

DOCKET

03-RPS-1078

DATE JUL 08 2011

RECD. JUL 08 2011

STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of,
Implementation Of Renewables
Portfolio Standard Legislation**

Docket No. 03-RPS-1078

**COMMENTS OF THE
NORTHERN CALIFORNIA POWER AGENCY
ON THE JUNE 17, 2011 STAFF WORKSHOP ON 33 PERCENT
RENEWABLES PORTFOLIO STANDARD REGULATIONS FOR
PUBLICLY OWNED ELECTRIC UTILITIES**

Pursuant to the California Energy Commission (Commission or CEC) June 7, 2011, Workshop Notice, as amended on July 1, 2011, the Northern California Power Agency¹ (NCPA) submits these comments on the June 17, 2011 *Staff Workshop On 33 Percent Renewables Portfolio Standard Regulations For Publicly Owned Electric Utilities* (Workshop).

I. INTRODUCTION

NCPA was established in 1968, and is a California Joint Powers Agency. NCPA's members are publicly owned entities interested in the purchase, aggregation, scheduling, and management of electrical energy. NCPA is a long-time supporter of a 33% statewide renewable portfolio standard (RPS) target for all state utilities, and supports the Legislature's recognition in SBX1 2 that the oversight of local publicly owned utility (POU) RPS programs should remain—as is now the practice—with the local governing boards and elected officials who are directly accountable to their residents and community. NCPA supports federal, regional, and statewide efforts to reduce greenhouse gas emissions and combat global climate change, and believes that its members' RPS programs help to advance those efforts. Accordingly, NCPA and its members

¹ NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and Associate Members Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

have a long history of environmental stewardship and have expended considerable resources to develop significant amounts of renewable electric generation resources, investments that are consistent with the fundamental objectives of climate change policy and a 33% RPS. All NCPA member communities, consistent with Senate Bill 1078 (Sher), have formally adopted RPS programs that are tailored to their individual communities, and in most instances are already exceeding the state average RPS numbers. Collectively, NCPA members are above the current 20% RPS, and many individual NCPA member utilities already have California-eligible RPS levels that exceed a 33% threshold.

NCPA and its members look forward to working with the CEC as it implements its obligations under SBX1 2. Of particular importance to NCPA is the development of a regulation that accurately reflects the CEC's responsibilities and limitations under the legislation, as well as effecting the legislative intent that all load serving entities achieve 33% RPS. In the coming months, NCPA's members, like all POU's, will be revising their existing renewable portfolio programs (RPS) in order to implement the new mandate. The most efficient and effective means of harmonizing this process with the program implementation contemplated by the CEC is to utilize – to the greatest extent possible – the existing RPS and reporting frameworks already in place, rather than mandate new rules and regulations where they are not necessary. This will allow both the CEC and the POU's to move forward as expeditiously and efficiently as possible.

NCPA also urges the Commission to make the most of the information that is gathered during the upcoming POU focus group meetings (Workshop Presentation, p. 31) and to carefully track the legislative intent behind the development of separate rules for POU RPS programs versus investor owned utility (IOU) programs. Following those meetings, NCPA looks forward to working with stakeholders and Staff on the development of the final regulation.

II. COMMENTS ON STAFF'S WORKSHOP PRESENTATION

A. POU Program Development and Implementation is Within the Exclusive Purview of the Local Governing Boards.

The Legislature sent a clear message regarding the entity responsible for adopting and implementing the POU 33% RPS programs; the local governing boards of the POU's. (§ 399.30, *see also* Workshop Presentation, p. 6) Accordingly, in designing the CEC's program, NCPA

supports the position that would provide for an umbrella regulation that accepts the local governing boards' obligations under the statute, rather than a severely structured and draconian program that does not recognize the individual nature of the POU programs acknowledged by the Legislature. With the promulgation of an overall program framework, the CEC is able to meet its obligations under SBX1 2, without worry of conflicting with the specific program design measures adopted by individual POUs under the authority set forth in § 399.30. The Legislature clearly distinguishes between POU and IOU programs; these distinctions are found throughout SBX1 2, including in provisions regarding RPS adoption and implementation requirements, as well as reporting and enforcement, and must be kept at the forefront of any discussion regarding program implementation.

With regard to the program specific elements that are left solely to the discretion of the POUs and their local governing boards, an attempt by the CEC to define parameters in advance of the POUs could result in conflicts and confusion. For example, § 399.30(d) allows POUs – at their discretion – to adopt measures regarding applications of excess procurement (§ 399.30(d)(1)), conditions for delaying timely compliance under certain circumstances (§ 399.30(d)(2)), and cost limitations for procurement expenditures (§ 399.30(d)(3)). (Workshop Presentation, p. 30) These measures, however, may not be (and likely will not be) exactly the same for each POU. Nor do they need to be. Instead, the only limitation is that these measures are to be “in the same manner” or “consistent with” the provisions of §§ 399.13 and 399.15(b) and (c). To that end, the CEC must remain cognizant of the distinctions recognized by the Legislature between IOU and POU programs, which acknowledges that particular aspects of each entity's program need not be identical.

Therefore, if a POU was to adopt a measure to address conditions for delaying timely compliance, in order to be “consistent with” the provisions of § 399.15(b), the POU need not adopt the same *process* that may be adopted by the California Public Utilities Commission (CPUC) for the IOUs. Instead, the POU program need only adopt a program that recognizes the categories set forth in § 399.15(b)(5), and must review and analyze each of those factors in determining whether compliance is beyond its control. How those factors are applied in each individual situation is not likely to be the same, but utilizing all of the same factors ensures that the programs – both POU and IOU – are all *consistent*.

The CPUC has initiated its own RPS proceeding to oversee the implementation of SBX1 2, and has encouraged the POU's' participation on that proceeding. (Workshop Presentation, p. 10) However, despite these parallel proceedings, it is imperative that the CEC's program not be developed merely as a copy of a program that may be adopted by the CPUC simply to maintain administrative simplicity, as doing so would violate the provisions of SBX1 2 and ignore the clear Legislative intent that, while both POU's and IOU's are required to achieve the same ends – 33% RPS, there are specific provisions that do not require them to use the same means.

B. POU's Are Not Required by SBX1 2 to Provide the Same Procurement Plans as IOU's.

During the Workshop, Staff queried whether POU procurement plans should contain the same information as the statute requires of investor owned utilities (IOU's). (Workshop Presentation, slide 16) Since the legislation clearly distinguishes between POU and IOU programs, the answer to this question is clearly “no.” As a primary matter, had the Legislature intended POU and IOU programs to include all of the same provisions, the legislation would have so provided. Rather, the Legislature acknowledged and preserved the different nature of IOU and POU RPS programs, and included in § 399.30 the only mandatory requirements of the POU plans, and not the elements delineated in § 399.13(a).

Furthermore, since SBX1 2 does not require this additional information, mandating it as part of the CEC's regulation is not authorized under the provisions of the legislation. Similar information that the CEC may be seeking would be included within the other annual reports that POU's are required to provide, including documentation regarding eligible renewable energy resources procurement contracts executed during the prior year (§ 399.30(g)) and information regarding expenditure of public goods funds, resource mix, and implementation status that are reported to the CEC and the POU's customers annually pursuant to § 399.30(1). (*See also*, Workshop Presentation, p. 28)

Finally, the inclusion of specific information is not necessary, as it does not serve the CEC any purpose in evaluating the POU programs. Section 399.30 clearly sets out what the POU's are required to do: their local governing boards establish the programs and implement them. It is important to keep in mind the distinction between IOU and POU programs. Not only

are POU programs designed on the local level and directly accountable to the local governing boards, but they are designed for a single utility, and accordingly, their procurement plans are more narrowly tailored. Accordingly, while the Legislature did mandate prescriptive requirements for the IOU programs, that mandate is designed to allow the IOUs' single governing body – the CPUC – to review the multiple programs. The CPUC must evaluate the procurement programs for several different jurisdictional entities. POU procurement plans, on the other hand, will not be reviewed by multiple entities, but rather by the governing boards that created them, making the need for a single, homogeneous POU procurement plan requirement unnecessary. Further, the range of information required under § 399.13(a)(1) may not even be relevant for some smaller entities; something that was recognized by the Legislature in **not** mandating a single format for all POU programs.

C. The CEC Has Flexibility in Crafting its Regulations Regarding 33% RPS Implementation.

During the Workshop, CEC Staff asked stakeholders to address the extent of the Commission's ability to craft flexible rules. NCPA maintains that SBX1 2 gives the Commission considerable discretion in crafting the RPS rules. For example, the statute does not mandate additional reporting requirements, nor does it direct the CEC to specifically adopt provisions for review and approval of POU plans. Rather, the majority of the CEC's obligations vis-à-vis the statute are entailed in § 399.25 (formerly § 399.13), and pertain to tracking and monitoring and procedures for enforcement (§ 399.30(o)). Even with regard to enforcement of the RPS, the legislation only requires the CEC to "shall collect data from electricity market participants that it *deems necessary* to verify compliance of retail sellers and local publicly owned electric utilities . . ." (§ 399.25(b), emphasis added) . To that end, the CEC has discretion to ascertain what information is necessary from what entities, including, as more fully set forth below, the discretion to adopt different requirements for reporting from smaller utilities, as well as what procedure would be best applied. Under the legislation, the CEC is required to adopt a procedure for enforcement that includes a public process (§ 399.30(o)). That procedure, however, can and should be established to include clearly defined procedures for review of the necessary information, for responding to inquiries, and an adequate opportunity to make corrections or cure deficiencies prior to any formal finding of noncompliance. NCPA also

supports the Commission's intent to fully review all relevant circumstances associated with any noncompliance as part of the process. (Workshop Presentation, p. 29)

As NCPA reads SBX1 2, the only mandates that must be the same for each and every compliance entity, is the 33% by 2020 standard, with 20% by 2013 and reasonable progress during the intervening compliance periods. (§ 399.15(b)(1) and (2) and § 399.30(b) and (c)) Even what is deemed "reasonable progress during the intervening periods is going to be a subjective determination based on the entity at issue, as is the determination of factors regarding the provisions of § 399.30(d).

During the Workshop, Staff has also asked for input from stakeholders on a means by which to make a determination regarding a POU's compliance based on resource costs and a delay in timely compliance. First of all, if a POU adopts such measures pursuant to §§ 399.30(d)(2) and (3), the factors considered will generally be the same factors set forth in §§ 399.15(b) and (c). However, as discussed above, application of those factors must be on a utility-by-utility basis, as there is no one empirical formula that will fairly treat all utilities. In the event that the Commission feels it is necessary to further define some parameters regarding the application of those factors, the Commission should hold additional workshops or meetings to fully develop what such parameters should look like.

D. RPS Reporting Obligations Should be Coordinated with Existing Requirements.

The CEC should not promulgate separate reporting rules for RPS implementation if the sought-after information is already provided to the Commission in another form. The Workshop Staff presentation notes that the CEC will be developing new regulations regarding POU reporting. (Workshop Presentation, slide 29) Before doing so, NCPA urges the Commission to carefully review the kinds of information already provided by POU's before implementing additional reporting obligations that would serve only to generate more paper and waste POU resources to generate the documents and CEC resource to review them. Each year, the POU's submit numerous reports to the CEC that provide the agency with extensive information regarding the utilities' operations. A number of those existing reports already include the kind of information that Staff contemplates is necessary for RPS program enforcement, including the S2

Filings. If the necessary information is already included in another report, additional reporting should not be required.

E. Utilizing Existing Reporting Requirements will Minimize the Administrative Burden on Smaller POU's.

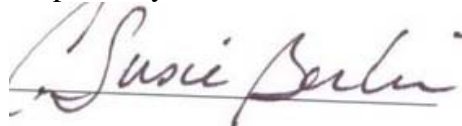
During the Workshop, CEC Staff acknowledged that smaller utilities will face a disproportionate administrative burden associated with the "paperwork" aspect of compliance with the 33% RPS legislation. One of the ways in which this burden can be minimized is by utilizing existing reporting obligations to gather the information the CEC seeks for RPS enforcement. As noted above, neither the POU's (large or small), nor the CEC is served by mandates to provide multiple and duplicative filings. Furthermore, NCPA urges the Commission to continue to allow smaller entities to provide consolidated reports, to the greatest extent possible. These measures do not adversely impact the POU's' ability to meet its RPS obligations, but do minimize additional burdens on already limited financial and personnel resources.

III. CONCLUSION

NCPA appreciates the opportunity to provide the CEC with this feedback regarding the June 17 Staff Workshop. NCPA and its members also look forward to continuing to work with the Commission as the agency develops the necessary regulations for implementation of the 33% RPS. If you have any questions regarding these comments, please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com.

July 8, 2011

Respectfully submitted,



C. Susie Berlin
MCCARTHY & BERLIN, LLP
100 W. San Fernando Street, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
Email: sberlin@mccarthylaw.com

Attorneys for the:
NORTHERN CALIFORNIA POWER AGENCY