

DOCKETED

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**STATE OF CALIFORNIA
STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)

Implementation of Renewables Portfolio)
Standard Legislation; SB 1078 (Public)
Utilities Code Sections 381, 383.5, 399.11)
through 399.15, and 445))
_____)

**ENERGY COMMISSION ORDER
Order No. 03-0305-04**

Pursuant to Section 25211 of the Public Resources Code and Section 1204 of Title 20 of the California Code of Regulations, the California Energy Commission (Commission) hereby adopts the following Order. This Order supplements Commission Order No. 02-0828-12, which establishes Commission Standing Committees and authorizes these Standing Committees to oversee various program and policy functions on the Commission's behalf.

I. Purpose

The purpose of this Order is to clarify and extend, as needed, the authority of the standing Renewables Committee to oversee implementation of the Renewables Portfolio Standard (RPS) Program, as mandated by Senate Bill 1078 under Public Utilities Code sections 381, 383.5, 399.11 through 399.15, and 445.

II. Committee Authorization

The Renewables Committee is hereby authorized to work collaboratively with the California Public Utilities Commission (CPUC) to oversee implementation of the Renewables Portfolio Standard (RPS) Program. The Renewables Committee is also authorized to oversee and undertake whatever actions and activities it determines are reasonably necessary to implement the attached RPS Collaboration Work Plan in accordance with applicable statutory directives and this Order.

The Renewables Committee shall commence a multi-phased RPS Proceeding to address the issues identified in the RPS Collaboration Work Plan. This Work Plan was prepared jointly by the Commission and the CPUC, consistent with CPUC Decision D.02-12-074, and identifies critical issues, agency responsibilities, decision-making processes, and tentative schedules for action items needed to implement the RPS under Senate Bill 1078 in a timely manner.

As part of the multi-phased RPS Proceeding, the Renewables Committee shall establish collaborative guidelines to facilitate the participation of CPUC staff in the proceeding. These collaborative guidelines shall be consistent with the guidelines established by the CPUC for the participation of Commission staff in CPUC proceeding R01-10-024, as set forth in the February 3, 2003 Ruling of Administrative Law Judge Peter Allen.

III. Committee Powers and Duties

The Renewables Committee shall take all actions necessary and appropriate to develop proposed decisions, policies, guidelines and regulations to address the issues identified in the RPS Collaboration Work Plan. The Renewables Committee may hold duly noticed public hearings and workshops, convene working groups with stakeholders, members of the public and other governmental agencies, and issue Committee orders and notices as necessary to carry out the purposes of this Order and oversee the Commission's implementation of the RPS under Senate Bill 1078. All decisions, policies, guidelines and regulations proposed by the Renewables Committee pursuant to this Order shall become final when formally adopted by the Commission at a Business Meeting.

The powers and duties conferred upon the Renewables Committee by this Order shall be in addition to those powers and duties authorized under the Commission's regulations (Division 2 of Title 20 of the California Code of Regulations, commencing with section 1001) and Commission Order No. 02-0828-12.

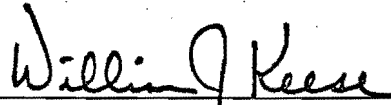
IV. Public Participation

Public participation shall be encouraged in all phases of the RPS Proceeding initiated by the Renewables Committee. Petitions to Intervene shall not be required as specified in section 1207 of Title 20 of the California Code of Regulations. Person wishing to participate in any phase of the RPS Proceeding may do so by filing written comments as specified by the Renewables Committee. Persons present at any hearing or workshop shall be afforded a reasonable opportunity to make oral comments on the subject matter of the hearing or workshop. Persons interested in participating in the RPS Proceeding may seek assistance from the Public Adviser to facilitate their participation.

The Executive Director shall ensure that this Order and every order or notice issued by the Renewables Committee are distributed to all interested persons, and that all Committee-proposed decisions, policies, guidelines and regulations are made publicly available sufficiently in advance of the Commission's adoption to allow timely review and participation.

Date: March 5, 2003

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

A handwritten signature in black ink, reading "William J. Keese", written over a horizontal line.

WILLIAM J. KEESE
Chairman

RPS Collaboration Workplan

This workplan represents the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) staff recommendations regarding collaborative implementation of the state's new Renewables Portfolio Standard Program (RPS)¹. These findings were developed through regular collaborative staff meetings beginning in late October 2002, and reflect an initial consideration of party comments on collaborative structure and process. The results of this effort are described below, and include:

- I. An overview of the RPS requirements, including the implementation responsibility of the two agencies;
- II. Collaborative issues and proposed process;
- III. A proposed schedule and work product.

I. OVERVIEW OF THE RPS

California's Renewable Portfolio Standard (RPS) requires retail sellers of electricity such as investor owned utilities (IOUs) to increase the renewable content of their energy deliveries by one percent per year, provided certain conditions are met, over a baseline level determined by the CPUC. Annual incremental procurement continues until renewable energy comprises 20 percent of the IOU's energy portfolio, a target that must be achieved by December 31, 2017.

The RPS statutes outline a disciplined approach to investment in new renewable projects. The CPUC and CEC are to make a number of determinations on RPS rules within a specified timeframe. The CEC is directed to prepare a renewable resource development plan for the state by the end of 2003, and the CPUC is directed concurrently to study how to connect renewable resources to the transmission grid. At the conclusion of these concurrent studies, a structured approach to making the necessary incremental investments in new and repowered renewable projects will be apparent, and the stock of existing facilities with expiring contracts will be known. An orderly process can then be undertaken to both build and connect renewable energy resources.

¹ Statutory authority for the California Renewable Portfolio Standard Program is contained in Public Utilities Code Sections 387, 390.1, and Article 16 commencing with Section 399.11; related statutory authority governing the CEC's Renewable Energy Program is contained in Public Utilities Code Sections 381, 383.5, 394.25, 445, 353.2, 383.6, and 2826.5.

Utility Procurement of Renewables²

Once the CPUC has made the necessary findings, the RPS procurement process begins with the IOU submitting a renewable procurement plan to the CPUC describing how annual procurement targets will be met. The CPUC reviews and ultimately approves the plan at least 90 days prior to a bid solicitation. Assuming the IOU is creditworthy and must meet an annual procurement target (APT) as defined by the CPUC, the IOU would commence a solicitation to procure renewables within 90 days of plan approval, consistent with its approved plan. Thus, in order to meet these two 90-day requirements, the CPUC must request these renewable procurement plans from all IOUs regardless of creditworthiness – if the IOU waits until it is creditworthy before it files an RPS procurement plan, the CPUC will be required to either approve the plan instantaneously or force the IOU to be out of compliance with the law.

The bid solicitation must offer CPUC-approved standardized contracts for a range of products, covering terms of at least ten years, unless the CPUC makes allowances for shorter terms. Bids received in response to the solicitation are to be ranked by the utility according to “least cost” and “best fit” for the IOUs’ long-term resource needs, criteria that will be defined via the implementation process outlined below.

The costs of the proposed contracts are then compared to a market price referent for each approved product, which will be determined independently of the solicitation process to avoid biasing bid results. The process for setting these referents, however, will be developed in advance of RPS solicitations as part of the RPS implementation rules, and will draw substantially from party input. Contract costs above these price referents will be covered by the Public Goods Charge (PGC), subject to availability of PGC funds, to be paid by the CEC directly to the renewable generator³. The CEC will establish processes for monitoring renewable transactions and affirming attainment of the APT, and the CPUC will establish flexible compliance and penalty mechanisms in accordance with the RPS statutes.

² The CPUC and CEC also recognize the need to develop RPS compliance rules for entities such as Electric Service Providers and Community Choice Aggregators.

³ IOUs cannot be required to enter into long-term contracts with renewable generators at prices above the CPUC-established referents. Thus, if a selected renewable bid is priced above the relevant product price referent, it will receive a supplemental revenue stream equivalent to the difference between the referent and the bid price, assuming PGC fund availability.

CEC and CPUC Roles

The CPUC and the CEC each have statutorily defined roles in implementing the RPS⁴.

The CPUC's responsibilities include:

- Establishing a process to determine market price referents, setting the criteria for IOU ranking of renewable bids by least cost and best fit, and establishing flexible compliance rules, penalty mechanisms and standard contract terms and conditions;
- Establishing initial renewable generation baselines for each IOU, making subsequent changes to these baselines as needed, and determining annual procurement targets (APTs);
- Directing the IOUs to develop procurement plans, and approving, amending or rejecting the plans;
- Making specific determinations of market price referents for products under contract;
- Approving or rejecting IOU requests to enter specific contracts for renewable power, including determining if a solicitation was adequately competitive;
- Factoring transmission and imbalance costs into the RPS process and identifying the transmission grid implications of renewable development;
- Defining rules for the participation of renewable Distributed Generation (DG), Electric Service Providers (ESP), Community Choice Aggregators (CCA), and potential Procurement Entities⁵.

⁴ Collaboration is specifically called for in the RPS legislation with the following language: 399.11 (a) "It is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article"; 399.11(d) the RPS Program "is intended to complement the Renewable Energy Program administered by the State Energy Conservation and Development Commission"; 399.13(b) "The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request"; and 399.15(e) "The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies."

⁵ The RPS statute allows for the following at Pub.Util.Code 399.14(e): "Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval."

The CEC's responsibilities include:

- Certifying eligible renewable resources, including those generating out-of-state;
- Establishing criteria to determine "incremental" output from existing geothermal resources for eligibility to meet the APT;
- Developing and implementing an accounting system to verify compliance with the RPS;
- Allocating and awarding supplemental energy payments (funded by the Public Goods Charge) to renewable generators to cover costs above the CPUC's market price referents for energy that is procured to meet the APT.

As noted above, the RPS legislation requires collaboration on certain points, and suggests a degree of collaboration across the range of implementation issues. CPUC and CEC staff has prepared an analysis of these points of collaboration and recommended approaches the agencies can take on an issue-specific basis, which follows here.

II. COLLABORATIVE ISSUES AND PROCESS

CPUC and CEC staff has developed the following guidelines for apportioning responsibilities and designing the collaborative process.

Issues and Forums

Staff has allocated final decision-making authority on each identified issue to the appropriate agency and described the proposed nature of this collaboration. Final decisions are to be made at the appropriate Commission, with opportunities made available for each agency to comment with special status on each issue.

Hearings are considered appropriate in the following instances: 1) where facts are in dispute; 2) where decisions will have "substantial economic impact," defined as potential impacts on rates or inclusion and exclusion of economic factors.

Workshops are suggested for purposes of: 1) information gathering, to define concepts or to trigger hearings as needed; 2) expanding the record, and to increase party representation, beyond the January filings; 3) resolving issues from hearings that are less contentious than anticipated; 4) preparing staff and interested party reports for submission to the Commission(s) as appropriate.

Staff collaboration will take place on an ongoing basis, including the preparation of topical white papers and workshop reports and the communication of agency views between the two Commissions.

Using this methodology, and in consideration of comments filed in the CPUC Procurement Rulemaking Proceeding (R.01-10-024) CPUC and CEC staff proposes the following organization and timing of issue development in the RPS implementation process.

A Three-Phased Approach to RPS Implementation

Staff has grouped the identified RPS issues into the following three categories, organized by deciding agency and expected date of resolution between now and year's end.

- Early Resolution
- Resolution by June 30, 2003
- Resolution by December 31, 2003

1. Early Resolution

CEC as Deciding Agency

CEC staff proposes that the issues below be addressed through CEC decisions in an expedited timeframe. Draft decisions are typically based on the recommendations of an assigned Commission Committee, which in turn may be based on a staff proposal or white paper, any public comments received as part a workshop or hearing, and the existing record of any pertinent CEC proceedings. After the issuance of a draft decision, the full CEC Commission would consider adoption of a final decision at a regularly scheduled Business Meeting. This process is relatively expeditious and is particularly useful in resolving issues for which there is little contention or that can be resolved quickly.

Making a Determination on the Eligibility of Out-of-State Power

- The CEC would follow up with any needed guidelines under item 2 below.

Defining Eligible Renewable Technologies

- Consideration of renewable DG will be handled separately (see below).

Making a Determination on Incremental Geothermal Generation

- The CEC plans to make a determination on what constitutes incremental geothermal generation by the end of March, and will follow up with any needed guidelines to the Existing Renewable Resources Account under item 2 below.

CPUC as Deciding Agency

All issues to be decided by the CPUC will be addressed in the Procurement Rulemaking (R.01-10-024), in the manner described in each category.

Establishing and Adjusting Renewable Generation Baseline and Setting Annual Procurement Targets

- CPUC and CEC staff will analyze IOU data and prepare a recommendation to the CPUC, and will coordinate baseline adjustment procedures with the CEC's resource certification process. Integration of IOU Interim renewable procurement that fits into baseline resources will be accomplished in this manner. No hearings, workshops or working groups are anticipated.

2. Resolution by Rule by June 30, 2003

CEC as Deciding Agency

Drawing on the experience of the Renewable Energy Program, the CEC staff proposes that the certification of in-state resources and the distribution of supplemental energy payments (SEPs) identified below be addressed under the CEC's authority to develop guidelines. The authority to develop guidelines to implement portions of the RPS under SB 1038 and SB 1078 is set forth in Public Utilities Code section 385.5(h)(1).

The adoption of these guidelines is exempt from the formal rulemaking requirements of the Administrative Procedures Act (APA). As a result, guidelines can be developed within months, and can be modified as necessary to adapt to developments in the market and make any other necessary adjustments in how the program is implemented. The guideline process is efficient and affords a great deal of flexibility.

Guidelines are developed through a public process, where the CEC typically releases staff or Committee draft guidelines for public comment in writing or verbally at workshops or hearings. A staff white paper, or public input from working groups could also serve as the basis of guideline development. Ultimately the guidelines, as well as any substantive revisions, must be formally adopted at a CEC Business Meeting.

Establishing Process to Certify In-State Resources

- CPUC and CEC staff will address this issue as part of guidelines for the New and Existing Renewables Resources Accounts. This includes addressing certification of incremental geothermal, small hydro, solid waste conversion, combustion of municipal solid waste, and biomass facilities. Staff will also consider Renewable Energy Credits (REC), if applicable, in the certification procedures.

Establishing Guidelines for SEP Payment

- CPUC and CEC staff will address this issue including how it applies to interim procurement as part of guidelines for the New Renewables Resources Account. Staff recommendations to the CEC will be coordinated with recommendations to the CPUC on bidding and contract evaluation rules.

Developing RPS Tracking and Verification System

- CPUC and CEC staff will develop an interim tracking and verification system applicable to the IOU interim renewable procurement and previously existing renewable stock for consideration by CEC decision. Staff will issue a white paper for party comment in **March**, and the CEC will host joint workshops in **April**. A CEC decision on the development of these rules for long-term use will be addressed separately (see below). Staff will consider RECs, if applicable, in the tracking and verification process.

CPUC as Deciding Agency

Developing Flexible Compliance and Penalty Mechanisms

- CPUC and CEC staff will facilitate workshops through mid-**March**, and hearing times will be reserved in advance for issues that may require further development. Initial exploration will focus on compliance and penalty provisions expressly called for in the RPS statutes; considerations relating to RECs will be addressed if applicable, potentially reserved for resolution at a later date.

Establishing Standard Contract Terms and Conditions

- CPUC and CEC staff will facilitate a workshop in mid-**March** to address these issues.

Determining the Market Price Referents

- CPUC and CEC staff will facilitate a workshop in mid-**March** to address these issues.

Defining Least Cost and Best Fit and Bid Ranking Criteria

- CPUC and CEC staff will issue a white paper for party comment in mid-**March**, and the CPUC will hold workshops on these issues from the middle to the end of **March**.

3. Resolution by December 31, 2003

Determining Eligibility of Renewable DG (CPUC and CEC)

Ensuring Resource Diversity (CPUC and CEC)

Commencement of RPS Implementation for Electric Service Providers (ESP) and Community Choice Aggregators (CCA) (CPUC and CEC)

Developing Criteria to Determine Competitive Sufficiency (CPUC and CEC)

Planning RPS Tracking and Verification System (CEC)

- Development of the tracking and verification system will include consideration of the role of RECs, if applicable. The system will likely be finalized in 2004, as the rules for the system are expected to be developed through a formal rulemaking process pursuant to the APA. The formal rulemaking process takes at least seven months to complete and typically a year for relatively non-controversial regulations.