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<td><strong>Docket Number:</strong></td>
<td>14-RPS-01</td>
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<tr>
<td><strong>Project Title:</strong></td>
<td>Rulemaking to Amend Regulations Specifying Enforcement Procedures for RPS for Local Publicly Owned Electric Utilities</td>
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<td><strong>Filer:</strong></td>
<td>Judi Carter</td>
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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

Item No.

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

Stephen O’Kane 2
Sean Beatty, NRG 4
*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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efficiency goals and, as Commissioner McAllister said, it’s voluntary and that’s important, and I think it will test some pretty cutting edge work and improvements.

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

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

COMMISSIONER MCALLISTER: I will move Item 6.

COMMISSIONER HOCHSCHILD: Second.

COMMISSIONER DOUGLAS: All in favor?

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

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

CALIFORNIA REPORTING, LLC
52 Longwood Drive, San Rafael, California 94901 (415) 457-4417
Electric Utilities. This is Angie.

MS. GOULD: Good morning Commissioners.

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

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

I’ll just start with a brief background of the RPS Regulations. Next slide.

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

SB 591 allows a POU that receives at least 50 percent of its retail sales from its own qualifying large hydro-generation to limit its procurement to the least of the retail sales not met by the large hydro, the RPS target that’s applicable to the other POUs, or procurement capped by the POU’s own cost limitation.
And SB 591 is intended to apply to Merced Irrigation District. Next slide.

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

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

The NOPA included the Notice for the Staff Workshop and the Adoption Hearing, today’s hearing, how to submit comments, and where to go to find documents related to the rulemaking. The NOPA also outlines the scope of the proposed regulations. Implementation of the recently signed SB 350 is not included in that scope. We will consider the 50 percent RPS in a new proceeding to begin within the next few months.
The Initial Statement of Reasons laid out the rationale for the Proposed Amendments to the Regulations and the Economic and Fiscal Impact Statement showed that the Fiscal Impact to the state of the proposed changes is negligible and can be absorbed by existing resources.

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

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

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

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

  got two additional comments in the last week, and

it’s that 15-day language that you’re being asked

to consider today. Next slide.

I’ll now go over the Proposed

  Modifications that were included in the 45-day

language, and then I’ll follow that with staff’s

proposed changes in the 15-day language made in

response to stakeholder comments. Next slide.

We revised and added definitions to

  Section 3201. The first revision is to the

definition of a Bundled Renewable Energy Credit.

This revision clarifies existing policy regarding

bundled RECs. We’ve always allowed RECs from

onsite energy consumption from a POU-owned

resource to count as bundled RECs for the RPS,

but since some parties were unsure, we decided to

explicitly state this in the Regulations.

The language added to the bundled

  definition is very limited in scope. It doesn’t

apply to generation from resources owned by the

customer using the onsite load, or owned by a

third party. In addition, the RECs would no

longer be considered bundled if they were sold to

another utility. Also, all other eligibility and
regulatory requirements would need to be met for
a POU to count the RECs as Bucket 1. For
example, the facility would need to be located in
a California Balancing Authority for the RECs
associated with onsite use to be Bucket 1.

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

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

Electricity products have three different
classifications depending on the date of contract
execution and whether the generation was eligible
for the RPS at the time of execution. Contracts
executed before June 1, 2010 that met eligibility
rules at the time are classified as count-in-full
with few restrictions. Those executed after June
Contracts executed before June 1, 2010 that were not eligible at the time, but have since become eligible are in a third classification that is neither count-in-full, nor subject to the portfolio balance requirements.

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

Existing regulations allow generation from resources with dynamic transfer agreements to count as Bucket 1 without additional requirements because dynamic transfer agreements renew at the time of adoption of the regulations and it was assumed that all generation under these agreements would be scheduled into a California Balancing Authority. However, staff has since learned that this is not the case after discussions with the ISO, so the proposed changes include a requirement that generation under a
Dynamic Transfer Agreement actually be scheduled into a California Balancing Authority to qualify as Bucket 1. However, the documentation of the scheduling will be less burdensome than what is required for generation under a traditional static schedule. Next slide, please.

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

This new subsection implements SB 591 for Merced Irrigation District. While average, the qualifying large hydro for the 20 years preceding each compliance period to determine if it meets 50 percent of Merced’s retail sales, which would allow Merced to qualify for a lower RPS target in compliance periods with high hydro years. Merced
would still be subject to Portfolio Balance Requirements and they would be required to meet multi-year compliance period targets, which would likely have the effect of averaging out years with high hydro.

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

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

In addition, San Francisco typically meets all or nearly all of its electricity demand with its large hydro. Merced typically meets 60 to 70 percent of its retail sales with its large
These differences mean that Merced can more easily plan to procure renewables, including Bucket 1 resources than San Francisco, which often won’t know how much it needs to procure until the end of each Compliance Year. Next slide, please.

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

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

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

We made some cleanup revisions to the reporting section and we also added a requirement
that POUs report on their own energy consumption. The Commission will use this information to verify reported retail sales, which is used to calculate a POU’s RPS target. The POU’s own energy consumption is excluded from retail sales and we need to ensure that POUs are defining their own energy consumption accurately and consistently.

Staff also added necessary reporting requirements for Merced and other POUs that receive special exemptions under statute. Next slide.

And finally, the proposed modification to add language to the section on Enforcement to allow the Commission to provide as complete a record as possible to the ARB shall determine penalties for any POU that the Commission finds in violation. The revisions include addition of mitigating factors that a POU may choose to address in its answer to the Commission’s formal complaint, as well as allowing for the possibility for the Commission to suggest penalties for a POU found in violation of the RPS to be forwarded to the ARB for its consideration. And the ARB is under no obligation to follow the
Commission’s suggested penalty. Next slide.

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

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

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

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

The 15-day changes modify the language on Excess Procurement related to amended contracts
in response to stakeholder comments. Before our
determination of whether an amended contract
would count as long term, and therefore be
eligible for excess procurement was based on
multiple factors, the time of the amendment, how
time was outed, and whether the contract was
initially short term or long term. The 15-day
revision simplify this and just calculate the
contract term as the period between the original
contract start date and the end date once it’s
amended. Next slide.

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

And since the 45-day language was
released, the Commission has revised other
Regulations that changed references in this
section, as well as some wording related to the
complaint filing. So the 15-day language brings
the RPS Regulations in line with other Commission
In response to stakeholder comment, we also made some revisions to clarify that the Commission’s authority lies in findings of compliance or noncompliance with the RPS. And any findings related to ARB’s assessment of penalties or suggestions for such penalties are just optional and may or may not be considered by ARB.

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

And that concludes my presentation and I’m happy to answer any questions.

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

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

COMMISSIONER MCALLISTER: I’ll second.
COMMISSIONER DOUGLAS: All in favor?

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

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

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

MS. GOULD: Yeah, so the usual expected
time for actually getting through the entirety of
the Regulations would be about a year. And we’ll
probably start that maybe January. We haven’t
quite come up with a schedule yet since it was
just signed last week, but we plan to do so soon
after adoption of these Regulations.

COMMISSIONER HOCHSCHILD: Thank you.
COMMISSIONER DOUGLAS: All right, thank
you.

MS. GOULD: Thank you, Commissioners.
COMMISSIONER DOUGLAS: All right, let’s
go on to Item 8, then. City of Gardena, Proposed
Resolution approving Agreement ARV-15-006. Let’s
see, Larry, go ahead.

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

The purpose of the solicitation was to
courage demonstration of Advanced Vehicle