



California Energy Commission

**DOCKETED**

**14-RPS-01**

**TN # 75722**

**MAY 08 2015**

May 8, 2015

California Energy Commission  
Docket No.14-RPS-01  
Docket Office  
1516 Ninth Street  
Sacramento CA 95814

*Submitted via email to: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)*

**Initial TURN Comments on Proposed Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

The Utility Reform Network (TURN) appreciates the opportunity to comment on the proposed Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard ("RPS") for Local Publicly Owned Utilities ("POUs") (the "Proposed Regulations"), noticed on March 27, 2015.

**I. General concerns over proposed modifications to RPS eligibility of POU-owned onsite generation**

Under the proposed modification to Section 3201, any POU-owned eligible renewable energy resource located behind the customer meter and serving onsite loads may be considered a "bundled" procurement transaction eligible to satisfy Product Content Category 1 (PCC 1) compliance requirements under the RPS program. This proposal represents a significant departure from the historic treatment of such resources. TURN has serious concerns about allowing any generation serving onsite customer loads to be treated as a PCC 1 resource. To date, these resources have provided retail load reductions rather than wholesale RPS generation.

Given a variety of unresolved concerns, it is not appropriate to allow PCC 1 status for onsite generation at this time. Any modifications to the eligibility status of onsite renewable generation should occur as part of a comprehensive expansion of the RPS program to achieve the Governor's goal of 50% renewable energy by 2030. A vigorous

debate in the Legislature during the current session is likely to yield specific guidance to both the Energy Commission and the Public Utilities Commission on the appropriate treatment of onsite generation as part of the RPS program. Moreover, only the Legislature can enact modifications that apply equally to POUs and retail sellers. Since the proposed regulation does not treat these entities equally, the Energy Commission should defer any actions relating to the treatment of onsite generation until a later date.

II. The modified rules would result in double counting of onsite generation in direct violation of state law

While Section 3201(e) would allow POU-owned onsite generation to be treated as PCC 1 procurement, Section 3201(cc) states that the RPS calculation of retail sales of electricity explicitly excludes “electricity produced for onsite consumption (self-generation).” Under these sections, a POU would be able to count each onsite kilowatt-hour twice – once as a unit of generation and the second time as an offset to retail sales. It is not logical, ethical or legal to allow production associated with onsite consumption to be counted both as “bundled” RPS procurement AND an offset to retail sales.

TURN is very surprised that this issue has not been identified or explained in the initial statement of reasons. The proposed regulation explicitly violates the requirements of §399.25(b) and §399.21(a) that prohibit the double counting of any output used for RPS compliance. The CEC is charged with preventing double counting and therefore cannot adopt the rules as written. Without changes to address this issue, TURN will consider seeking judicial review of the final regulation.

At a minimum, the CEC should modify the following provision as follows:

**“Retail sales”** means 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). Any energy produced for onsite consumption and used to satisfy RPS procurement requirements shall be added to the retail sales of the POU serving the customer hosting the onsite generation.

Absent this change, the modifications would violate state law. Moreover, these modifications would reduce the expected results of the RPS program by allowing onsite generation to simultaneously substitute for wholesale generation and reduce the retail sales used to calculate remaining RPS procurement requirements. This result would set a dangerous precedent, is illegal, and should not be allowed.

III. Absent a far better effort to educate customers, there will be significant potential for fraud and misrepresentation regarding the ownership of renewable attributes associated with onsite generation used for POU RPS compliance

TURN is very concerned about the potential for customers hosting onsite renewable generation to misunderstand the impact of applying the output of such a system to POU RPS compliance requirements. Most customers assume that their decision to host such a system results in the addition of incremental renewable generation (*i.e.* in excess of regulatory requirements) and results in the customer's onsite needs being met with "renewable energy". If the POU treats the onsite generation as PCC 1 RPS procurement and retires the associated RECs on behalf of all of its customers as part of RPS compliance, the onsite system is not incremental and the customer is not receiving the "renewable" energy for its own needs.

The potential for confusion is not limited to small customers. For example, Solar City's web page points to 190 onsite solar projects at Walmart stores and states that "By installing solar, Walmart has taken a major step toward its long-term goal of using only renewable energy for all its retail and distribution facilities."<sup>1</sup> This statement is only true if 100% of the RECs associated with the output from these solar systems are retired on behalf of Walmart. To the extent that these RECs are retained by Solar City, used for RPS compliance by any retail seller or POU, or sold into the voluntary REC market, it would be fraudulent to claim that Walmart uses "only renewable energy" for any facility hosting these systems.<sup>2</sup> Another entity could also be claiming ownership of the same "renewable energy" to regulators or customers. The Energy Commission should take proactive steps to prevent this type of misrepresentation and reduce the potential for fraudulent claims. No such steps have been identified in the proposed regulations or the supporting documents.

Any POU seeking to use onsite generation to satisfy its RPS procurement targets should provide affirmative notification of this arrangement to the customer hosting the generation on its premises. This notification should, at a minimum, ensure that the

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<sup>1</sup> <http://www.solarcity.com/commercial/commercial-solar-projects/walmart>

<sup>2</sup> News reports suggest that Walmart has partnered with other solar companies to install rooftop systems that allow the developer to retain and sell the RECs. For example, see <http://www.greenskies.com/news/walmart-install-solar-panels-27-stores-mass/> ("Walmart's solar installations will be built by Greenskies Renewable Energy LLC, a Connecticut-based company that will own and operate the solar generating system, and sell the power produced to Walmart for use in its stores....Greenskies is not getting direct financial aid from the state for the project, but will be able to sell the renewable energy credits attributed to the solar panels to energy producers, who must meet state goals to reduce greenhouse-gas emissions.")

customer understands that they relinquish any rights to make any public, legal, regulatory or marketing claim asserting that they are served by, or own the rights to, any quantity of renewable onsite generation that is credited to the RPS compliance obligations of the POU. Moreover, the POU should be required to inform the customer that any onsite generation used to meet RPS requirements will reduce POU's obligation to procure energy from other RPS resources. Finally, the Energy Commission should establish a process for hearing private complaints and resolving attribution claims in the event that customers assert they are receiving renewable energy from onsite generation while the RECs are being claimed by another entity.

Please feel free to contact us with any questions about our position.

Respectfully submitted,

MATTHEW FREEDMAN

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Attorney for  
The Utility Reform Network  
785 Market Street, 14<sup>th</sup> floor  
San Francisco, CA 94103  
Phone: 415-929-8876 x304  
matthew@turn.org