

CALIFORNIA ENERGY COMMISSION

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In the matter of:)	Docket No. 14-RPS-01
)	
Amendments to Regulations Specifying)	Order No. 15-1014-7
Enforcement Procedures for the)	
Renewables Portfolio Standard)	
for Local Publicly Owned Electric Utilities)	
_____)	

California Energy Commission

DOCKETED

14-RPS-01

TN # 76201

OCT 07 2015

**ORDER ADOPTING MODIFICATIONS OF REGULATIONS ESTABLISHING
ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO
STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

I. INTRODUCTION

The California Energy Commission hereby adopts modifications to its regulations establishing enforcement procedures for the Renewables Portfolio Standard (RPS) for local publicly owned electric utilities (POUs). These regulations are codified in the California Code of Regulations, Title 20, sections 1240 and 3200 - 3208, and are being amended to implement Senate Bill 591 (SB 591, Stats. 2013, ch. 520) and clarify existing provisions in the regulations. The Energy Commission adopts these modifications to the regulations under the authority of sections 25213 and 25218(e) of the Public Resources Code and section 399.30 of the Public Utilities Code. The modifications to the regulations implement, interpret, and make specific provisions of sections 25741 and 25747 of the Public Resources Code, and sections 399.13, 399.15, 399.16, 399.21, 399.30, 9507 and 9508 of the Public Utilities Code.

The regulations establishing enforcement procedures for the RPS for POUs were adopted by the Energy Commission on June 12, 2013, subsequently approved by the Office of Administrative Law, and took effect on October 1, 2013. The regulations were adopted in accordance with section 399.30 of the Public Utilities Code, which directs the Energy Commission to adopt regulations specifying procedures for the enforcement of the RPS on POUs and directs 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 for possible penalties. 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.

The regulations are being amended to implement SB 591, which establishes a limited procurement exemption for a qualifying 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. If this criteria is satisfied, SB 591 provides that 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 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.

In addition, the regulations are being amended to clarify several existing provisions in the regulations, including the following: 1) the definitions of "bundled," "resale," and the "Western Electricity Coordinating Council"; 2) the requirements for qualifying electricity products procured under agreement executed prior to June 1, 2010; 3) the requirements for electricity products qualifying as dynamic transfers; 4) the portfolio content category classification of electricity products from POU-owned resources; 5) the excess procurement rules related to amended contracts; 6) the application of optional compliance measures; 7) select reporting requirements; and 8) procedural provisions for complaints of noncompliance.

II. PROCEDURAL BACKGROUND

After extensive pre-rulemaking activities, including a public workshop on July 11, 2014 to discuss and solicit input on the implementation of SB 591 and several issues related to the existing regulations, the California Energy Commission published a Notice of Proposed Action (NOPA) for the proposed modifications to the regulations on March 27, 2015. In addition to the NOPA, the Energy Commission made available to the public the Express Terms of the proposed modifications to the regulations, also referred to as the 45-day language Express Terms, an Initial Statement of Reasons (ISOR) that explained the rationale for the proposed modifications, and the legally-required fiscal and economic analysis of the proposed modification to regulations. The NOPA was distributed to every person and entity on the Energy Commission's Renewable List serve, and to every person who had requested notice of such matters, including the Secretary of the Natural Resources Agency. The NOPA, ISOR, 45-day language Express Terms, and the fiscal and economic analysis for the proposed modifications to the regulations were also posted on the Energy Commission's website.

The NOPA informed the public of a staff workshop/hearing on April 9, 2015 to receive comments on the proposed modifications to the regulations. The NOPA designated June 10, 2015 as the date for the Energy Commission hearing to consider adoption of the proposed modifications to the regulations, and provided a 45-day comment period through May 11, 2015. The NOPA indicated that if substantial, sufficiently related modifications are made to the 45-day language Express Terms, the modified text with changes in underline/strikeout would be made available to the public for at least 15 days before the Energy Commission would adopt the final version of the modifications to regulations.

On June 8, 2015, the Energy Commission published a Notice of Postponement of Hearing to inform interested parties that the Energy Commission's hearing to consider adoption of the proposed modifications to the regulations was being postponed from June 10, 2015, to a later date to be announced to provide the Energy Commission additional time to consider public comments received on the Express Terms. The notice was distributed to every person and entity on the Energy Commission's Renewable List serve, and to every person who had requested notice of such matters. In addition, the notice was posted on the Energy Commission's website.

On July 6, 2015, pursuant to the NOPA and Government Code section 11346.8, the Energy Commission published a Notice of Changes to Proposed Regulations, Notice of Hearing, and Notice of 15-Day Comment Period regarding changes to the text of the proposed modifications to the regulations. This notice was published along with the full text of the revised proposed modifications to the regulation ("15-Day Language") with the changes clearly indicated in underline/strikeout. The notice and the 15-Day Language were distributed to interested parties consistent with the NOPA and posted on the Energy Commission's website. The notice provided a 15-day period through July 21, 2015, to comment on the changes to the proposed modifications to the regulations. The notice identified August 12, 2015, as the date for the Energy Commission hearing to consider adoption of the proposed modifications to the regulations.

On August 7, 2015, the Energy Commission published a Notice of Postponement of Hearing to inform interested parties that the Energy Commission's hearing to consider adoption of the proposed modifications to the regulations was being postponed from August 12, 2015, to a later date to be announced to provide the Energy Commission additional time to consider public comments received on the 15-Day Language. The notice was distributed to every person and entity on the Energy Commission's Renewable List serve, and to every person who had requested notice of such matters. In addition, the notice was posted on the Energy Commission's website.

On September 29, 2015, the Energy Commission published a Notice of Hearing to inform interested parties of the Energy Commission's hearing on October 14, 2015, to consider adoption of the proposed modifications to the regulations as reflected in the 15-Day Language. The notice was distributed to every person and entity on the Energy Commission's Renewable List serve, and to every person who had requested notice of such matters. In addition, the notice was posted on the Energy Commission's website.

None of the comments received during the comment period, and nothing else in the record, justify further changes to the proposed modifications to the regulations as published on July 6, 2015, and reflected in the 5-Day Language.

III. FINDINGS

Based on the entire rulemaking record for Docket No. 14-RPS-01, the California Energy Commission finds as follows:

A. The California Renewables Portfolio Standard Program. The adopted modifications to the regulations:

1. Implement changes in law under SB 591, which adds a new subdivision (k) to section 399.30 of the Public Utilities Code and establishes a limited 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. If this criteria is satisfied, SB 591 provides that the POU may limit its RPS procurement obligations for a given compliance period to the lesser of a) the portion of the POU's retail sales not met by its own hydroelectric generation, b) the procurement obligations applicable to other POUs under Public Utilities Code section 399.30 (c), or c) the amount of procurement capped by the POU's cost limitations adopted in accordance with Public Utilities Code section 399.30; and
2. Clarify existing provisions in the regulations, including:
 - a. The definitions of "bundled," "resale," and the "Western Electricity Coordinating Council";
 - b. The requirements for qualifying electricity products procured under agreements executed prior to June 1, 2010;
 - c. The requirements for electricity products qualifying as dynamic transfers;
 - d. The rules for determining excess procurement related to amended contracts;
 - e. The application of optional compliance measures;
 - f. The reporting requirements; and
 - g. The procedural provisions for complaints of noncompliance.

B. The Administrative Procedure Act. The adopted modifications to the regulations:

1. Are not inconsistent or incompatible with existing state regulations;
2. Are not inconsistent or incompatible with existing federal law;
3. Will apply only to POUs as defined in Public Utilities Code section 224.3, which are local agencies and not businesses;
4. Will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states;
5. Will not create or eliminate jobs in California;
6. Will not create new businesses, eliminate existing businesses, or have an effect on the expansion of businesses in California;

7. Will impose no costs on private persons;
8. Will impose no direct costs, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, but do impose administrative costs on POU's, which are local agencies, that can be recouped through rate increases authorized by Public Utilities Code sections 10001, et seq., 11501, et seq., and 15501, et seq., and Water Code section 20500, et seq.;
9. Will result in no other nondiscretionary costs or savings to local agencies;
10. Will result in no costs or savings in federal funding to the State of California;
11. Will result in no costs or savings to any state agency, except for the Energy Commission, which is expected to have negligible costs that can be absorbed by existing staff and resources;
12. Will have no significant impact on housing costs;
13. Will have no significant adverse effect on businesses in general or small businesses in particular;
14. Will have no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations;
15. Will not require businesses, including small businesses, to submit any new reports;
16. Will not directly impact the health and welfare of California residents, worker safety, or the state's environment; and
17. Have no alternatives that would be more effective in carrying out the purposes of the regulations, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes.

C. The California Environmental Quality Act (CEQA). The adoption of the proposed modifications to the regulations is exempt from CEQA because:

1. The activity is not a "project" as defined by section 15378 of Title 20 of the California Code of Regulations because the modifications to the regulations are administrative in nature and properly characterized as a continuing administrative activity related to general policy and procedure making in

accordance with section 15378(b)(2) and (5) of Title 14 of the California Code of Regulations; and

2. The activity falls within the “common sense” exemption to CEQA as set forth in section 15061(b)(3) of Title 14 of the California Code of Regulation in that it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

IV. ADOPTION OF PROPOSED MODIFICATIONS TO REGULATIONS

The California Energy Commission, after considering the entire record of Docket No. 14-RPS-01 including, but not limited to, the memorandum regarding the *Application of California Environmental Quality Act to Modifications of Regulations Establishing Enforcement Procedures for the RPS for Local Publicly Owned Electric Utilities*, dated October 1, 2015, and all relevant public comments, hereby adopts the proposed modifications to regulations as reflected in the 15-Day Language published on July 6, 2015.

V. DELEGATION OF AUTHORITY AND DIRECTIVE TO EXECUTIVE DIRECTOR

The California Energy Commission delegates the authority and directs the Executive Director to take, on behalf of the Energy Commission, all actions reasonably necessary to have the adopted modifications to the regulations go into effect, including but not limited to making any appropriate non-substantial, editorial-type changes to the regulations and preparing and filing all appropriate documents, such as the Final Statement of Reasons with the Office of Administrative Law and the Notice of Exemption with the Office of Planning and Research.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the forgoing is a true and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on October 14, 2015.

AYE: [List Commissioners]

NAY: [List Commissioners]

ABSENT: [List Commissioners]

ABSTAIN: [List Commissioners]

Tiffani Winter,
Secretariat