

DOCKETED

Docket Number:	19-RPS-01
Project Title:	Petition for Rulemaking re: Public Utilities Code, section 399.30(c)(4)
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Document Title:	Petition Requesting Rulemaking Hearings Implementing Public Utilities Code section 399.30(c)(4)
Description:	Petition Requesting Rulemaking Hearings Implementing Public Utilities Code section 399.30(c)(4) - Docket Nos. 19-BUSMTG-02 and 19-RPS-01 and PROPOSED ORDER DENYING THE PETITION FOR RULEMAKING HEARING
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Memorandum

To: Chair and Commissioners
California Energy Commission

Date: June 7, 2019

Telephone: (916) 654-4996

From: **Drew Bohan**
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Subject: **Petition Requesting Rulemaking Hearings Implementing Public Utilities Code section 399.30(c)(4) - Docket Nos. 19-BUSMTG-02 and 19-RPS-01**

I. Summary

On April 16, 2019, Mr. Steve Uhler filed a petition with the Executive Director of the California Energy Commission (Energy Commission) requesting that the Energy Commission initiate a rulemaking hearing to implement statutory provision Public Utilities Code (PUC) section 399.30(c)(4).

This petition will be heard at the Energy Commission's June 12, 2019, business meeting. Staff recommends denying the petition because Petitioner's request is not necessary. An update to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* is currently in the pre-rulemaking phase. This update will address multiple new statutory requirements including the specific statutory section referenced in the petition. A pre-rulemaking workshop is scheduled for July.

II. Background

On October 7, 2015, Senate Bill 350 (the Clean Energy and Pollution Reduction Act)(De León, Chapter 547, Statutes of 2015) (SB 350) was signed into law, establishing new clean energy, clean air and greenhouse gas reduction goals for 2030 and beyond. SB 350 included a number of changes to the Renewables Portfolio Standard (RPS) including the addition of PUC section 399.30(c)(4) which states:

Beginning January 1, 2014, in calculating the procurement requirements under this article, a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program. Any exclusion shall be limited to electricity products that do not meet the portfolio content criteria set forth in paragraph (2) or (3) of subdivision (b) of Section 399.16. Any renewable energy credits associated with electricity credited to a participating customer shall not be used for compliance with procurement requirements under this article, shall be

retired on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose. To the extent possible for generation that is excluded from retail sales under this subdivision, a local publicly owned electric utility shall seek to procure those eligible renewable energy resources that are located in reasonable proximity to program participants.

On October 14, 2015, the California Energy Commission adopted an amended version of the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*¹, which became effective on April 12, 2016, following review by the Office of Administrative Law. The April 12, 2016, version is the current version of the regulations that implement enforcement procedures for the Renewables Portfolio Standard for local publicly owned electric utilities established in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. As this version was adopted at roughly the same time as the passage of SB 350, the changes required by SB 350 were not addressed in the current version of the regulations.

On January 13, 2016, the California Energy Commission adopted an Order Instituting Rulemaking Proceeding, Order No. 16-0113-05², to implement changes in the law required by Senate Bill 350. This action also approved the opening of a Sub-Proceeding to incorporate amendments to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* resulting from SB 350, as well as any other necessary updates to the regulations.

On July 8, 2016, Energy Commission staff opened docket 16-RPS-03, Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, for the rulemaking activities related to updating the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

On August 4, 2016, Energy Commission staff issued *Pre-Rulemaking Amendments to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utility*³, along with a public notice of a staff workshop to discuss the proposed pre-rulemaking amendments. The draft version of the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* included a proposed addition, identified as section 3204(b)(8) implementing the requirements of PUC section 399.30(c)(4).

In late 2016, Energy Commission staff suspended pre-rulemaking activities anticipating that the rulemaking process would resume following completion of verification activities

¹ <https://www.energy.ca.gov/2016publications/CEC-300-2016-002/CEC-300-2016-002-CMF.pdf>

² https://www.energy.ca.gov/business_meetings/2016_packets/2016-01-13/Item_05_OIR-SB_350/Item%205%20OIR%20SB350_final_1-4-16.pdf

³ <https://efiling.energy.ca.gov/GetDocument.aspx?tn=212630&DocumentContentId=26374>

for Compliance Period 1 of the Renewables Portfolio Standard (RPS). Since the Energy Commission's last update to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, additional pieces of legislation have modified the RPS program for POUs including SB 1393 (De León, Chapter 677, Statutes of 2016), SB 1110 (Bradshaw, Chapter 605, Statutes of 2018) and SB 100 (De León, Chapter 312, Statutes of 2018.)

On June 7, 2018, Energy Commission staff opened docket 18-RPS-02 - Renewables Portfolio Standard Compliance Period 2 (2014-2016) to serve as the record for verification activities related to Renewables Portfolio Standard Compliance Period 2, covering the years 2014-2016.

On October 8, 2018, Energy Commission staff posted to the Energy Commission website, the Renewables Portfolio Standard Verification Methodology Report, Second Edition⁴ (RPS Methodology Report, Second Edition). The RPS Methodology Report includes a description of the methods staff use to complete RPS verification activities, including the confirmation of retail sales for each publicly owned electric utility and calculation of each POU's procurement requirements based on their retail sales. The description addresses the methods staff used to evaluate requests for a reduction in retail sales submitted for Compliance Period 2.

On October 9, 2018, Energy Commission staff posted a number of documents to docket 18-RPS-02 - Renewables Portfolio Standard Compliance Period 2 (2014-2016), including the RPS Methodology Report, Second Edition, and Public Notice of the Availability of the RPS Methodology Report, Second Edition.

On November 2, 2018, Mr. Uhler posted comments to docket 18-RPS-02, identified as *Verification Process Overview, just like a bank audit*. Mr. Uhler's comments addressed the RPS 2014-2016 Retail Sellers Procurement Verification proposed for adoption.

On February 14, 2019, Energy Commission staff posted to docket 18-RPS-02, draft Verification Results Reports for 40 local publicly owned utilities (POUs), including two POUs that requested a reduction in retail sales pursuant to Public Utilities Code section 399.30(c)(4), as well as a Notice of Availability and Request for Comments on RPS 2014-2016 Verification Results for Local POUs Staff Draft Reports.

On February 27, 2019, Mr. Uhler filed comments to docket 18-RPS-02, identified as *What conditions did SMUD satisfy to reduce total retail sales under PUC 399.30*. The docketed comments pose a series of questions related to the Sacramento Municipal Utilities District's (SMUD) reduction in retail sales under PUC 399.30(c)(4), SMUD's voluntary green pricing products or shared renewable energy resources, and Power Content Labels issued by SMUD under the Power Source Disclosure Program.

On March 12, 2019, during a regularly scheduled business meeting, the Energy Commission adopted verification results reports for 40 POUs, including two POUs that

⁴ <https://www.energy.ca.gov/2018publications/CEC-300-2018-008/CEC-300-2018-008-SF.pdf>

requested a reduction in retail sales according to the provisions of PUC section 399.30(c)(4). Mr. Uhler provided comments on this and other items at the Business Meeting.

On March 15, 2019, Mr. Uhler filed two comments to docket 18-RPS-02 identified as *Does this mean SMUD only increased 1.62 percent in renewable output in compliance period 2* and *What authority has allowed the Energy Commission staff to produce CEC-300-2018-008-SF*.

On April 16, 2019, Mr. Uhler's petition was filed with the Executive Director, requesting that the Commission initiate a rulemaking hearing under California Code of Regulations, title 20, section 1221 and Government Code section 11340.6, for the purpose of implementing statutory provision PUC 399.30 (c)(4).⁵

On April 23, 2019, the Energy Commission's Executive Director certified that the petition was complete and contained the informational requirements of CCR, title 20, section 1221.⁶

On April 23, 2019, Mr. Uhler acknowledged the Executive Director's certification letter and requested his petition be heard at the June 12, 2019, business meeting due to his unavailability for the May 15, 2019, meeting.⁷

On May 22, 2019, Energy Commission staff opened Docket 19-RPS-01 2019 Renewables Portfolio Standard (RPS) as a new docket for the Petition for Rulemaking re: Public Utilities Code section 399.30(c)(4) and copied all prior correspondence related to this matter in the docket.

On June 7, 2019, Energy Commission staff filed this response to the petition, recommending that the Commission deny the petition.

On June 12, 2019, the Energy Commission will hold a hearing to consider the petition.

III. Petitioner's Requests and Assertions

Petitioner requests that the Energy Commission initiate a rulemaking proceeding related to the Energy Commission's implementation of the RPS program. As explained below, the request should be denied because Energy Commission staff is already in the pre-rulemaking process and anticipates initiation of the formal rulemaking process later this year. Petitioner states, that calculations listed in 20 CCR § 3204 of RPS Procurement

⁵ Steve Uhler Petition Requesting Rulemaking Hearing
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=228363&DocumentContentId=19-RPS-01>

⁶ Executive Director's Certification of Petition for Rulemaking
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=228364&DocumentContentId=19-RPS-01>

⁷ Steve Uhler Comments Request per 20 CCR § 1221 Petitions re post certification
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=228365&DocumentContentId=19-RPS-01>

Requirements fail to implement the method for calculating the procurement requirements under ARTICLE 16. California Renewables Portfolio Standard Program [399.11 – 399.33], where a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program.

Staff have already initiated pre-rulemaking activities to update the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. The planned update will incorporate the rules under which a local publicly owned electric utility may exclude from its total retail sales, the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program, pursuant to Public Utilities Code section 399.30(c)(4). The *Notice of a Staff Workshop*⁸ to review staff's proposal for planned updates to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* was posted on June 3, 2019. The workshop is scheduled to be conducted on July 17, 2019, with a public comment to follow the workshop. Staff anticipate initiating the formal rulemaking process later this year with a goal of adopting updated Regulations prior to December 31, 2020.

IV. Recommendation

Staff recommends denying the petition because staff have already initiated pre-rulemaking activities to update the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* to address a range of statutory updates, including the statutory sections referenced in the petitioner's request.

⁸ Notice of Staff Workshop RE: Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electric Utilities
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=228488&DocumentContentId=59727>

Appendix A

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

STEVE UHLER

**PETITION FOR RULEMAKING
HEARING**

Docket No. 19-RPS-01

**PROPOSED ORDER DENYING THE
PETITION FOR RULEMAKING HEARING**

I. INTRODUCTION AND PROCEDURAL HISTORY

On April 16, 2019, Mr. Uhler's petition requesting that the Commission initiate a rulemaking hearing under California Code of Regulations, title 20, section 1221 and Government Code section 11340.6, for the purpose of implementing statutory provision PUC 399.30 (c)(4), was filed with the Executive Director.

Specifically, the petition requests implementation of statutory provision PUC 399.30(c)(4).

PUC 399.30 (c)(4) states that: Beginning January 1, 2014, in calculating the procurement requirements under this article, a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program. Any exclusion shall be limited to electricity products that do not meet the portfolio content criteria set forth in paragraph (2) or (3) of subdivision (b) of Section 399.16. Any renewable energy credits associated with electricity credited to a participating customer shall not be used for compliance with procurement requirements under this article, shall be retired on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose. To the extent possible for generation that is excluded from retail sales under this subdivision, a local publicly owned electric utility shall seek to procure those eligible renewable energy resources that are located in reasonable proximity to program participants.

In his petition, Mr. Uhler states that the Calculations listed in 20 CCR § 3204 of RPS Procurement Requirements fail to implement the method for calculating the procurement requirements under ARTICLE 16. California Renewables Portfolio Standard Program [399.11 – 399.33], where a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program.

On April 23, 2019, the Commission's Executive Director certified that the petition was complete and contained the informational requirements of CCR title 20, section 1221.

On June 7, 2019, Commission Staff filed a response to the petition recommending denial of the petition because a rulemaking hearing is not necessary. According to the staff recommendation, pre-rulemaking activities supporting an update to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities have already been initiated and the planned update will implement the provisions of PUC 399.30(c)(4).

On June 12, 2019, the Commission held a hearing to consider the petition.

II. FINDINGS

Based on the record, the Commission finds that:

- 1) Public Resources Code section 25218 empowers the Commission to adopt any rule or regulation, or take any action it deems reasonable and necessary to carry out its statutory duty. Thus, the Commission has the authority to initiate a rulemaking, as requested in the petition.
- 2) On June 3, 2019, Energy Commission staff posted a public notice informing parties of a scheduled Pre-Rulemaking Workshop implementing changes to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* including changes pursuant to SB 350 and subsequent legislation.
- 3) Energy Commission staffs' planned update to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* will address all changes in law affecting the RPS program.
- 4) As a rulemaking to address regulatory changes implementing PUC 399.30(c)(4) has been initiated, no additional rulemaking proceedings on this topic are necessary.

II. CONCLUSION AND ORDER

For the reasons stated above, the Petition is hereby DENIED.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on June 12, 2019.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat