



33% RPS Proposed Rulemaking for Publicly Owned Utilities

California Energy Commission
DOCKETED
11-RPS-01
TN # 69934
MAR. 15 2013

Angie Gould
Renewable Energy Office
Efficiency and Renewable Energy Division

Staff Workshop/Hearing
March 15, 2013
Energy Commission, Hearing Room A



Presentation Agenda

- Housekeeping
- Purpose of Staff Workshop
- Background and Overview
 - Senate Bill (SB) X1-2
 - Pre-Rulemaking Phase
 - Formal Administrative Procedure Act (APA)
Rulemaking Phase
 - Overview of Proposed Regulations



Presentation Agenda, continued

- Proposed Regulations by Section
 - Qualifying Electricity Products
 - Portfolio Content Categories
 - Renewables Portfolio Standard (RPS) Procurement Requirements
 - Procurement Plans and Enforcement Programs
 - Optional Compliance Measures
 - Compliance Reporting for publicly owned utilities (POUs)
 - RPS Enforcement
- Next Steps



Housekeeping

- Handouts on desk at room entrance
- Restrooms located on 1st floor
- Snack bar on 2nd floor
- Several restaurants within walking distance
- Emergency evacuation procedures
- WebEx
 - For interactive participation
- This presentation will be available on California Energy Commission's (CEC) website



Housekeeping, continued

- Comments in person: Fill out blue card and hand it in; we will call you to the podium
- Comments via WebEx: Use the “raise hand” feature; we will un-mute you when it is your turn
- Comments via phone: We will un-mute all phone lines at the end of comment period – please only un-mute your phone to ask a question
- Written comments: Submit according to directions in Notice of Proposed Action available at http://www.energy.ca.gov/portfolio/pou_rulemaking/documents



Purpose of Staff Workshop

- Provide overview and background on the rulemaking process and Proposed Regulations
- Encourage and facilitate public participation
- Receive oral and written comments on Proposed Regulations



BACKGROUND AND OVERVIEW



SB X1-2

- Signed in April 2011, went into effect December 2011
- Changes to RPS law
 - Requires 33% of sales from eligible renewables by 2020
 - Establishes multiyear compliance periods
 - Establishes portfolio content categories
 - Requires POU participation



SB X1-2, continued

- New CEC responsibilities
 - Certify renewable facilities serving POUs as eligible for the RPS
 - Design and implement an accounting system to track and verify RPS compliance for POUs
 - Adopt regulations specifying procedures for the RPS for POUs



Pre-Rulemaking Phase

- June 17, 2011: Held initial scoping workshop on regulations
- July 13, 2011: Adopted Order Instituting Rulemaking for 33% RPS
- July 19-20, 2011: Held focus group meetings with POU's in southern and northern California
- August 25, 2011: Released RPS Regulations Concept Paper with options and recommendations on key issues
- September 1, 2011: Held workshop on Concept Paper
- February 17, 2012: Released first RPS Draft Regulations



Pre-Rulemaking Phase, continued

- March 1, 2012: Held workshop on first draft
- March 22, 2012: Held webinar with POUs to discuss contentious issues
- July 25, 2012: Released second RPS Draft Regulations
- July 30, 2012: Held workshop on second draft
- September – November 2012: Held one workshop and two working group meetings to discuss reporting and verification
- February 20, 2013: Posted RPS Proposed Regulations



Formal APA Rulemaking Phase

- Initiated March 1, 2013 – Office of Administrative Law (OAL) published NOPA in the California Regulatory Notice Register
- Rulemaking documents posted on CEC’s website and made available to the public for review and comment
 - Notice of Proposed Action (NOPA)
 - Proposed Regulations (also called Express Terms)
 - Initial Statement of Reasons (ISOR)
 - Supporting Materials for Economic and Fiscal Impact Statement and Assessment



Formal APA Rulemaking Phase, continued

- NOPA
 - Notice of staff workshop/hearing and adoption hearing; public comment instructions; availability of documents
- ISOR
 - Rationale for all subsections in the Proposed Regulations
- Supporting Materials for the Economic and Fiscal Impact Statement and Assessment
 - Based on costs due to regulations, not statute; just over \$2 million total annual costs to POUs



Formal APA Rulemaking Phase, continued

- During formal APA rulemaking phase, all oral and written comments are recorded and included in the rulemaking file
- CEC Adoption Hearing for Proposed Regulations scheduled for May 8, 2013
- Once completed, final rulemaking package submitted to OAL for approval



Rulemaking Document Availability

- Copies of rulemaking documents available on CEC website at:
http://www.energy.ca.gov/portfolio/pou_rulemaking/documents
- Copies of rulemaking documents can also be obtained by contacting CEC staff



Overview of Proposed Regulations

- POU's adopt their own RPS programs; CEC determines whether POU's have complied with RPS requirements and forwards any notices of violation to the CA Air Resources Board (ARB); ARB determines any necessary penalties
- Three compliance periods: 2011-2013, 2014-2016, 2017-2020
- RPS procurement targets: 20% average 2011-2013, 25% by 12/31/16, 33% by 12/31/20, at least 33% each year thereafter



Overview of Proposed Regulations, continued

- Procurement associated with contracts/ownership agreements executed on or after 6/1/10 will be classified into three portfolio content categories (PCCs)
- Portfolio balance requirements: POUs must meet minimum targets for PCC 1, cannot exceed PCC 3 maximum
- Five optional compliance measures
 - Two allow POUs to remain in compliance even if RPS requirements are not met – cost limitations and delay of timely compliance



Overview of Proposed Regulations, continued

- Five optional compliance measures, continued
 - Three help POU's meet their RPS requirements more easily – excess procurement, portfolio balance requirement reduction, and historic carryover
- Procurement plans and enforcement programs
 - Must be properly adopted, publicly noticed, and reported to the CEC
- Reporting
 - Annual reports
 - Compliance period reports
 - Historic carryover reports, if being claimed



PROPOSED REGULATIONS BY SECTION



Section 3202: Qualifying Electricity Products

- Three types:
 1. Contract or ownership on or after June 1, 2010: classify in portfolio content categories (PCCs) and apply portfolio balance requirements (PBR)
 2. Contract or ownership before June 1, 2010 **and** met CEC's RPS rules in place at that time: count in full
 3. Contract or ownership before June 1, 2010 and **did not meet** CEC's RPS rules in place at that time: classify in PCCs (i.e., do not count in full), but PBR does not apply



Section 3202: Qualifying Electricity Products, continued

Electricity Product Type	Pre-6/1/10	On or after 6/1/10	Met rules in place	Count in full	Classify in PCCs	Subject to PBR
Type 1		X			X	X
Type 2	X		X	X		
Type 3	X				X	



Section 3202: Qualifying Electricity Products, continued

- Products from contracts or ownership prior to June 1, 2010, that are purchased and resold must be classified in PCCs with portfolio balance requirements applied **unless** the resale is explicitly included in the original contract terms



Section 3202: Qualifying Electricity Products, continued

- All Renewable Energy Credits (RECs) must be retired within 36 months of generation of the associated electricity to be claimed for the RPS
- RECs may only be retired to apply toward the RPS procurement requirements of the current or prior compliance period
- RECs may not be retired to apply toward RPS before they are procured or before the associated electricity is generated



Section 3203: Portfolio Content Categories

- PCC 1
 - Facility must be interconnected to California balancing authority area (CBA), interconnected to a distribution system to serve CBA end users, have generation scheduled into CBA, or have dynamic transfer agreement with CBA
 - Electricity and REC must be bundled



Section 3203: Portfolio Content Categories, continued

- PCC 1, continued:
 - Electricity may not be resold to the generating facility
 - If a resale, must be for future generation and RECs only, and must otherwise meet the requirements of PCC 1



Section 3203: Portfolio Content Categories, continued

- PCC 2
 - Facilities' first point of interconnection outside CA
 - Substitute energy incremental to POU
 - Substitute energy procured after renewable energy
 - Substitute energy scheduled into CA BA in same calendar year as renewable energy is generated
 - Energy may not be sold back to originating RPS facility
 - If a resale, for future generation and RECs only, and otherwise meet the requirements of PCC 2



Section 3203: Portfolio Content Categories, continued

- PCC 3
 - All unbundled RECs
 - Any other electricity products that do not meet criteria of PCC 1 or PCC 2



Section 3204: RPS Procurement Requirements

- 2011-2013 compliance period (average of 20%)
 - Average of 20% of 2011-2013 retail sales
- 2014-2016 compliance period (25% by 2016)
 - Sum of 20% 2014, 20% 2015, and 25% 2016 retail sales
- 2017 -2020 compliance period (33% by 2020)
 - Sum of 25% 2017, 25% 2018, 25% 2019, and 33% 2020 retail sales



Section 3204: RPS Procurement Requirements, continued

- Deficits from one compliance period not applied to another
- PCC 3 RECs in excess of the calculated limit shall not be counted toward a POU's RPS procurement target



Section 3204: RPS Procurement Requirements, continued

- Portfolio balance requirements:
 - Applied to the portion of retired RECs associated with a post-6/1/10 contract or ownership agreement that is claimed toward the RPS procurement target

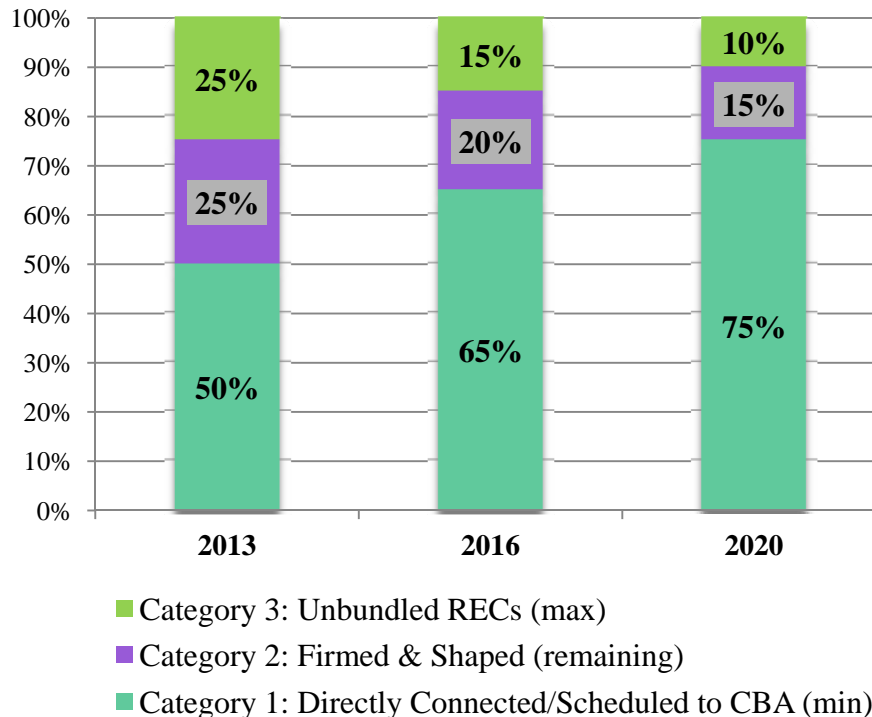


Section 3204: RPS Procurement Requirements, continued

- Portfolio balance requirements, continued:
 - PCC 1: 50% for 2011-2013, 65% for 2014-2016, then 75%
 - PCC 3: 25% for 2011-2013, 15% for 2014-2016, then 10%
 - PCC 2: No requirement



Section 3204: RPS Procurement Requirements, continued



Category 3. Maximum Procurement – no more than:

- 25% by 12/2013
- 15% by 12/2016
- 10% by 12/2020 and thereafter

Category 2: No minimum or maximum procurement.

Category 1. Minimum Procurement – at least:

- 50% by 12/2013
- 65% by 12/2016
- 75% by 12/2020 and thereafter

PBR applies only to electricity products associated with contracts/ownership agreements executed on or after 6/1/2010.



Section 3204: RPS Procurement Requirements, continued

- Exceptions/special circumstances
 - 399.30 (g) POU: in compliance with all RPS procurement requirements (Trinity)
 - 399.30 (h) POU: POUs not interconnected to a California balancing authority not required to meet PBR (Needles, Truckee Donner)
 - 399.30 (i) POU: retail sales for RPS calculations based on average of last seven years (PWRPA and Eastside Power Authority)



Section 3204: RPS Procurement Requirements, continued

- Exceptions/special circumstances, continued
 - 399.30 (j) POU: in compliance with all RPS procurement requirements **if** all electricity demand is met by its hydro each year; if not, must meet unmet demand up to soft target with renewable energy (CCSF)
 - Do not need to meet portfolio balance requirements for renewable energy procurement
 - Must meet 67% of demand with hydro for 7 years preceding compliance period



Section 3205: Procurement Plans and Enforcement Programs

- Each POU must adopt a procurement plan by 60 days after effective date of regulations detailing how the POU will achieve its RPS procurement requirements
 - POUs described in Public Utilities Code Section 399.30 (j) must also include forecast of hydro generation
 - POUs to provide CEC updates to procurement plans after they are adopted for posting on our website



Section 3205: Procurement Plans and Enforcement Programs, continued

- Each POU must adopt an enforcement program by 1/1/12 detailing actions the POU will take if RPS procurement requirements are not met
- Any action taken by a POU on a procurement plan or enforcement program must be publicly noticed and all information provided to the governing board related to the procurement plan or enforcement program must also be provided to the CEC



Section 3206: Optional Compliance Measures

- POU **may** adopt any of the following:
 - Excess procurement
 - PCC 3: May not be applied toward future compliance period as excess procurement; PCC 3 that exceeds the portfolio balance requirement for that compliance period will be subtracted from excess procurement calculation
 - Special rules for POU that meet 399.30 (h): unbundled RECs (rather than PCC 3 RECs) that exceed 25% in first compliance period, 15% in the second, and 10% after, will be subtracted from excess procurement calculation



Section 3206: Optional Compliance Measures, continued

- Excess procurement, continued:
 - Contracts less than 10 years duration: will be subtracted from excess procurement calculation, unless from “count in full” resources; may be applied toward future compliance period
- Cost limitations (enforcement waived if cost of compliance would exceed limitation)
 - POUs shall ensure that limitation prevents disproportionate rate impacts, costs of all procurement credited toward achieving RPS are counted, and no indirect expenses are included



Section 3206: Optional Compliance Measures, continued

- Cost limitations, continued
 - POU shall rely on most recent procurement plan, estimated procurement expenditures, and likelihood of project delay/cancellation
 - If cost limitation is applied:
 - Must be reported in dollars expended during the compliance period
 - POU must also report the estimated cost to comply with the RPS
 - POU may only apply those factors or types of costs used in setting the adopted cost limitation



Section 3206: Optional Compliance Measures, continued

- Delay of timely compliance (enforcement waived for conditions beyond POU's control) due to:
 - Inadequate transmission capacity
 - Permitting, interconnection or other procurement delays, or an insufficient supply of renewable energy
 - Unanticipated curtailment of renewable energy to address needs of balancing authority



Section 3206: Optional Compliance Measures, continued

- Portfolio balance requirement reduction
 - POU's may reduce the minimum PBR for PCC 1
 - PCC 1 requirement for any compliance period after 12/31/16 may not be reduced below 65%
 - Reduction must be due to delay of timely compliance conditions
 - Reduction must be adopted at publicly noticed meeting; notice must include details of and reasons for the reduction



Section 3206: Optional Compliance Measures, continued

- Historic carryover
 - Will be calculated based on eligible resources, baseline, and RPS targets consistent with those for retail sellers for 2004-2010
 - Procurement generated before 1/1/11 that exceeds a POU's targets, and wasn't sold or otherwise claimed, may be applied to RPS procurement requirements for a future compliance period
 - Will be calculated beginning 1/1/04, or the first year in which POU was operational



Section 3206: Optional Compliance Measures, continued

- Historic carryover, continued
 - RECs used for historic carryover must be retired within 36 months of generation
 - RECs applied to 2004-2010 annual procurement targets do not have to be retired within 36 months
 - “Retired” is either reporting to the CEC using the interim tracking system or transferring to retirement subaccount in WREGIS
- Optional compliance measures must be adopted within compliance period for which they will be used; adoption date of optional measures may be a factor considered in compliance determination



Section 3206: Optional Compliance Measures, continued

- Optional compliance measures must be submitted to CEC within 30 days of adoption
- POUs may opt for CEC consideration of their adopted measures; CEC may request public input to help consider
- In determining a POU's RPS compliance, the CEC will not consider the application of any optional compliance measures adopted by a POU that the CEC determines does not comply with statute or the regulations



Section 3207: Compliance Reporting for POUs

- Annual Report
 - Must be submitted by 9/1/13 or 30 calendar days after effective date, whichever is later, and by 7/1 of each year after
 - Must include POU identifying information, RECs retired for that reporting year classified by PCC, static information, and identified issues that may affect RPS compliance and the actions the POU plans to take in response



Section 3207: Compliance Reporting for POUs, continued

- Annual Report, continued
 - Reasonable progress: POUs must report the actions taken in the prior year that demonstrate reasonable progress to meet RPS procurement requirements, as well as actions planned for the upcoming year that will demonstrate reasonable progress
 - Format will be specified by the CEC, but the annual report information may be combined with other existing reports that contain the same information and are also supplied to the CEC



Section 3207: Compliance Reporting for POUs, continued

- Compliance Report
 - Must be submitted by 7/1/14, 7/1/17, 7/1/21, and by 7/1 of each year after
 - Must include RECs retired classified by PCC; documentation verifying PCC claims; POU's RPS target; excess procurement calculated (if any); historic carryover and excess procurement claimed (if any); and, if any RPS procurement requirement was not met, documentation justifying the application of RPS compliance options



Section 3207: Compliance Reporting for POUs, continued

- Compliance Report, continued
 - POU must report the RECs it wishes to apply toward the RPS procurement target for the purposes of calculating portfolio balance requirements
 - If POU applies adopted cost limitation measures, both the cost limitation and the cost of compliance with all RPS procurement requirements must be reported in the form of dollars expended during the compliance period



Section 3207: Compliance Reporting for POUs, continued

- **Historic Carryover Report**
 - Must be submitted by 7/1/13, or 30 days after effective date, whichever is later
 - Must include all procurement claims 2004-2010 and supporting documentation
- Incomplete reports can be fixed and resubmitted within 10 days of notification without violation



Section 3208: Enforcement

- Possible violations may include, but not be limited to:
 - Failure to meet an RPS procurement target
 - Failure to meet the portfolio balance requirement for PCC 1
 - Failure to adopt or properly notice a procurement plan or enforcement program
 - Failure to submit a complete annual, compliance, or other report



Section 1240: RPS Enforcement

- Complaint
 - Brought by CEC staff against a POU for failure to meet an RPS requirement, or any RPS regulation, order or decision
 - Complaint will contain a statement of facts on which complaint is based; statute, regulation, order or decision upon which complaint is based; action CEC is requested to take; and, authority for CEC to take such action



Section 1240: RPS Enforcement, continued

- Answer
 - POU must file answer within 45 days of service of complaint
 - Must include all data, reports, analyses, and any other relevant information to any claims made in answer
- Response
 - CEC must file within 15 days of receipt of answer; POU may reply within 10 days



Section 1240: RPS Enforcement, continued

- Hearing
 - Held 30 days or more after filing of response; must be publicly noticed
 - May be held before full Commission, a designated committee, or a hearing officer
 - If not held before the full Commission, proposed decision must be forwarded to the full Commission within 45 days of hearing
 - Decision of full Commission is final



Section 1240: RPS Enforcement, continued

- Referral
 - CEC staff forwards notice of violation and record of proceedings to the ARB for their determination of possible penalty
- Any person or entity may participate in a proceeding (ex., may submit public comment regarding a complaint), but shall not be a party to the proceeding



NEXT STEPS



Public Comment

- Comment period started on March 1, 2013, and will end on April 16, 2013
- Oral and written comments will also be accepted at the CEC adoption hearing scheduled for May 8, 2013
- Instructions for submitting written comments are on page 3 of the NOPA



Public Comment, continued

- Staff will evaluate all oral and written comments received during public comment period, including comments received during today's workshop, and make recommendations to the CEC for the next steps
- Staff will respond in writing in the Final Statement of Reasons (FSOR) to all oral and written comments received during public comment period



Public Assistance

- If you need assistance commenting, please contact the Public Adviser's Office at (800) 822-6228, or by email at PublicAdviser@energy.ca.gov.



Adoption Hearing

- Scheduled for May 8, 2013, during regularly-scheduled Business Meeting
- CEC will consider whether to adopt the Proposed Regulations
- CEC may issue changes to the proposed regulations after the 45-day public comment period ends on April 16, 2013, but before the scheduled adoption hearing on May 8, 2013; this will trigger an additional 15-day public comment period if the changes are substantial, which may result in a postponement of the scheduled adoption hearing



Contact Information

Angie Gould

916-654-4881

angela.gould@energy.ca.gov