

July 28, 2014

California Energy Commission
Docket Office, MS-4
Docket No. 13-RPS-01
1516 Ninth Street
Sacramento, CA 95814
Submitted via email to: docket@energy.state.ca.us

California Energy Commission

DOCKETED

14-RPS-01

TN 73501

JUL 28 2014

Re: Amendments to Regulations Specifying Enforcement Procedures for the RPS for POU's

Docket Office:

Please find the enclosed comments from the Union of Concerned Scientists regarding the Amendments to Regulations Specifying Enforcement Procedures for the RPS for POU's.

Sincerely,



Laura Wisland
Senior Energy Analyst, UCS
2397 Shattuck Ave., Ste.203
Berkeley, CA 94704
510-843-1872
lwisland@ucsusa.org

COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE AMENDMENTS TO REGULATIONS SPECIFYING ENFORCEMENT PROCEDURES FOR THE RPS FOR POUS

The Union of Concerned Scientists (“UCS”) appreciates the opportunity to provide the California Energy Commission (“CEC”) with comments on the Pre-Rulemaking Draft Amendments to the Regulations for Enforcement Procedures for the Renewables Portfolio Standard (“RPS”) for Local Publicly Owned Electric Utilities (“POU”) (the “Regulations”), which were released in July 2014.

The comments below address several issues raised in Attachment A to the July 11th Workshop Notice on the Draft Amendments:

- The implementation of SB 591 (Canella)
- PCC categorization for POU-owned or procured distributed generation systems
- Definition of “retail sales”
- Definition of “resale”
- Contract amendments and definition of long-term contracts.

1. Implementation of Senate Bill 591

Satisfying the qualifying conditions for the RPS exemption

Question (a): How should the 50 percent of retail sales requirement be satisfied? Should a POU have to demonstrate that its qualifying hydroelectric generations supplies enough power each year to meet at least 50 percent of the POU’s annual retail sales needs? Or should the 50 percent requirement be determined over an average of multiple years, given that hydroelectric generation varies from year to year?

UCS’s Response:

California Public Utilities (PU) Code section 399.30(k) clearly states that the 50% retail sales requirement must be satisfied on an annual basis: “A local publicly owned electric utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation.”(emphasis added). Had the legislature intended for the criteria to be an average of 50% hydropower over a number of years, it would have made that explicit in the statute. The plain meaning of the statute stipulates that a local POU may only qualify for the RPS flexibility contained in 399.30(k) if it can prove that its own hydroelectric generation is meeting more than 50% of its retail sales requirement on an annual basis.

Question (c): What should the reporting requirements be for a POU to demonstrate it satisfies the qualifying conditions for the RPS exemption? Should the POU be required to report information to the Energy Commission to demonstrate it satisfies the 50 percent requirement once at the beginning of each compliance period for its qualifying hydroelectric generation supplies immediately prior to the start of the compliance period?

UCS's response:

Since the qualifying conditions for the RPS exemption require that the POU prove it is receiving “greater than 50 percent of its annual retail sales from its own hydroelectric generation”, UCS recommends that the CEC use the power source disclosure forms, which are submitted annually and provide information about where the POU is getting its electricity to satisfy its own onsite needs and retail sales. The power source disclosure forms should be a sufficient source of information to verify whether a POU is relying on greater than 50% of qualifying hydropower generation to satisfy its annual retail sales. Simply requiring the POU to report information once at the beginning of each compliance period would be insufficient, since compliance periods contain multiple years and the statute clearly requires the POU to prove that it is using qualifying hydropower to satisfy its annual retail sales needs, which means it must submit evidence on an annual basis.

Application of the RPS exemption under SB 591

Question (a): Assuming a POU satisfies the qualifying conditions for the RPS exemption, should its RPS target be based on its total retail sales or its remaining retail sales not met by its own qualifying hydroelectric generation that is not RPS-eligible?

UCS's response:

The RPS requirement should clearly be based on the POU's total retail sales number, not the remaining retail sales once hydropower that meets the conditions of PUC section 399.30(k) has been subtracted out. There is nothing in the statute to suggest that the baseline RPS calculation (% of renewables / total retail sales) should be changed before any special exemptions related to PUC section 399.30(k) are applied to a POU's RPS obligation. Instead, the statute is clear that once a POU has calculated its baseline RPS requirement, the requirement may be lowered if the POU can meet the criteria contained in PUC section 399.30(k). Specifically, if the portion of its annual retail sales that is not being met by its own qualifying hydroelectric generation is smaller than the baseline RPS requirement, then the POU is only required to procure renewables in amount that is not “in excess of” the “portion of its retail sales not supplied by its own hydroelectric generation.”

For example, consider a POU that received 77% of its retail sales from its own qualifying hydroelectric generation in the year 2016. That means that the portion of retail sales “not supplied by its own hydroelectric generation “ was 23%. Since the pre-exemption or baseline RPS requirement for this POU is 25% of retail sales in 2016, the POU in this case would not be required to procure 25%, but instead only 23% because procuring 25% would be 2% “in excess of” the portion of retail sales not supplied by its own qualifying hydropower.

2. Portfolio Content Category for POU-Owned or Procured DG System

The CEC is exploring under what circumstances it may be appropriate to classify generation from an RPS-certified distributed generation (DG) system as procurement under Portfolio Content Category 1 (PCC 1).

Question (a): Are there circumstances when it would not be appropriate to classify electricity generation from a POU-owned DG system as PCC 1? Would it matter if the electricity generation was immediately sold to a POU customer, rather than transmitted to the POU's distribution system? This could occur where the PPOU-owned DG system was located on the customers' site.

UCS's response:

It would not be appropriate to classify electricity from a DG facility as PCC1 procurement if the facility does not meet the interconnection criteria contained in Section 3203 of the CEC's RPS enforcement procedures.¹ In addition, it would also not be appropriate to classify electricity from a DG facility (that meets the interconnection requirements) if it is not separately metered per the WREGIS metering requirements and satisfies a customer's on-site electricity needs, thereby reducing a POU's total retail sales and its RPS obligation. Both the CEC and the California Public Utilities Commission (CPUC) have already determined that net-metered electricity generation, using non WREGIS-grade meters and lowering a POU's retail sales, is not a PCC 1 product. Any surplus RECs from this generation facility can be sold to a POU and counted as a PCC 3 product. Changing how customer-side electricity is treated in the RPS program in these regulations, which pertain only to the POUs, and not making the same changes at the CPUC for the IOUs would result in market confusion and an uneven playing field for retail sellers and POUs. UCS urges the CEC to work closely with the CPUC to ensure that rules pertaining to portfolio content categories are the same for all RPS-obligated electricity providers.

However, UCS is interested in clarifying ways in which DG generation facilities can be used as RPS compliance tools, especially for the very small POUs that may be more reliant on making investments in relatively small solar installations to meet RPS requirements. UCS believes that DG facilities that are owned by a POU, meet the interconnection requirements of Section 3203 of the CEC's RPS enforcement procedures, and are installed on a customer facility can meet the requirements of PCC1 as long as the POU is providing electric service to the customer (and therefore the customer's load is counted in the POU's total retail sales) and the facility meets the WREGIS metering requirements. In this case, the facility is not behind-the-meter and the bundled generation is contributing to the percentage of retail sales that the POU sources from RPS-eligible renewable energy generation. Similarly, if the DG facility is owned by a third party, installed on a customer facility, meets WREGS requirements, and sells the bundled electricity to the POU, that

¹ Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, California Energy Commission, August 13, 2013, pp.6-7.

electricity should be considered PCC1, even if the electricity is ultimately sold back to the customer to meet its electricity needs. In this case, the electricity is still contributing to the percentage of renewables in a POU's electricity mix that is used to meet its retail sales.

3. Definition of “retail sales”

The CEC currently defines “retail sales” in Section 3201 of the RPS enforcement procedures as “sales of electricity by a POU to end-use customers and their tenants, measured in MWh. This does not include energy consumption by a POU, electricity used by a POU for water pumping, or electricity produced for onsite consumption (self-generation).”²

Question (a): Does the definition of “retail sales” need to be clarified to ensure POUs are properly excluding their consumptive loads in determining retail sales?

Question (b): If clarifications are needed, how should the definition of “retail sales” be revised to properly exclude a POU's own consumptive demand, but capture all sales to its retail customers?

UCS's response:

Attachment A makes clear that the definition of retail sales is not in dispute, and that “retail sales” includes electricity sold to customers, but not electricity used by the POU itself. Without more information to explain under what circumstances POUs find this definition confusing, it's difficult for UCS to provide guidance on how the definition should be revised and clarified. Specific examples of how distinguishing between on-site use and customer use is difficult may have been brought up during the July 11, 2014 workshop, which UCS was unfortunately unable to attend. On a general level, UCS suggests that if a POU is charging an entity for electricity and receiving revenue from the electricity sales, that electricity should be included as part of its “retail sales” calculation.

4. Definition of “resale”

Without additional information explaining why the definition of “resale” currently posted on the CEC's website in the Frequently Asked Questions section is insufficient, UCS is not able to provide comments on whether this guidance is sufficient. However, UCS suggests that the definition of “resale” be added to Section 3201 of the RPS enforcement procedures so that it is officially included in the CEC's RPS regulations.

² Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, California Energy Commission, August 13, 2013, p.3.

5. Contract amendments and excess procurement

Attachment A asks parties to comment on how the CEC should treat amended contracts for the purposes of classifying contracts as “long-term” in order to determine which contracts can be considered “excess procurement” and banked from one compliance period to another.

Question (a): Should the regulations be clarified regarding the term of amended contracts for purposes of calculating and subtracting excess procurement? If so, how and why?

UCS's response:

UCS believes that the statutory language on banking requires close coordination between the CEC and the CPUC. The flexible compliance rules, including the banking rules for POU, are contained in PU Code section 399.30(d). Each flexibility provision in this section is one sentence long and references other sections of the statute which describe the provisions in more detail. Section 399.30(d)(1) allows for the banking of certain types of excess procurement: “Rules permitting the utilities to apply excess procurement in one compliance period to subsequent compliance periods *in the same manner* as allowed for retail sellers pursuant to Section 399.13.” (*emphasis added*)

The section to which 399.30(d)(1) refers is PUC section 399.13(a)4(B), which requires that only electricity generated from contracts of 10-years or more in length can be considered excess procurement, and banked from one compliance period to another: “In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration.”

For this reason, the CEC must ensure that any clarifications to the banking rules be consistent with the banking rules established by the CPUC for retail sellers. UCS draws the CEC's attention to a CPUC draft resolution E-4649, filed April 10, 2014.³ In this situation, PG&E was requesting approval of three separate ten-year contracts with the large majority of procurement front-loaded in the first two years of the contract. The CPUC ultimately decided even though the official lengths of these contracts were ten years, they did not meet the Legislature's intent behind restricting short-term contracts from banking eligibility rules.

The purpose of restricting bankable contracts to those of 10 years or more in length was to encourage the procurement of long-term RPS contracts, which are more likely to support the development of new renewable energy resources and provide ratepayers with long-term price certainty. For this reason, UCS suggests that allowing a POU to tack a few more years onto what was originally a short-term contract will likely not support the development of new renewable

³ Available at: https://www.pge.com/regulation/RenewablePortfolioStdsOIR-IV/Draft-Decisions/CPUC/2014/RenewablePortfolioStdsOIR-IV_Draft-Dec_CPUC_20140307_298476.pdf

energy resources and should not be eligible for banking. However, since contract amendments are inevitable, UCS is willing to explore the possibility that some previously short-term contracts could be considered eligible for banking if the contract lengths were extended. UCS suggests that the CEC consider any contract amendment that would extend the future years of the contract enough so that there was a minimum of ten future years.

Conclusion

UCS thanks the CEC for the opportunity to submit these initial comments and looks forward to additional participation in this proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Wisland". The signature is written in dark ink on a white background.

Laura Wisland