

NOTICE OF PROPOSED ACTION**MODIFICATION OF REGULATIONS
ESTABLISHING ENFORCEMENT PROCEDURES FOR THE
RENEWABLES PORTFOLIO STANDARD
FOR LOCAL PUBLICLY OWNED UTILITIES**

California Energy Commission

DOCKET NO. 14-RPS-01

MARCH 27, 2015

The California Energy Commission proposes to modify existing regulations establishing enforcement rules and 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 action is taken under the authority of sections 25213 and 25218(e) of the Public Resources Code and section 399.30 of the Public Utilities Code. The proposed modifications to the regulations will implement, interpret, and make specific several provisions of Public Utilities Code sections 399.13, 399.15, 399.16, 399.30, 9507, and 9508.

Staff Workshop/Hearing

Energy Commission staff will hold a workshop/hearing on the following date and time to receive public comments on the proposed modifications to the regulations:

April 9, 2015

Beginning 9:30 a.m.

California Energy Commission

1516 Ninth Street

First Floor, Art Rosenfeld Hearing Room

Sacramento, California

(Wheelchair accessible)

At this workshop/hearing, any person may present oral and written comments on the proposed modifications to the regulations. Persons may submit written comments as specified below. If possible, please submit written comments to be considered at the staff workshop/hearing by April 2, 2015. The Energy Commission appreciates receiving written comments at the earliest possible date. Energy Commission commissioners may attend this workshop/hearing.

Audio for the April 9, 2015, staff workshop/hearing will be broadcast over the internet via WebEx. To join the meeting online, go to <https://energy.webex.com/>, enter the meeting number **922 381 183**, then enter your name and email address. If a password is

required, enter the meeting password: meeting@930. Click "Join". Follow the instructions that appear on your screen to join the teleconference for the workshop/hearing.

To join the audio conference only, call the number below and enter the access code **922 381 183**:

Call-in toll-free number (US/Canada): 1-866-469-3239

Call-in toll number (US/Canada): 1-650-429-3300

Public Hearing

The Energy Commission will hold a public hearing for consideration and possible adoption of the 45-day language Express Terms on the following date and time:

June 10, 2015
Beginning 10 a.m.
California Energy Commission
1516 Ninth Street
First Floor, Art Rosenfeld Hearing Room
Sacramento, California
(Wheelchair accessible)

At this adoption hearing, any person may present oral or written comments on the proposed modifications to the regulations. Persons may submit written comments as specified below.

Audio for the June 10, 2015, adoption hearing will be available by telephone and will be broadcast over the internet via WebEx. Further information regarding telephone and WebEx participation for the adoption hearing will be included in the agenda for that hearing, which will be published on or about May 29, 2015.

If you have a disability and require assistance to participate in either the staff workshop/hearing or the Energy Commission adoption hearing, please contact Lou Quiroz at (916) 654-5146 at least five days in advance of the workshop/hearing or the adoption hearing.

Oral and Written Comments and Comment Period

The public comment period for the proposed modifications to the regulations as written in the 45-day language Express Terms is March 27, 2015, through and including May 11, 2015. Any interested person may submit oral and written comments on the proposed modifications to the regulations. To provide ample opportunity to evaluate written comments, it is requested that written comments be submitted by 5:00 p.m. on May 11, 2015. However, both oral and written comments will be accepted at the June

10, 2015, adoption hearing. The Energy Commission appreciates receiving written comments at the earliest possible date. E-mail is preferred.

To e-mail comments on behalf of an organization, send a scanned copy of the comments on the organization's letterhead, signed by an authorized representative.

E-mail comments in either Microsoft Word format (.doc) or Adobe Acrobat portable document format (.pdf) to: DOCKET@energy.ca.gov

All written comments sent by e-mail must indicate **Docket No. 14-RPS-01** in the subject line. Written comments may also be mailed to:

California Energy Commission
Docket No. 14-RPS-01
Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814-5504

Public Adviser

The Energy Commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489, or toll-free in California at (800) 822-6228, or e-mail publicadviser@energy.ca.gov.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Public Resources Code sections 25213 and 25218(e) and Public Utilities Code section 399.30 authorize the Energy Commission to adopt modifications to the regulations.

The proposed modifications to the regulations would implement, interpret, and make specific several provisions of Public Utilities Code sections 399.13, 399.15, 399.16, 399.30, 9507, and 9508.

The proposed modifications to the regulations will be codified in the California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3201, 3202, 3203, 3204, 3206, and 3207, and in Title 20, Division 2, Chapter 2, Article 4, section 1240.

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

A. Summary of Existing Laws and Regulations

The Energy Commission's enforcement regulations for the RPS for POUs were adopted on June 12, 2013, pursuant to Public Utilities Code section 399.30, as enacted by Senate Bill X1-2 (Stats. 2011, 1st Ex. Sess., ch. 1) and subsequently revised by Assembly Bill 2227 (Stats. 2012, ch. 606, sec. 8). Public Utilities Code section 399.30 (l) directs the Energy Commission to adopt regulations specifying procedures for the enforcement of the RPS for POUs and requires that the regulations include a public process under which the Energy Commission may issue a notice of violation and

correction against a POU for failure to comply with the RPS, and for referral of violations to the California Air Resources Board (ARB) for penalties.

The regulations were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013, and took effect on October 1, 2013. The regulations establish the rules and procedures the Energy Commission will use to assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. The regulations require POUs to submit various information and reports to the Energy Commission, so the Energy Commission may verify and determine compliance with the RPS, and, if appropriate, issue a notice of violation and correction for a POU's failure to comply and refer the violation to the California Air Resources Board for potential penalties.

Public Utilities Code section 399.30 was subsequently amended by Senate Bill 591 (SB 591, Stats. 2013, ch. 520)¹ after the regulations were adopted by the Energy Commission. SB 591 modifies the RPS requirements for a qualifying POU. Specifically, SB 591 adds a new subdivision (k) to Public Utilities Code section 399.30, which establishes a limited procurement exemption for a "local publicly owned electric utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource." If this criteria is satisfied the 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 POUs under PUC 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.

On March 12, 2014, the Energy Commission adopted an Order Instituting Rulemaking to initiate a rulemaking proceeding to consider modifications to its regulations to implement SB 591 and, to the extent necessary, clarify existing provisions in the regulations. In addition to the modifications needed to implement SB 591, the Energy Commission has identified several areas in the regulations that need clarification. These areas of clarification are related to the following: i) the definitions of "bundled," "resale," and the "Western Electricity Coordinating Council," ii) the requirements for qualifying electricity products procured under agreement executed prior to June 1, 2010, iii) the requirements for electricity products qualifying as dynamic transfers, iv) the portfolio content category classification of electricity products from POU-owned resources, v) the excess procurement rules related to amended contracts, vi) the application of optional compliance measures, vii) select reporting requirements, and viii) procedural provisions for complaints of noncompliance.

The need for these clarifications is based in part on the inquiries received from stakeholders since the regulations were adopted in 2013 and from the comments received in response to a pre-rulemaking public workshop held on July 11, 2014.

¹ SB 591 amended Public Utilities Code section 399.30, subdivision (k), and renumbered subsequent subdivision, so that former Public Utilities Code section 399.30, subdivisions (k) – (n) became subdivisions (l) – (o), respectively.

B. Objective

The overall problems the Energy Commission is attempting to address with the proposed modifications are unclear requirements under its existing regulations and the implementation of SB 591.

Since the regulations became effective October 1, 2013, the Energy Commission has received repeated questions on several topics, including the portfolio content category classification for distributed generation systems, the definition of retail sales, the definition of resale, excess procurement rules when a contract is extended, and dynamic transfer agreements. The Energy Commission held a workshop in July 2014 to discuss these topics and solicit public comments. After reviewing the comments received, the Energy Commission determined that clarification was needed on select provisions in the regulations to avoid confusion and improve the application of the regulations.

In addition, SB 591 went into effect after the regulations became effective in October 2013, so modifications to the regulations are needed to implement the new Public Utilities Code section 399.30 (k) and revise references to subsequent Public Utilities Code sections that were renumbered by SB 591.

C. Anticipated Benefits

The benefits anticipated from this regulatory action are improved direction and guidance on how the Energy Commission will interpret, apply and enforce the RPS law, so the POU's can plan accordingly in procuring renewable electricity to meet their RPS requirements. Specifically, POU's will now 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) will have direction on how to demonstrate that it meets the criteria in the statute as well as how to demonstrate that it meets its RPS requirements.

Clarifying the requirements in the regulations will also 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.

D. Overview of RPS Implementation

The Energy Commission and the California Public Utilities Commission (CPUC) work collaboratively to implement the RPS; however, the Energy Commission and the CPUC maintain separate roles in administering their respective responsibilities under the law. Under the RPS, the Energy Commission is charged with certifying eligible renewable energy resources that may be used to satisfy the RPS procurement requirements of retail sellers and POU's and with developing an accounting system to verify the RPS

compliance of retail sellers and POUs. (Pub. Util. Code, §399.25.) The CPUC is responsible for establishing the RPS procurement requirements for retail sellers, determining compliance for retail sellers, and imposing penalties for non-compliance of retail sellers. (Pub. Util. Code, §§ 399.13 – 399.17.)

The Energy Commission implements its responsibilities for certifying eligible renewable energy resources and verifying RPS compliance through guidelines that were originally adopted in April 2004, with subsequent revisions adopted in May 2004, August 2004, May 2005, April 2006, March 2007, December 2007, December 2010, May 2012, August 2012, April 2013, April 2014, October 2014, and November 2014. The adoption of these guidelines is expressly exempt from the formal rulemaking requirements of the Administrative Procedures Act pursuant to Public Resources Code section 25747 (a). These guidelines are set forth in the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*, which explains the requirements and process for certifying eligible renewable energy resources for California's RPS. The *Renewables Portfolio Standard Eligibility Guidebook* also describes how the Energy Commission tracks and verifies RPS-eligible generation for the RPS.

The Energy Commission recognizes the need to revise the guidebook periodically to reflect changes in the law and market and regulatory developments, and to incorporate the lessons learned from experience implementing the RPS. The guidebook works in tandem with the Energy Commission's enforcement regulations for the RPS for POUs.

Consistency and Compatibility with Existing State Regulations

(Gov. Code, § 11346.5, subd. (a)(3)(D))

During the process of developing the proposed modifications to the regulations, the Energy Commission conducted a search of similar regulations on topic and concluded that the proposed modifications are neither inconsistent, nor incompatible with existing state regulations.

The proposed modifications to the regulations are consistent with *Renewables Portfolio Standard Eligibility Guidebook*. In addition, the proposed modifications to the regulations are consistent with the RPS rules and requirements established by the CPUC for retail sellers.

In developing the proposed modifications to the regulations, the Energy Commission considered the effects of the proposed modifications on the *Renewables Portfolio Standard Eligibility Guidebook* to ensure the two were consistent and could be used in tandem to implement the RPS. In addition, the Energy Commission worked with the CPUC to ensure the proposed modifications to the regulations were consistent with the rules developed by the CPUC for the retail sellers.

Documents Incorporated by Reference

(1 California Code of Regulations, § 20, subd. (c)(3))

The proposed modifications to the regulations do not incorporate any documents by reference.

Federal Law (Gov. Code, §§ 11346.2, subd. (c), and 11346.9)

The Energy Commission is aware of no comparable federal regulations or statutes establishing procedures for the enforcement of California's RPS on POUs. Furthermore, no federally mandated regulation or amendment is being proposed.

Local Mandate Determination (Gov. Code, § 11346.5, subd. (a)(5))

If adopted, the proposed modifications to the regulations would impose a mandate on local agencies. POUs are local agencies. Pursuant to Government Code section 17556(d), the costs would not be required to be reimbursed because the POUs, as local agencies, have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Public Utilities Code sections 10001, et seq., 11501, et seq., and 15501 et seq., and Water Code section 20500, et seq. provide revenue sources for the affected POUs to recoup any costs incurred through compliance with the proposed modifications to the regulations.

Fiscal and Economic Impact Estimates (Gov. Code, § 11346.5, subd. (a)(6))

A. Costs or Saving for State Agencies

Implementation of the proposed modifications to the regulations would result in minor costs to one state agency – the Energy Commission. It is estimated that the proposed modifications to the regulations will result in approximately 60 hours of a single staff person's time to evaluate and process the additional information reported by POUs under the proposed modifications. The cost associated with evaluating and processing this additional information is [(60 hours) X (\$26.66/hour)] or \$1,600, and is based on the responsibilities, duties and pay of an Energy Analyst in the Energy Commission's Renewable Energy Division.

These additional costs are negligible in comparison to the Energy Commission's ongoing costs of \$376,000 annually to implement the existing regulations, and can be absorbed by existing Energy Commission staff and resources.

B. Costs or Saving for Local Agencies or School Districts Requiring Reimbursement Pursuant to Government Code Section 17500, et seq.

Implementation of the proposed modifications to the regulations would result in minor costs to POUs, which are local agencies. It is estimated that each POU will spend no more than 4 hours of a single staff person's time to report on the POU's own energy

consumption, and that the additional cost to report this information is estimated to be no more than \$106.64 annually for a median-sized POU based on the duties, responsibilities and salary of an Energy Commission Energy Analyst. In addition, it is estimated that certain POUs (those meeting the criteria of Public Utilities Code section 399.30 (h) or (k)) will spend no more than 2 hours of a single staff person's time to report the additional information required to verify eligibility under section 399.30 (h) or (k), and that the additional cost to report this information is estimated to be no more than \$53.32 once per compliance period based on the duties, responsibilities and salary of an Energy Commission Energy Analyst. Also, POUs may incur increased costs connected with the tracking and reporting of electricity products procured from eligible renewable energy resources under dynamic transfer agreements if they procure such electricity products. These costs will be \$2,544 annually for tracking fees plus a related report fee of \$25 annually and would be incurred if a POU procures electricity products under a dynamic transfer agreement. These additional tracking and report fees would only result in a cost increase for a POU if the POU is not currently incurring these fees for the tracking and reporting of electricity that is not dynamically scheduled into a California balancing authority.

Implementation of the proposed modifications to the regulations would not result in any savings to local agencies. Nor would the proposed modifications result in any costs or savings to school districts.

C. Other Non-Discretionary Costs or Savings on Local Agencies

Implementation of the proposed regulations would not result in other non-discretionary costs or savings on local agencies.

D. Costs or Savings in Federal Funding to the State

Implementation of the proposed regulations would not result in any costs or savings in federal funding.

Initial Determination Regarding Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States

(Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), and 11346.5, subd. (a)(8))

The Energy Commission finds that the proposed modifications to the regulations will not have a significant statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination also applies to small businesses, which, as defined in Government Code section 11342.610, are limited to business activities that are "independently owned and operated" and "not dominant in its field of operation." (Gov. Code, § 11342.610, subd. (a)(1) and (2).)

The Energy Commission is unaware of any legitimate cause and effect relationship between the proposed modifications to the regulations and a significant statewide

adverse economic impact directly affecting businesses. No business, including a small business, is legally required to comply with or enforce the proposed modifications to the regulations. Nor will any business derive a direct benefit or detriment from the implementation of the proposed modifications to the regulations. The proposed modifications to the regulations would apply to a POU, which is a local agency and not an independently owned and operated business.

Statement of the Results of the Economic Impact Assessment

(Gov. Code, § 11346.5, subd. (a)(10))

The Energy Commission has made the initial determination relating to the economic and fiscal impacts of the proposed modifications to the regulations by checking box A-1(h) on the Form 399 *Economic and Fiscal Impact Statement*.

The proposed modifications to the regulations are minor and will require only a minimal amount of additional information and reporting-related work above what is already required under the existing regulations. As a result, the proposed modifications to the regulations would not affect the creation or elimination of jobs with California, the creation of new businesses or elimination of existing businesses in California, or the expansion of existing businesses currently doing business in California. Nor would the proposed modifications to the regulations directly impact the health and welfare of California residents, worker safety, or the state's environment.

However, the proposed modifications to the regulations may have an indirect effect on the state's environment if the proposed modifications result in a more consistent application of the state's RPS with respect to POUs. A more consistent application and enforcement of the state's RPS will help promote the underlying goals of the RPS, which include reducing air pollution associated with fossil fuel-based electrical generation and helping meet the state's climate change goals by reducing greenhouse gas emissions associated with electrical generation.

Cost Impacts on Representative Person or Business

(Gov. Code, § 11346.5, subd. (a)(9))

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed modifications to the regulations. The proposed modifications to the regulations would not directly apply to private individuals or businesses. The proposed modifications to the regulations would apply only to POUs, which are local agencies and not independently owned and operated businesses.

Business Reports (Gov. Code, §§ 11346.5, subd. (a)(11), and 11346.3, subd. (d))

The proposed modifications to the regulations would not require businesses, including small businesses, to submit any new reports.

Small Business Impacts (1 California Code of Regulations, § 4)

The Energy Commission has determined that the proposed modifications to the regulations will not negatively impact small businesses. As discussed above, the proposed modifications to the regulations apply only to POUs, which are local agencies and not independently owned and operated small businesses. No small business is legally required to comply with or enforce the proposed modifications to the regulations. Nor will any small business derive a direct benefit or detriment from the implementation of the proposed modifications to the regulations.

Effect on Housing Costs (Gov. Code, § 11346.5, subd. (a)(12))

The Energy Commission has determined, based on the nature of the proposed modifications to the regulations, that the proposed modifications will have no significant effect on housing costs.

Alternatives Statement (Gov. Code, § 11346.5, subd. (a)(13))

In accordance with Government Code section 11346.5, subdivision (a)(13), the Energy Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Energy Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Energy Commission is not aware of any alternatives that would be as effective as and less burdensome than the proposed modifications to the regulations. The proposed modifications to the regulations are not expected to have any effect on private persons.

The Energy Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

Designated Contact Persons (Gov. Code, § 11346.5, subd. (a)(14))

For general information about the proceeding, contact:

Angela Gould
Renewable Energy Office
California Energy Commission
1516 Ninth Street, MS-45
Sacramento, California 95814-5512
(916) 654-4881
angela.gould@energy.ca.gov

The designated back up for general information about the proceeding is:

Emily Chisholm
Renewable Energy Office
California Energy Commission
1516 Ninth Street, MS-45
Sacramento, California 95814-5512
(916) 654-4006
emily.chisholm@energy.ca.gov

For legal questions about this proceeding, contact:

Gabriel Herrera
Staff Counsel
California Energy Commission
1516 Ninth Street, MS-14
Sacramento, California 95814-5512
(916) 654-5141
gabe.herrera@energy.ca.gov

For documents related to the proceeding, go to:

<http://www.energy.ca.gov/portfolio/documents/index.html>, or contact

Docket Office
Docket No. 14-RPS-01
California Energy Commission
1516 Ninth Street, MS-4
Sacramento, California 95814-5504
(916) 654-5076
docket@energy.ca.gov

Media Inquiries

Media inquiries should be sent to the Media and Public Communications Office, at (916) 654-4989 or mediaoffice@energy.ca.gov.

Availability of the Initial Statement of Reasons, Express Terms, Economic and Fiscal Impact Statements, and Information upon which the Proposed Rulemaking is Based (Gov. Code, § 11346.5, subd. (a)(16))

The Energy Commission has prepared an Initial Statement of Reasons for the proposed modifications to the regulations, Express Terms for the proposed modifications of the regulations, and Supporting Materials for the Economic and Fiscal Impact Statement and Assessment for the proposed modifications of the regulations. To obtain a copy of the Initial Statement of Reasons, Express Terms, Supporting Materials for the Economic and Fiscal Impact Statement and Assessment, or other information upon which the proposed modifications to the regulations are based, please visit the Energy

Commission's website at: http://www.energy.ca.gov/portfolio/pou_rulemaking/2014-RPS-01/ or contact the Energy Commission's Docket Office or designated contact persons at the addresses noted above.

Availability of Changed or Modified Text (15-Day Language)

(Gov. Code, § 11346.5, subd. (a)(18))

The Energy Commission may adopt the proposed modifications to the regulations as described in this notice and shown in the Express Terms. The proposed modifications to the regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Energy Commission commissioners. In addition, changes to the proposed modifications not indicated in the Express Terms could be considered by the Energy Commission if the changes improve the clarity or effectiveness of the proposed modifications to the regulations. If the Energy Commission makes changes that are substantial and sufficiently-related to the originally proposed Express Terms, it will make the changed text of the regulations available for public review at least 15 days before it adopts the changed text of the regulations.

Notice of the changed text of the regulations will be provided to all persons who submit comments at the public hearing and provided contact information, who submit written comments to the Energy Commission's docket for this proceeding, and who specifically request notification of any such changes to the text of the regulations. In addition, notice of the changed text of the regulations will be placed on the Energy Commission's website. The Energy Commission will accept comments on the changed text of the regulations for the period specified in the notice and will consider adoption of the changed text at a public hearing as specified in the notice.

Final Statement of Reasons (Gov. Code, § 11346.5, subd. (a)(19))

The Energy Commission will prepare a final statement of reasons to support the final version of the proposed modifications to the regulations. The final statement of reasons will also contain summaries and responses to relevant public comments received by the Energy Commission during the comment period.

The final statement of reasons will be posted on the Energy Commission's website at: http://www.energy.ca.gov/portfolio/pou_rulemaking/2014-RPS-01/

Internet Access (Gov. Code, §§ 11346.4, subd. (a)(6), and 11346.5, subd. (a)(20))

The Energy Commission maintains a website to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Energy Commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, and the Supporting Materials for the Economic and Fiscal Impact Statement and Assessment, as well other documents upon which the proposed modifications to the regulations are based, are available on the Energy Commission's website at:

http://www.energy.ca.gov/portfolio/pou_rulemaking/2014-RPS-01/

Served on the following list servers: Renewable