

BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of:
Amendments to Regulations Specifying
Enforcement Procedures for the
Renewables Portfolio Standard for
Local Publicly Owned Electric Utilities**

Docket No. 14-RPS-01

California Energy Commission

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**NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON
JULY 11 WORKSHOP ON PROPOSED AMENDMENTS TO RPS REGULATIONS**

The Northern California Power Agency (NCPA)¹ offers these comments to the California Energy Commission (CEC or Commission) on the July 11 Staff Workshop (Workshop) to discuss proposed Pre-Rulemaking Draft Amendments to Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities² (Regulations) and set forth in Attachment A to the Workshop Notice.³

NCPA appreciates the Commission's outreach to stakeholders regarding proposed amendments to the RPS Regulations, and looks forward to working with the Commission to develop the regulatory language. In addition to addressing the specific regulatory amendments necessary to implement Senate Bill (SB) 591, NCPA recommends that the Commission include amendments to the Regulations recognizing the Portfolio Content Category (PCC) 1 treatment of energy generated from distributed generation systems either owned by the utility or through a procurement contract. The Regulations should also be amended to expressly allow for excess procurement to be calculated from procurement contracts that are amended to a duration of more than 10 years, and to address instances where the utility opts to procure electricity from short-term resources rather than invoke the provisions of 3206(a)(2) of the Regulations. Amendments in response to the other issues raised in Attachment A are not necessary, and should not be promulgated at this time.

¹ NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

² 14-RPS-01, Notice of Staff Workshop, dated June 27, 2014.

³ Attachment A, Staff Workshop on Amending the California Energy Commission's Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, dated July 11, 2014.

Although the impetus for initiating this Rulemaking was to “address changes in law under SB 591,” the Order Instituting Rulemaking Proceeding⁴ (Rulemaking Order) notes that the scope of the proceeding may include “amendments to clarify existing provisions in the current Regulations. The purpose of any such amendments would be to clarify the regulation as originally contemplated and adopted by the Commission in 2013.” The RPS Regulations is in the nascent stages of its implementation, and NCPA believes that issues may arise during the course of reviewing the first round of compliance period filings that may warrant further review and potential changes to the Regulations. In order to avoid precluding an opportunity to address potential glitches in the Regulations, NCPA urges the CEC to work with stakeholders now and through the final adoption of the upcoming amendments to ensure that all of the potential issues that have been identified up to that date are addressed in the revisions, even to the extent that those issues were not raised in Attachment A or during the Workshop.

Portfolio Content Category for POU-Owned or Procured DG System

The Commission should amend the Regulations to ensure the broadest possible interpretation of the statutory provisions of Public Utilities Code sections 399.11, *et seq.*, and should avoid extra statutory restrictions that are contrary to public policy and unduly restrict the ability of load serving entities to meet the policies and objectives of the RPS program. The Commission sought feedback from stakeholders regarding "whether generation from an RPS-certified facility consisting of a distributed generation system either owned by a POU or from which the POU procures generation could be classified as Portfolio Content Category (PCC) 1 under PUC section 399.16 (b)(1) and section 3203 of the Energy Commission’s regulations for POU’s." As more fully set forth below, the answer to this inquiry is “yes” – generation in those instances should be classified as PCC 1.

Attachment A queries whether there are “circumstances when it would *not be appropriate* to classify electricity generation from a POU-owned DG system as PCC 1?” It is appropriate to allow electricity generated from an eligible distributed generation (DG) resource to count as PCC1, regardless of whether or not the resource is owned by a utility or procured under contract. Furthermore, it does not matter “if the electricity generation was immediately sold to a POU customer, rather than transmitted to the POU’s distribution system.” As the enabling legislation makes no such distinction, neither should the Regulation. If the DG resource

⁴ Order No. 14-0312-01, March 12, 2014.

is interconnected to the utility's system – and thus has a first point of interconnection” in a California balancing authority – it meets the statutory requirements for PCC1 and should be eligible for PCC1. This PCC1 eligibility should apply to all of the electricity produced, irrespective of whether the generation is sold back to the customer. Because the transaction at issue is one that involves retail load, the restrictions in 3203(a)(1) of the Regulation are not applicable.

Likewise, if the generation is consumed on-site, the full amount of the output should be eligible for PCC1 treatment under the RPS Regulations to the extent that the utility customer is a retail customer. This relationship still serves all of the underlying public policy objectives of the RPS program, in addition to other state objectives that seek to expand DG and minimize the need for additional electricity transmission and distribution infrastructure. As the state continues to encourage the development of DG resources, and explore ways to further DG technologies, it is counterintuitive and contrary to sound public policy to place prohibitions or restrictions on development of DG resources that would preclude their eligibility for the highest level of the RPS program.

During the workshop, stakeholders were undivided in their support for amendments that would address this issue, and indeed, noted that the same rules should be applied to all load serving entities. The public policy considerations at play are not limited to select DG resources, but apply across the state. As such, NCPA is encouraged to see that the Rulemaking Order anticipates collaboration with other stated agencies, and specifically, as it pertains to the crucial issues of ensuring that both the spirit and letter of the law are applied to PCC1 eligibility.

NCPA recommends that the Regulations be amended to clarify the PCC1 treatment of electricity generated from DG resources owned by the utility or procured under contract to serve the utility's retail load.

Contract Amendments and Excess Procurement

Attachment A questions whether or not there should be amendments to the Regulations to address changes in short-term contracts that are amended and how they should be treated for purposes of calculating excess procurement. During the Workshop, Roseville Electric raised a related issue regarding the calculation of excess procurement that implicates short-term contracts. As more fully set forth below, the Regulations should be amended to address both of these situations.

Amending Short Term Contracts: In Attachment A, the Commission requests input on whether the Regulations “should address subtraction of short term contracts for purposes of excess procurement.” The Regulations should be amended to allow for short-term contracts that are subsequently amended to extend beyond 10 years to be eligible for the excess procurement calculation. Not only did stakeholders support making such a change during the Workshop, but such an amendment is also consistent with earlier discussions between staff and stakeholders on earlier versions of the Commissions RPS FAQ. There is no language in the statute that precludes this interpretation, nor are there any public policy reasons against it. While the State has an interest in ensuring that only eligible resources are counted in the RPS program, there is also an interest in ensuring that resources are not “wasted”, and that utilities are able to maximize their investments in renewable energy generation.

Special Conditions for Short-Term Contracts: During the Workshop, Roseville Electric introduced a proposal that would allow for short-term contracts to be “excess procurement eligible” under certain conditions. While this proposal needs to be further developed, when circumstances exist that are analogous to conditions that would qualify a POU for delay of timely compliance under section 3206(a)(2), but where the POUs elect to procure the shortfall through contracts of less than 10-years rather than utilize 3206(a)(2), the POU would be able to include generation from those specific contracts in their calculation of excess procurement. POUs would be precluded from gaming this option by demonstrating that the utility had sufficient eligible renewable generation under contract, but those facilities failed to perform or deliver as contracted for, and but for those conditions, it would not have been necessary for the POU to enter into the additional short-term contacts to meet the shortfall.

Other Issues

Attachment A also presented questions regarding whether the Regulations should be amended to provide further definitions and clarifications relevant to “retail sales,” “resell,” and “dynamic transfer agreements.” None of these issues should be addressed in the proposed amendments.

Retail Sales: Attachment A queries whether there is need to change the definition to ensure that the POUs are properly excluding their consumptive loads. The current definition states that retail sales “*do not include energy consumption by a POU, electricity used by a POU for water pumping, or electricity produced for onsite consumption (self-generation).*” To the

extent the POU/municipality is providing electricity to its own facilities – municipal police and fire departments, City Hall buildings, municipally owned street lights – that consumption is clearly excluded from the calculation of retail load. Such an interpretation is clear from the plain language of the Regulations, and attempting to include an exhaustive list of such facilities would be cumbersome to compile, and potentially problematic as the various POU's may have vastly different titles for their various facilities.

Resale: Barring some demonstration that the explanation for resale in footnote 16 of the RPS Compliance Report Form for Local Publicly Owned Electric Utilities and the definition in the RPS FAQ is insufficient, the Regulations should not be amended to add a definition.

Dynamic Transfer Agreements: There is no need to alter the current Regulations to include “to further clarify the definition of ‘dynamic transfer agreements’.” As noted by stakeholders during the Workshop and as set forth in PU 399.16(b)(1)(B), PCC1 eligibility requires “an agreement to dynamically transfer electricity to a California balancing authority.” This may be accomplished with pseudo ties or dynamic schedules, which is already adequately addressed in the Regulations. Revising the Regulations to require additional documentation or verification is not only unnecessary, but inconsistent with the plain language of the statute.

Conclusion

NCPA appreciates the opportunity to provide the Commission with this feedback on the Workshop and Attachment A, and looks forward to working with the Commission to develop regulatory language for the proposed amendments to the Regulations. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Dated this 28th day of July, 2014.

Respectfully submitted,



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