

DOCKETED

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Project Title:	Rulemaking to Amend Regulations Specifying Enforcement Procedures for RPS for Local Publicly Owned Electric Utilities
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Document Title:	Request for Earlier Effective Date
Description:	Request to OAL for earlier effective date of the proposed amendments to regulations establishing enforcement procedures for the RPS for POUs.
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CALIFORNIA ENERGY COMMISSION

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In the matter of:)	Docket No. 14-RPS-01
Modifications of Regulations Establishing)	OAL Notice File Number
Enforcement Procedures for the)	Z-2015-0313-01
Renewables Portfolio Standard for Local)	
Publicly Owned Electric Utilities, California)	
Code of Regulations, Title 20, Sections)	
1240, 3201-3204, 3206, and 3207)	
_____)	

Request for Earlier Effective Date

The California Energy Commission requests an earlier effective date for the proposed amendments to regulations establishing enforcement procedures for the Renewables Portfolio Standard (RPS) for local publicly owned electric utilities (POUs) under Article 16 (commencing with section 399.11) of chapter 2.3 of part 1 of the Public Utilities Code. The proposed amendments to the regulations implement, interpret, and make specific the provisions of Public Utilities Code section 399.30 (o), as renumbered by Senate Bill 350.¹ The proposed amendments also implement, interpret, and make specific related provisions in Public Utilities Code sections 399.13, 399.15, 399.16, 399.21, 9507 and 9508, and in Public Resources Code sections 25741 and 25747. The proposed amendments will be codified in Title 20 of the California Code of Regulations, sections 1240, 3201, 3202, 3203, 3204, 3206, and 3207.

Government Code section 11343.4 (b)(3) allows the Office of Administrative Law (OAL) to prescribe an earlier effective date for regulations when an agency makes a written request to the OAL demonstrating good cause for requesting it. On December 28, 2012, the OAL published notice of a proposed definition of “good cause,” to be contained in Title 1 of the California Code of Regulations, section 30. On November 15, 2013, the OAL published notice of modifications to the proposed definition of “good cause.” The definition, as modified on November 15, 2013, would require the OAL to consider five factors, described in subdivisions (a) through (e) of section 30, to determine whether an agency’s request demonstrates good cause. On December 20, 2013, the OAL published notice of its decision not to proceed with the adoption of section 30.²

Although section 30 was not adopted by the OAL, the five factors specified in subdivisions (a) through (e) are helpful in showing that “good cause” exists for the California Energy Commission’s request for an earlier effective date. Each of these five factors is addressed below.

¹ As a result of amendments under Senate Bill 350 (Stats. 2015, ch. 547, sec. 24), subdivision (m) of Public Utilities Code section 399.30 was renumbered subdivision (o). Senate Bill 350 became effective January 1, 2016.

² California Regulatory Notice Register, Register 2013, No.51-Z, December 20, 2013, p. 2036.

Subdivision (a): whether and to what extent the earlier effective date benefits public safety, protects public health or welfare, protects worker safety, protects the environment, prevents discrimination, or is necessary for the function of governments.

The proposed amendments to the regulations will help with the function of POU's, which are local government agencies. As explained in the Notice of Proposed Action (NOPA), the benefits anticipated from the proposed amendments to the regulations are improved direction and guidance on how the Energy Commission will interpret, apply, and enforce the RPS law, so that the POU's can plan accordingly in procuring renewable electricity to meet their RPS procurement requirements. The proposed amendments will help POU's to better understand the requirements for bundled and resale transactions, dynamic transfers, excess procurement calculations, portfolio content category classification for POU-owned resources, applying optional compliance measures, and procedures related to complaints of noncompliance. In addition, a POU that meets the criteria of Public Utilities Code section 399.30 (k), as enacted by Senate Bill 591 (SB 591, Stats. 2013, ch. 520), will have direction on how to demonstrate that it meets the criteria in the statute as well as its RPS procurement requirements. Under section 399.30 (k), a qualifying POU may limit its RPS procurement obligations for a given compliance period to the lesser of 1) the portion of the POU's retail sales not met by its own hydroelectric generation, 2) the procurement obligations applicable to other POU's under Public Utilities Code section 399.30 (c), or 3) the amount of procurement capped by the POU's cost limitations adopted in accordance with Public Utilities Code section 399.30.

The proposed amendments to the regulations will also help with the POU's reporting functions. Under the existing regulations, POU's are required to report to the Energy Commission by July 1 of each year various RPS-related information as specified in section 3207. The proposed amendments to the regulations include modifications to section 3207. If the proposed amendments are approved by OAL and not given an earlier effective date, the proposed amendments will likely take effect on July 1, 2016, in accordance with Government Code section 11343.4 (a)(3). This could result in POU's submitting annual reports twice - once based on the existing requirement of section 3207, and a second time after July 1, 2016, based on the amended requirements of section 3207. An earlier effective date could help avoid duplicate reporting by ensuring the amended reporting requirements become effective prior to July 1, 2016.

Additionally, while the proposed amendments to the regulations do not directly protect the environment, they will have an indirect benefit on the environment. This is so, since the amendments clarify the requirements in the regulations and will thereby result in a more uniform and consistent application of the RPS law, which in turn will help promote the underlying goals of the RPS, including reducing air pollution associated with fossil fuel-based electrical generation and helping the state meet its climate change goals by reducing greenhouse gas emissions associated with electrical generation.

Subdivision (b): whether the earlier effective date is necessary for consistency with federal or state laws and/or regulations.

As explained the NOPA, one of the purposes of the amendments to the regulations is to implement changes in law under SB 591, which establishes a limited RPS procurement exemption for a POU “that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource.” The limited RPS procurement exemption granted under SB 591 is not unlike the RPS exemptions granted to other uniquely-situated POUs. Under the Energy Commission’s existing regulations, a qualifying POU under SB 591 is treated the same as the POUs that are not granted an exemption, instead of like the group of uniquely-situated POUs that are granted an exemption. An earlier effective date will allow the amendments to the regulations to be implemented sooner and thereby allow the Energy Commission to treat a qualifying POU under SB 591 as part of the group of uniquely-situated POUs.

Subdivision (c): whether and to what extent the adopting agency anticipates that the benefit to the people of the State of California from the earlier effective date will outweigh any negative effect on affected businesses, including small businesses, imposed by the earlier effective date.

As explained in the NOPA, the proposed amendments to regulations will not affect businesses, including the ability of California businesses to compete with businesses in other states. No business, including a small business, is legally required to comply with or enforce the proposed amendments to the regulations. Nor will any business derive a direct benefit or detriment from the implementation of the proposed amendments. The proposed amendments to the regulations will apply to POUs, which are local government agencies and not independently owned and operated businesses.

The people of the State of California, as well as POUs, will benefit from an earlier effective date because the amendments to the regulations clarify the requirements in the regulations and will thereby result in a more uniform and consistent application of the RPS law, which in turn will help promote the underlying goals of the RPS, including reducing air pollution associated with fossil fuel-based electrical generation and helping the state meet its climate change goals by reducing greenhouse gas emissions associated with electrical generation.

Subdivision (d): whether and to what extent the adopting agency anticipates that the benefit to the people of the State of California from the earlier effective date will outweigh any negative effect on affected individuals imposed by the earlier effective date.

As with businesses, the earlier effective date does not create a negative effect on individuals. The proposed amendments to the regulations do not apply to private individuals. The proposed amendments apply to POUs, which are local government agencies. However, to the extent individuals are electricity customers of a POU, the individuals will benefit indirectly from the amendments to the regulations, because the amendments clarify the requirements in the regulations and will thereby result in a more uniform and consistent application of the RPS law, which in turn will help promote the underlying goals of the RPS. Additionally, individuals that are electricity customers of a

POU will benefit indirectly from an earlier effective date if their POU can avoid duplicate annual reporting as discussed in subdivision (a) above.

Subdivision (e): any other facts and information the adopting agency believes will support its request for an earlier effective date.

POUs have been aware of the proposed amendments to reporting requirements in section 3207 since before the Energy Commission adopted these amendments on October 14, 2015. The proposed amendments to these reporting requirements have not changed since the Energy Commission published notice of 15-day language changes on July 6, 2015. Therefore, prescribing an earlier effective date for the amendments to the regulations should not cause a burden to POUs. If anything, an earlier effective date could help POUs avoid duplicate annual reporting as discussed in subdivision (a) above.

Based on these reasons, the Energy Commission has demonstrated that good cause exists for an earlier effective date of the proposed amendments to the regulations, and respectfully requests that the OAL prescribe an earlier effective date upon finishing its review of the proposed amendments and filing them with the Secretary of State.