

DOCKETED

Docket Number:	14-RPS-01
Project Title:	Rulemaking to Amend Regulations Specifying Enforcement Procedures for RPS for Local Publicly Owned Electric Utilities
TN #:	210515
Document Title:	Transcript of 10/14/15 Business Meeting
Description:	Transcript sections beginning on page 41 of the adoption of the RPS regulations at the October 14, 2015 Business Meeting.
Filer:	Judi Carter
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/23/2016 3:52:51 PM
Docketed Date:	2/23/2016

BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Business Meeting)
_____)

CALIFORNIA ENERGY COMMISSION
CEC BUILDING
ART ROSENFELD HEARING ROOM (HEARING ROOM A)
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 14, 2015
10:00 A.M.

Reported by:
Peter Petty

APPEARANCES

Commissioners Present

Karen Douglas
David Hochschild
Andrew McAllister
Janea Scott

Staff Present

Rob Oglesby, Executive Director
Kourtney Vaccaro, Chief Counsel
Alana Mathews, Public Advisor
Tiffany Winter, Secretariat
Roger Johnson
Eileen Allen

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Chris Davis	2
Ken Celli	3, 4, 5
Farakh Nasim	6
Angie Gould	7
Larry Rillera	8
Matthew Ong	9
David Nichols	10
Hassan Mohammed	11
Yu Hou	12
Armando Ramirez	13
Gavin Situ	14
Adrian Ownby	15, 16

Also Present (*Present via Telephone)

Interested Parties

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*Paula Faust, City of Gardena	8
*Annaliese Franz, UC Davis	9
Greg Newhouse, SDCCD ATTE	10
*William Cox, Chemehuevi Indian Tribe	11

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1 efficiency goals and, as Commissioner McAllister
2 said, it's voluntary and that's important, and I
3 think it will test some pretty cutting edge work
4 and improvements.

5 COMMISSIONER MCALLISTER: Yeah, exactly.
6 We need to keep track of the marketplace and see
7 what builders actually build and how they
8 negotiate with the various different stretch
9 codes that the local jurisdictions hopefully will
10 be adopting based on CALGreen or otherwise. And
11 I want to thank Farakh and Mazi and Erline and
12 the whole team on their good work on this, too.
13 So thanks, you guys.

14 COMMISSIONER DOUGLAS: Great. Do we have
15 a motion on this item?

16 COMMISSIONER MCALLISTER: I will move
17 Item 6.

18 COMMISSIONER HOCHSCHILD: Second.

19 COMMISSIONER DOUGLAS: All in favor?

20 (Ayes.) The item is approved 4-0. Thank
21 you.

22 COMMISSIONER DOUGLAS: Item 7,
23 Modifications of Regulations Establishing
24 Enforcement Procedures for the Renewables
25 Portfolio Standard for Local Publicly Owned

1 Electric Utilities. This is Angie.

2 MS. GOULD: Good morning Commissioners.

3 I'm Angie Gould from the Renewable Energy
4 Division and I'm here this morning to ask for
5 your approval of modifications to the RPS
6 Regulations for POUs.

7 The original Regulations were approved
8 June 2013 and they became effective October 1st
9 of that year. Next slide, please.

10 I'll just start with a brief background
11 of the RPS Regulations. Next slide.

12 The Regulations are being modified
13 primarily to implement Senate Bill 591 which
14 became effective January 2014. The Regulations
15 also include clarifications in response to
16 stakeholder comments and clarifications
17 identified by staff during implementation of the
18 Regulations.

19 SB 591 allows a POU that receives at
20 least 50 percent of its retail sales from its own
21 qualifying large hydro-generation to limit its
22 procurement to the least of the retail sales not
23 met by the large hydro, the RPS target that's
24 applicable to the other POUs, or procurement
25 capped by the POU's own cost limitation.

1 And SB 591 is intended to apply to Merced
2 Irrigation District. Next slide.

3 The rulemaking formally began on March
4 27th of this year with the publication of the
5 Notice of Proposed Action or NOPA in OAL's Notice
6 Register. That same date, the Energy Commission
7 posted the NOPA, as well as the Express Terms of
8 the Regulations, the Initial Statement of
9 Reasons, and the Economic and Fiscal Impact
10 Analysis. This began the 45-day comment period
11 on the Proposed Modifications to the Regulations.

12 The Commission has one year from the date
13 of NOPA publication, so until March of next year,
14 to complete the Regulations and submit the final
15 rulemaking package to OAL for approval. Next
16 slide.

17 The NOPA included the Notice for the
18 Staff Workshop and the Adoption Hearing, today's
19 hearing, how to submit comments, and where to go
20 to find documents related to the rulemaking. The
21 NOPA also outlines the scope of the proposed
22 regulations. Implementation of the recently
23 signed SB 350 is not included in that scope. We
24 will consider the 50 percent RPS in a new
25 proceeding to begin within the next few months.

1 The Initial Statement of Reasons laid out
2 the rationale for the Proposed Amendments to the
3 Regulations and the Economic and Fiscal Impact
4 Statement showed that the Fiscal Impact to the
5 state of the proposed changes is negligible and
6 can be absorbed by existing resources.

7 The total cost to the POUs as a group is
8 \$7,154 for a typical reporting year, and \$7,261
9 for reporting years that follow the end of a
10 compliance period when there is some additional
11 reporting requirements. Next slide.

12 After posting the proposed language for
13 comment, we held a joint workshop with staff from
14 the Air Resources Board, who were included
15 because the RPS Statute authorizes the ARB to
16 impose penalties on POUs for non-compliance with
17 the RPS.

18 We received 18 sets of written comments
19 by the end of the 45-day comment period, in
20 addition to the oral comments made at the
21 workshop.

22 Staff revised the language of the Express
23 Terms in the Response to Comments and released
24 that version for a 15-day comment period on July
25 6th. And we actually received nine sets of

1 written comments on the 15-day language, we just
2 got two additional comments in the last week, and
3 it's that 15-day language that you're being asked
4 to consider today. Next slide.

5 I'll now go over the Proposed
6 Modifications that were included in the 45-day
7 language, and then I'll follow that with staff's
8 proposed changes in the 15-day language made in
9 response to stakeholder comments. Next slide.

10 We revised and added definitions to
11 Section 3201. The first revision is to the
12 definition of a Bundled Renewable Energy Credit.
13 This revision clarifies existing policy regarding
14 bundled RECs. We've always allowed RECs from
15 onsite energy consumption from a POU-owned
16 resource to count as bundled RECs for the RPS,
17 but since some parties were unsure, we decided to
18 explicitly state this in the Regulations.

19 The language added to the bundled
20 definition is very limited in scope. It doesn't
21 apply to generation from resources owned by the
22 customer using the onsite load, or owned by a
23 third party. In addition, the RECs would no
24 longer be considered bundled if they were sold to
25 another utility. Also, all other eligibility and

1 regulatory requirements would need to be met for
2 a POU to count the RECs as Bucket 1. For
3 example, the facility would need to be located in
4 a California Balancing Authority for the RECs
5 associated with onsite use to be Bucket 1.

6 And second, we added a definition for
7 resale or resold because the existing regulations
8 use the term, but don't actually define it. The
9 added definition clarifies that we're using the
10 same definition of resale that was adopted by the
11 CPUC for Retail Sellers. The definition
12 specifies that it relates to contracts only
13 because sales from owned resources would just be
14 sales and not resales.

15 And we added clarification to the
16 definition of the Western Electricity
17 Coordinating Council regarding its relationship
18 to NERC. Next slide.

19 Electricity products have three different
20 classifications depending on the date of contract
21 execution and whether the generation was eligible
22 for the RPS at the time of execution. Contracts
23 executed before June 1, 2010 that met eligibility
24 rules at the time are classified as count-in-full
25 with few restrictions. Those executed after June

1 1, 2010, are categorized into the three buckets
2 established in Senate Bill X12 and subject to the
3 portfolio balance requirements for those buckets.

4 Contracts executed before June 1, 2010
5 that were not eligible at the time, but have
6 since become eligible are in a third
7 classification that is neither count-in-full, nor
8 subject to the portfolio balance requirements.

9 Existing regulations are silent on how
10 the Commission will treat amendments to contracts
11 in this third category. The proposed changes are
12 consistent with contract amendment rules defined
13 in statute for count-in-full contracts. Next
14 slide, please.

15 Existing regulations allow generation
16 from resources with dynamic transfer agreements
17 to count as Bucket 1 without additional
18 requirements because dynamic transfer agreements
19 renew at the time of adoption of the regulations
20 and it was assumed that all generation under
21 these agreements would be scheduled into a
22 California Balancing Authority. However, staff
23 has since learned that this is not the case after
24 discussions with the ISO, so the proposed changes
25 include a requirement that generation under a

1 Dynamic Transfer Agreement actually be scheduled
2 into a California Balancing Authority to qualify
3 as Bucket 1. However, the documentation of the
4 scheduling will be less burdensome than what is
5 required for generation under a traditional
6 static schedule. Next slide, please.

7 We slightly modified the section that
8 outlines the Special RPS Target and Portfolio
9 Balance Requirements for San Francisco. We
10 changed the averaging period to show that San
11 Francisco qualifies for this section from seven
12 years to 20 years because it better captures the
13 fluctuations and hydro-production as a result of
14 drought years, which may run in cycles longer
15 than seven years. Twenty years is also
16 consistent with how incremental hydro-generation
17 is currently calculated for RPS eligibility when
18 certifying hydro facilities. Next slide.

19 This new subsection implements SB 591 for
20 Merced Irrigation District. While average, the
21 qualifying large hydro for the 20 years preceding
22 each compliance period to determine if it meets
23 50 percent of Merced's retail sales, which would
24 allow Merced to qualify for a lower RPS target in
25 compliance periods with high hydro years. Merced

1 would still be subject to Portfolio Balance
2 Requirements and they would be required to meet
3 multi-year compliance period targets, which would
4 likely have the effect of averaging out years
5 with high hydro.

6 This contrasts with the existing
7 regulations implementing a similar statutory
8 provision for San Francisco. San Francisco has
9 annual targets instead of multi-year targets, and
10 is not subject to the Portfolio Balance
11 Requirements. This difference is supported by
12 the difference in language between the sections
13 of the statute and also by differences in the
14 situations of the two utilities.

15 Section 399.30(j) which covers San
16 Francisco states that San Francisco needs to
17 procure enough renewables to meet only the
18 electricity demands unsatisfied by its hydro-
19 electric generation in any given year. Section
20 399.30(k) covering Merced does not include such
21 language.

22 In addition, San Francisco typically
23 meets all or nearly all of its electricity demand
24 with its large hydro. Merced typically meets 60
25 to 70 percent of its retail sales with its large

1 hydro. These differences mean that Merced can
2 more easily plan to procure renewables, including
3 Bucket 1 resources than San Francisco, which
4 often won't know how much it needs to procure
5 until the end of each Compliance Year. Next
6 slide, please.

7 We added language to Section 3206 to
8 clarify how the Energy Commission would classify
9 generation from amended contracts for the
10 purposes of calculating excess procurement
11 because RECs from short-term contracts can't
12 count toward the excess procurement calculation.

13 Staff revised this section in 15-day
14 language, so I'll cover this section in further
15 detail when we get to the 15-day language
16 changes.

17 We also added subsections to allow POUs
18 to waive a portion of their shortfall from their
19 RPS targets or Portfolio Balance Requirements
20 using optional compliance measures. The current
21 regulations only contemplate applying for a
22 waiver of the entirety of the shortfall. Next
23 slide.

24 We made some cleanup revisions to the
25 reporting section and we also added a requirement

1 that POU's report on their own energy consumption.
2 The Commission will use this information to
3 verify reported retail sales, which is used to
4 calculate a POU's RPS target. The POU's own
5 energy consumption is excluded from retail sales
6 and we need to ensure that POU's are defining
7 their own energy consumption accurately and
8 consistently.

9 Staff also added necessary reporting
10 requirements for Merced and other POU's that
11 receive special exemptions under statute. Next
12 slide.

13 And finally, the proposed modification to
14 add language to the section on Enforcement to
15 allow the Commission to provide as complete a
16 record as possible to the ARB shall determine
17 penalties for any POU that the Commission finds
18 in violation. The revisions include addition of
19 mitigating factors that a POU may choose to
20 address in its answer to the Commission's formal
21 complaint, as well as allowing for the
22 possibility for the Commission to suggest
23 penalties for a POU found in violation of the RPS
24 to be forwarded to the ARB for its consideration.
25 And the ARB is under no obligation to follow the

1 Commission's suggested penalty. Next slide.

2 Now I will cover the proposed 15-day
3 language changes. Next slide.

4 We've added minor clarifications to the
5 definition of Bundled and Retail Sales in
6 response to stakeholder comments. The 15-day
7 language changes clarify that the language
8 regarding when RECs associated with onsite
9 generation could be considered bundled was
10 provided as just one and not the only example of
11 Bundled RECs.

12 The Retail Sales definition was revised
13 to make clear that all generation that a PUC
14 sells to a customer will be considered part of
15 retail sales, including generation that is
16 consumed onsite by a customer. Next slide.

17 For RPS Procurement Requirements, we
18 determined that, when calculating whether a hydro
19 facility meets the SB 591 requirements, it's only
20 necessary to allow averaging of the hydro-
21 generation over 20 years, and not the retail
22 sales, as well, as was proposed in the 45-day
23 language. Next slide.

24 The 15-day changes modify the language on
25 Excess Procurement related to amended contracts

1 in response to stakeholder comments. Before our
2 determination of whether an amended contract
3 would count as long term, and therefore be
4 eligible for excess procurement was based on
5 multiple factors, the time of the amendment, how
6 time was outed, and whether the contract was
7 initially short term or long term. The 15-day
8 revision simplify this and just calculate the
9 contract term as the period between the original
10 contract start date and the end date once it's
11 amended. Next slide.

12 Staff added a requirement for a POU with
13 an SB 591 exemption to report additional
14 information on the qualifying hydro-generation
15 produced and procured during the compliance
16 period. This information was mistakenly excluded
17 from the 45-day language and it will be used to
18 verify the amount of qualifying large hydro-
19 generation. Next slide.

20 And since the 45-day language was
21 released, the Commission has revised other
22 Regulations that changed references in this
23 section, as well as some wording related to the
24 complaint filing. So the 15-day language brings
25 the RPS Regulations in line with other Commission

1 Regulations.

2 In response to stakeholder comment, we
3 also made some revisions to clarify that the
4 Commission's authority lies in findings of
5 compliance or noncompliance with the RPS. And
6 any findings related to ARB's assessment of
7 penalties or suggestions for such penalties are
8 just optional and may or may not be considered by
9 ARB.

10 And we also revised references to the
11 California Air Resources Board to be consistent
12 with common State practice. Okay, next slide.

13 And that concludes my presentation and
14 I'm happy to answer any questions.

15 COMMISSIONER DOUGLAS: Thank you. Now, I
16 don't have any blue cards for this item, so I
17 just want to check. Is there any public comment
18 in the room for Item 7? In the room or on the
19 phone? All right. Commissioner Hochschild.

20 COMMISSIONER HOCHSCHILD: Thank you,
21 Angie, for your work and your team's as well.
22 I'm comfortable with where we are and unless
23 there's further discussion, I would move this
24 item.

25 COMMISSIONER MCALLISTER: I'll second.

1 COMMISSIONER DOUGLAS: All in favor?

2 (Ayes.) I just want to congratulate the
3 staff. I know this is complicated and very
4 detail heavy work, and so thank you for your work
5 on this.

6 COMMISSIONER MCALLISTER: Also, I guess
7 we should probably just point out, Angie said it,
8 but sort of reiterate that, you know, SB 350 will
9 create a lot of opportunity to have necessary
10 discussions going forward, and actually the sort
11 of need to have those discussions, so there's a
12 lot of stakeholder input that we're going to
13 need.

14 COMMISSIONER HOCHSCHILD: You raise a
15 very good point, Commissioner, and that is
16 actually worth spending one second on it. So
17 there is a pretty significant lag time between
18 when legislation passes and because our process
19 is public and transparent and thorough, it
20 doesn't move quickly. So the timing on the next
21 round of Regs, really we don't expect to be
22 actually implementing until 2017. Maybe you
23 could speak to that briefly, Angie, sort of what
24 the sequence of events is from here?

25 MS. GOULD: Yeah, so the usual expected

1 time for actually getting through the entirety of
2 the Regulations would be about a year. And we'll
3 probably start that maybe January. We haven't
4 quite come up with a schedule yet since it was
5 just signed last week, but we plan to do so soon
6 after adoption of these Regulations.

7 COMMISSIONER HOCHSCHILD: Thank you.

8 COMMISSIONER DOUGLAS: All right, thank
9 you.

10 MS. GOULD: Thank you, Commissioners.

11 COMMISSIONER DOUGLAS: All right, let's
12 go on to Item 8, then. City of Gardena, Proposed
13 Resolution approving Agreement ARV-15-006. Let's
14 see, Larry, go ahead.

15 MR. RILLERA: Good morning,
16 Commissioners. I am Larry Rillera of the
17 Division of Fuels and Transportation. I am
18 seeking your approval of an agreement for a total
19 of \$2,745,419 resulting from the Medium- and
20 Heavy-Duty Advanced Vehicle Technology
21 Demonstration Solicitation issued under the
22 Alternative and Renewable Fuel and Vehicle
23 Technology Program.

24 The purpose of the solicitation was to
25 encourage demonstration of Advanced Vehicle