

The RPS Rulemaking is intended to implement amendments to the RPS statutes associated with Senate Bill 2 of the 1st Extraordinary Session (SB 2X), which California Gov. Jerry Brown signed into law on April 12, 2011. SB 2X requires California retail electric providers to, among other matters, procure 33 percent of their retail energy sales from eligible renewable sources by 2020. An earlier DWT advisory summarized SB 2X and can be [found here](#).

As previously reported, certain provisions of SB 2X require the CPUC to transform the statutory language into workable and ideally unambiguous rules—the RPS Rulemaking appears to be the primary forum for interested parties to participate in this process. The RPS Rulemaking covers a broad range of issues, each of which will have far-reaching implications for future compliance with, and participation in, California’s RPS Program.

For these reasons, load serving entities and energy developers (both in-state and out-of-state), should strongly consider at least some level of participation in the RPS Rulemaking.

This advisory summarizes (a) three broad issues to be addressed in the RPS Rulemaking, (b) the schedule for implementation, and (c) how to participate.

The issues to be addressed in the RPS Rulemaking include, (but are not limited to):

Implementation of SB 2X

1. Defining the “Three Bucket” procurement structure

As previously described in our SB 2X advisory, SB 2X establishes a structure under which a certain percentage of renewable energy will be procured from three different “buckets” of RPS eligible resources, including (1) in-state or in-state equivalent products, (2) unbundled renewable energy credits (RECs), and (3) “firmed and shaped products that provide incremental power.”

Furthermore, SB 2X mandates that beginning in 2013, the majority (increasing to a minimum of 75 percent by 2017), of RECs that may be used for RPS compliance purposes must come from in-state or in-state equivalent products (i.e., Bucket 1). These RPS transactions that qualify for such Bucket 1 status will have a competitive advantage over Bucket 2 and Bucket 3 transactions, of which the combined market

share will ultimately be limited to no more than 25 percent.

While SB 2X laid out these broad guidelines, the RPS Rulemaking will adopt specific rules to further define the three “buckets” of RPS-eligible procurement and set limits on the use of each bucket.

2. Classification of out-of-state RPS using transmission

The potential to use transmission capacity to make a direct sale to a California purchaser as a means to qualify as a Bucket 1 transaction is a particularly critical issue for out-of-state renewable developers who wish to participate in the California REC market. Previously, the CPUC has appeared receptive to certain out-of-state transmission sale arrangements being considered the functional equivalent of a purchase from an in-state generator.

Along these lines, SB 2X provides that out-of-state generators that make “direct” sales to in-state purchasers using firm transmission should be accorded Bucket 1 status (i.e., as if the generator were located within the state). However, so far the CPUC and Legislature have suggested that only out-of-state developers holding *firm* transmission rights should be eligible for such treatment. In many respects, out-of-state generators with less than absolutely firm transmission rights should be able satisfy these policy objectives—a “direct sale” into California, no intermediaries, and an ability to schedule power into California.

In any event, given the competitive advantage Bucket 1 status offers an RPS generator, any out-of-state generator that could potentially obtain transmission rights to deliver power directly into California will have a particular interest in this aspect of the RPS Rulemaking.

3. Tradable renewable energy credits (TRECs)

SB 2X requires the CPUC to implement changes to the rules governing TRECs to, among other things, eliminate the “delivery” requirement and modify TREC trading rules. The elimination of the “delivery” requirement will allow, for the first time, an out-of-state RPS generator to sell its physical power to local markets in one transaction and, in a totally separate and independent transaction, convey the RECs associated with the RPS generation to a completely different entity (i.e., the current need for the out-of-state generator to engage in a “buy-sell” agreement with the California purchaser will be eliminated).

4. Replacement of market price referent

SB 2X eliminates the market price referent (MPR) as a metric for the CPUC to evaluate proposed RPS contracts. In its place, SB 2X requires the CPUC to “establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy sources used to comply [with the RPS Program].”

Given the critical importance of the MPR pricing protocol to the CPUC's regulatory review of RPS contracts, it is imperative that the CPUC develop clear guidelines for both the utilities and the developers. Unfortunately, the language in SB 2X provides scant guidance on how this new pricing protocol is to be developed or implemented.

Changes to RPS compliance and reporting

1. Multi-year vs. annual compliance periods

SB 2X requires the CPUC to replace the current annual compliance obligation with a multiple-year obligation, resolve "seams issues" between the 20 percent and 33 percent RPS compliance requirements, and "clarify compliance requirements for the years 2010-2013." Under the multi-year approach, a utility may fail to satisfy the RPS requirement in any one year, but still be compliant over the course of the compliance period.

2. Grandfathering

The RPS Rulemaking will develop rules for REC contracts executed prior to June 1, 2010, including determining what it means for a contract to "count in full" toward RPS requirements. Under the CPUC TREC Decision, various RPS sales transactions that the CPUC has approved as "bundled" (and thus eligible for Bucket 1 status under SB 2X) would be "recategorized" as "TREC-only" transactions thus subject to the restrictions on purchases from the other Buckets.

Both the TREC Decision and SB 2X seemingly would allow at least certain RPS contracts executed before June 2010 to retain some aspect of their "bundled" status. The RPS Rulemaking should clearly identify the RPS contracts eligible for such "grandfathering" and the scope and consequences of such grandfather status.

Renewables integration

1. Integration of cost adders

The RPS Rulemaking will address the integration of cost adders and the development of a methodology to determine RPS resource need and integration into RPS procurement plans.

2. Minimum long-term procurement rules

The RPS Rulemaking will also attempt to implement the requirement that retail sellers must procure a minimum quantity of long-term contracts prior to counting short-term contracts with existing facilities for RPS compliance, in place of the requirement in D.07-05-028 setting the minimum quantity of long-term contracts and/or short-term contracts with new facilities prior to counting short-term contracts with existing facilities.

Implementation schedule

The CPUC acknowledges that the multiplicity of issues to be addressed in the RPS Rulemaking will require a prolonged process of approximately 24 months. Comments on the RPS Rulemaking are due on May 31. Comments may “state any objections to the preliminary scoping memo regarding the issues, category, need for hearing, or schedule” or may address “any matter a party believes should be considered now for the purpose of scoping this [RPS Rulemaking], and anything else necessary for the efficient, effective and equitable conduct of this proceeding.” Reply comments are due June 9.

The Administrative Law Judge will then issue a Scoping Memo setting forth the scope and schedule of the proceeding. The judge may also choose to set a prehearing conference to determine if hearings are necessary or to discuss the scope and schedule of the proceeding.

Participation

The RPS Rulemaking names as “respondents” the fullest universe of sellers of electricity—large electric utilities, small electric utilities, multijurisdictional electric utilities, registered electric service providers, and community choice aggregators. Any parties not automatically named as respondents to the proceeding or previously on the service list for Rulemaking 08-08-009, but who wish to participate in the proceeding, must seek formal party status from the CPUC.

For more information regarding the RPS Rulemaking and for those stakeholders who wish to participate in the proceeding, please contact a Davis Wright Tremaine energy professional.

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