

STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

DOCKET	
11-RPS-01	
DATE	SEP 12 2011
RECD.	SEP 12 2011

In the matter of,
Implementation Of Renewables
Portfolio Standard Legislation

Docket No. 11-RPS-01

**M-S-R PUBLIC POWER AGENCY COMMENTS ON THE
“33 PERCENT RENEWABLES PORTFOLIO STANDARD
PUBLICLY OWNED ELECTRIC UTILITY REGULATIONS CONCEPT PAPER”**

Pursuant to the California Energy Commission (Commission or CEC) Notice dated September 2, 2011, the M-S-R Public Power Agency (M-S-R) submits these comments on the August 26, 2011 *33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper* (Concept Paper).

I. INTRODUCTION

Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. As such M-S-R does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members. M-S-R pursues the development of renewable energy projects and contracts within California and outside of the State, on behalf of its member agencies who are obligated to meet the 33% renewable portfolio standard (RPS). As a joint powers agency that contracts for renewable energy resources on behalf of its members, M-S-R has a direct interest in the outcome of this proceeding and the manner in which Senate Bill (SB) X1 2 is implemented.

II. PRELIMINARY STATEMENT

M-S-R appreciates Staff’s attempt to provide guidance to POU stakeholders regarding the factors that the Commission intends to utilize as part of its enforcement program, which will be promulgated pursuant to the provisions of SBX1 2 (specifically, Public Utilities Code § 399.30(n)). In the introduction to the Concept Paper, Staff notes that the purpose of the paper is to “*explore the issues underlying the regulations specifying procedures for enforcement of the renewable portfolio standard (RPS) for publicly owned utilities (POUs).*” However, the scope of the Concept Paper goes beyond that core function as set forth in § 399.30(n).¹ The Energy Commission should look no further than the actual statutory language for purposes of establishing the procedure for POU enforcement, and it need not create additional layers of detailed definitions to accomplish this task. The role of the CEC in developing a regulation that establishes a procedure for POU enforcement of the RPS should not be confused or intertwined with the role of the CEC to verify RPS compliance for both retail sellers and publicly owned utilities, as set forth in § 399.25.²

Accordingly, factors regarding the tracking and verification are properly included in the RPS Eligibility Guidebook or appropriate guidance documents that applies to all compliance entities, and not within the regulation that should deal exclusively with “procedures for enforcement of the RPS requirements that include a public process under which the Energy Commission is authorized to issue a notice of violation and correction with respect to a local publicly owned electric utility and for referral to the State Air Resources Board for penalties.”

III. COMMENTS ON THE CONCEPT PAPER

A. FOUNDATIONAL ISSUES

a) Meaning of “consistent with” and “in the same manner as” (Public Utilities Code Sections 399.30 (c)(3), 399.30 (d) (1), 399.30 (d) (2), 399.30 (d)(3))

i) Options:

(1) Always same as those for retail sellers

(2) In spirit of rules for retail sellers; up to POU’s and Energy Commission to define for specific cases

(3) Some rules the same as those for retail sellers (for instance, definitions of portfolio content categories), and some in the spirit of the rules for retail sellers, as determined by POU’s and the Energy Commission

ii) Staff recommendation: Option (3); the law should be applied to all

¹ Unless otherwise noted, all code section references shall be to the California Public Utilities Code.

² SBX1 2 requires the Energy Commission to design and implement an accounting system to verify compliance with the RPS requirements by retail sellers and local publicly owned electric utilities, alike.

entities using the same rules to the extent practicable. In areas in which different rules apply to POU, those rules will be as consistent as possible with those for retail sellers. (In response to this particular issue, staff requests that stakeholders specify which rules should be the same for POU and retail sellers and what criteria should be used to determine “in the spirit of.” Please include rationale.)

In order to address this foundational issue, it is necessary to look specifically at the statutory language and the fact that the terms “consistent with” and “in the same manner as” are used distinctly and not interchangeably.

1. “Same Manner As”

At only one place in the regulation does the legislature direct the POU to implement their own RPS programs “in the same manner” as retail sellers, and that is specifically limited to § 399.30(d)(1) regarding the application of excess procurement. Accordingly, for purposes of determining compliance with § 399.30(d)(1), the CEC needs to look only at the requirements of § 399.13(a)(4)(B), which provides that beginning January 1, 2011, entities can apply excess procurement from one compliance period over to the next compliance period as long as they “*deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration,*” and “[i]n no event shall electricity products meeting the portfolio content of [Category 3] paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.” Since the language in the legislation clearly sets forth the requirements, there is no need for further definitions.

2. “Consistent With”

In other sections of the legislation, the legislature uses the term “consistent with.” The rules of statutory interpretation require that we view “consistent with” and “in the same matter as” as distinct terms and not use them interchangeably. “Consistent with” the provisions of another section does not mean, nor should it be inferred to mean, consistent with the California Public Utilities Commission (CPUC) interpretation or application of that section. When looking at the provisions of § 399.30 that require implementation “consistent with” another section, the CEC must look to the specific provisions of the legislation at issue, and use the statutory language as the guiding factor. Accordingly, for purposes of § 399.30(d)(2) regarding compliance delays, if the POU chooses to adopt these program elements, they must be consistent with § 399.15(b)(5), meaning that the list of factors that are reviewed based on the individual and independent circumstances of each compliance entity must be considered. It is neither necessary nor appropriate for the Commission to read anything more into this language, nor to attempt to define specific restrictions. Likewise, in § 399.30(d)(3), the

legislation allows POU's to adopt provisions to address cost limitations for expenditures. These program elements must be consistent with the program elements set forth in § 399.15(c), meaning that the POU must look to the factors set forth in the legislation, as should the Commission. In neither instance is it necessary or appropriate for the Commission to look at what the CPUC has done. All of the necessary guidance for determining whether or not the POU has acted lawfully is provided in § 399.15(b)(5) and 399.15(c). Likewise, the reference in § 399.30(c)(3) to consistent manner with § 399.16 means only that procurement requirements adopted by the POU's must be consistent with the provisions set forth in § 399.16.

Accordingly, none of the proposed options set forth in the Concept Paper are entirely correct. The Commission's statutory authority does not require (nor allow) the application of the same "rules" in any of the instances discussed above, nor does it authorize the inclusion of additional definitions for rules in the "spirit of". Rather, the specific provisions of § 399.13 offer all the guidance needed with regard to the meaning of "in the same manner," and the list of considering factors set forth in §§ 399.16, 399.15(b)(5) and 399.15(c), and 399.16 offer the needed guidance with regard to provisions that are to be "consistent with."

B. ELIGIBILITY OF RESOURCES

- i) Pre-June 1, 2010, contracts approved by POU under former Public Utilities Code 387 (Public Utilities Code Sections 399.12 (e)(1)(C))*
- ii) Options:*
 - (1) Resources must meet Energy Commission's eligibility rules at time of contract execution*
 - (2) Resources must meet the definition of renewable electric generation facility in Public Resources Code Section 25741*
 - (3) Resources must meet the Energy Commission's eligibility requirements applicable at the time the facility applies for RPS certification.*
- iii) Staff recommendation: Option (3).*

Staff's recommended Option 3 is outside the scope of the legislation, as it directly conflicts with the express provisions of § 399.16(d)(1) that provides that the rules at issue are "the rules in place as of the date when the contract was executed," and does not make a reference to the resource eligibility at the time a facility applies for RPS certification, as Staff's recommendation states. Staff's options 1 and 2 fail to incorporate the entirety of the various cross-referenced provisions at issue, including the express acknowledgment in SBX 1 2 of the differences between POU and IOU RPS programs, which were statutorily authorized prior to the passage of SBX1 2. Accordingly, resources

eligible under § 399.16(d) are those that were approved by the POU's prior to June 1, 2010, and met the POU's RPS requirements at the time of the contract execution.

C. CLASSIFICATION OF PROCUREMENT PRODUCTS

1. Portfolio Content Category 1

i) Portfolio Content Category 1 – interconnected or scheduled to a California balancing authority (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))

(1) Definition:

(a) Options (one or more of the following):

(i) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is automatically considered eligible, even if it is procured as an unbundled product or is unbundled after procurement

(ii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as and remains a bundled product

(iii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as a bundled product, even if it is subsequently unbundled

(iv) Generation scheduled into a California balancing authority is considered eligible if it is procured as a bundled product, even if it is subsequently unbundled

(v) Generation scheduled into a California balancing authority is considered eligible only if it is procured as and remains a bundled product

(vi) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as a bundled product, even if it is subsequently unbundled

(vii) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as and remains a bundled product

(b) Staff recommendation: None at this time

At a minimum, the resources should include i (Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is automatically considered eligible, even if it is procured as an unbundled product or is unbundled after procurement), iv (Generation scheduled into a California balancing authority is considered eligible if it is procured as a bundled product, even if it is subsequently unbundled), and vi (Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as a bundled product, even if it is subsequently unbundled), as well as all in-state renewable energy credits. It is important to note that the legislation

does not speak to any limitations based on whether the renewable energy credits are bundled or unbundled. Accordingly, there is no basis upon which to establish a limitation for in-state renewable energy credits in these Bucket 1 resources.

2) Minimum percentage of reduction of procurement content requirement, upon successful application by POU, applied to this category (Public Utilities Code Sections 399.16 (e) and 399.30 (c)(3))
(a) Compliance period ending December 31, 2013
(i) Options:
1. Not less than 40%
2. Not less than 33%
3. Not less than 25%
4. No defined limit; decided on a case-by-case basis
(ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.

Staff correctly notes that there is no specific limit for the first compliance period in the legislation. M-S-R agrees only with part of the Staff recommendation regarding the treatment of § 399.16(e). However, neither does the statute require that the POU submit an application to the CEC for approval upon the determination of an appropriate reduction. POU's are required to adopt procurement plans consistent with § 399.16, and in doing so, it is the POU and not the CEC, that has the authority to make the same decisions that have been granted to the CPUC in § 399.16. Accordingly, it is up to the POU to review the relevant circumstances (and to adopt measures for setting conditions that allow for delaying timely compliance per § 399.30(d)(2)) in order to determine whether or not the delay in timely compliance is warranted. If the conditions are met, there is no discretion on whether or not to grant the waiver for timely compliance, however, that determination is not made by the CEC, but rather by the POU.

2) Minimum percentage of reduction of procurement content requirement, upon successful application by POU, applied to this category (Public Utilities Code Sections 399.16 (e) and 399.30 (c)(3))
(b) Compliance period ending December 31, 2016
(i) Options:
1. Not less than 50%
2. Not less than 40%
3. Not less than 33%
4. No defined limit; decided on a case-by-case basis
(ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.

See response above; this rationale applies equally to the compliance period ending December 31, 2016.

(3) Determination that generation belongs in this category

(a) Options (one or more of the following):

- (i) POU indicates which generation it believes belongs in this category as part of compliance reporting*
- (ii) Staff determination at request of POU*
- (iii) Committee determination at request of POU*
- (iv) Commission determination at request of POU*
- (v) At end of compliance period as part of compliance and verification by staff, approved by Commission*

(b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

It is the role of the POU, under the provisions of § 399.30(c), to make the determination regarding what generation resources will apply to any of the three categories. The time for the CEC to review this determination is when the Commission verifies the POU's compliance with the program, at the end of each compliance period. The Staff's recommendation, therefore, is appropriate, to the extent that the verification is part of the overall review of compliance based on the parameters discussed herein.

2. Portfolio Content Category 2

ii) Portfolio Content Category 2 – firmed and shaped incremental (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))

(1) Definition:

M-S-R prefaces its following discussion on the notion that SBX1 2 does not grant the Commission authority to impose restrictive conditions on the definition of Category 2 resources, as the Concept Paper proposes. Furthermore, M-S-R does not believe that the regulation that addresses a procedure for enforcement is the proper place to include such restrictions, and that this discussion is outside of the authority granted to the Commission in § 399.30(n). The definition of firmed and shaped resources is set forth in § 399.16(b)(2), and the Commission's authority in § 399.30(n) does not include the ability to make this determination for the POU's, but rather to review the POU's own determination, consistent with § 399.16(b)(2).

(a) Location of renewable resource interconnection:

(i) Options:

- 1. May or may not be interconnected to a California balancing authority
- 2. Not interconnected to a California balancing authority

(ii) Staff recommendation: None at this time

Notwithstanding the fact that the Commission lacks the statutory authority to make a determination regarding the definition of Category 2 resources, M-S-R believes that the

characterization of the proposed options in the Concept Paper fail to correctly frame the issue. Category 2 resources may or may not be connected to a California balancing authority, but since eligible renewable resources connected to a California balancing authority will be eligible as a Category 1 resource, this distinction for Category 2 is not necessary.

b) Timing of incremental electricity resource scheduling into California balancing authority (scheduling may not precede generation of renewable product)

(i) Options:

- 1. Within one month of generation*
- 2. Within same calendar year as generation*
- 3. Within 12 months of generation*
- 4. Within same compliance period as generation*
- 5. Within 36 months of generation*

(ii) Staff recommendation: None at this time

The determination of the applicable timing of generation associated with the firm and shaped contracts is to be decided by the POUs as part of their implementation of § 399.30(c) and § 399.16. As a practical matter, the restriction that “scheduling may not precede generation of renewable product” is not consistent with how the transactions are scheduled into the control area; prescheduling is required to conduct these transactions, and is therefore set forth in the underlying contractual arrangements. Furthermore, when POUs make this determination, it is important that resource availability not be unduly constrained (as a one month limit would) or arbitrarily constrained (as would be the case if the timing was based solely on compliance period or a calendar year). Accordingly, M-S-R believes, that at a minimum, Category 2 resources that are firm and shaped should be counted within 12 months of generation. This is consistent with other renewable energy standards, and does not unduly restrict industry practices associated with firm and shaped renewable energy resources.

(c) Renewable resource

(i) Options:

- 1. Intermittent resources only*
- 2. Both intermittent and non-intermittent resources permitted*

(ii) Staff recommendation: None at this time

The definition of a renewable resource should not be limited by artificial factors, including a requirement that the resources be intermittent in nature. Allowing both intermittent and non-intermittent resources would more accurately reflect the various market contingencies that necessitate these kinds of transactions, such as transmission constraints.

- (d) Incremental resource*
- (i) Options:*
- 1. Incremental to California*
 - 2. Incremental to POU*
- (ii) Staff recommendation: None at this time*

M-S-R requests that staff provide further clarification regarding their use of the word “incremental” in the Concept Paper. At a minimum, the term should clarify that the resource at issue is “incremental energy.” Further, as with all matters regarding the implementation of § 399.30(c) and § 399.16, the POU determines the parameters of Category 2 resources

- (e) Location of incremental resource relative to renewable resource*
- (i) Options:*
- 1. Must be within same balancing authority*
 - 2. May or may not be within same balancing authority*
- (ii) Staff recommendation: None at this time*

M-S-R supports option 2. There are no policy reasons or operational considerations that would justify or warrant the imposition of a locational restriction based on the balancing authority area.

- (f) Execution of incremental resource contract*
- (i) Options:*
- 1. Must occur at the same time or after renewable resource contract is executed*
 - 2. May occur before, at the same time, or after renewable resource contract is executed*
- (ii) Staff recommendation: None at this time*

The Commission should embrace option 2; as long as the arrangements are linked to the underlying resource, there is no reason why the Commission should assume an interpretation that would impose other temporal restrictions.

- (g) Contractual relationship between renewable and incremental resources*
- (i) Options:*
- 1. Clear relationship must exist in contract for the renewable and/or incremental resource in order for the generation to count toward this category*
 - 2. No contractual relationship necessary*
- (ii) Staff recommendation: None at this time*

The Commission should not attempt to define all of the agreement types that could create a valid relationship between the parties. The legislation does not mandate that the firmed and shaped

resource agreements be comprised of a single relationship-type, and therefore, neither should the Commission impose one.

(2) Determination that generation belongs in this category
(a) Options (one or more of the following):
(i) POU indicates which generation it believes belongs in this category as part of compliance reporting
(ii) Staff determination at request of POU
(iii) Committee determination at request of POU
(iv) Commission determination at request of POU
(v) At end of compliance period as part of compliance and verification by staff, approved by Commission
(b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

As noted above with regard to Category 1 resources, M-S-R believes that it is the role of the POU, under the provisions of § 399.30(c), to make the determination regarding what generation resources will apply to any of the three categories. The time for the CEC to review this determination is when the Commission verifies the POU's compliance with the program, at the end of each compliance period. Staff's recommendation, therefore, is appropriate, to the extent that the verification is part of the overall review of compliance based on the parameters discussed herein.

3. Portfolio Content Category 3

iii) Portfolio Content Category 3 – all other, including unbundled renewable energy credits (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))

(1) Definition:
(a) Options:
(i) All unbundled renewable energy credits and any other generation that does not qualify for portfolio content category 1 or 2
(ii) Any generation that does not qualify for portfolio content category 1 or 2
(b) Staff recommendation: None at this time

The POU's will make the determination regarding the resources available for use in Category 3; after making their determination consistent with § 399.30(c) and § 399.16, the Commission would verify that the POU has complied with its interpretation of § 399.16. That statute does not place distinctions on resources based on whether or not the renewable energy credits are bundled or unbundled, and therefore, the resources eligible for Bucket 3 include any generation that does not qualify for Buckets 1 or 2.

- (2) Determination that generation belongs in this category*
- (a) Options (one or more of the following):*
- (i) POU indicates which generation it believes belongs in this category as part of compliance reporting*
 - (ii) Staff determination at request of POU*
 - (iii) Committee determination at request of POU*
 - (iv) Commission determination at request of POU*
 - (v) At end of compliance period as part of compliance and verification by staff, approved by Commission*
- (b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.*

As with resources used for Categories 1 and 2, it is appropriate for the POU to make this determination based on its procurement plan and for Staff to review the POU's determination to the extent that the verification is part of the overall review of compliance based on the parameters discussed herein.

D. COMPLIANCE AND VERIFICATION

1. Verification Process

- i) Options:*
- (1) Include POU verification as part of current RPS Verification Report; full report will be sent to both CPUC and ARB*
 - (a) Adopt annually*
 - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year*
 - (2) POU's have a separate verification report*
 - (a) Adopt annually*
 - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year*
- ii) Staff recommendation: Option (2)(b); Verification of POU and IOU compliance should take place under separate reports, so that a complication in verifying information from one group will not needlessly delay the timely verification of the other. As compliance can only be determined at the end of each compliance period, staff recommends only adopting a verification report after each period. For years when a report is not adopted, annual procurement data will be posted to allow tracking of progress toward RPS targets. An annual workshop could be held to publicly discuss findings.*

M-S-R concurs with Staff's recommendation that the POU verification report should be separate from the IOU verification report. Furthermore, M-S-R agrees that verification should only be done at the end of each compliance period (which would be annually after 2020).

2. Non-Compliance Triggers

- i) Options (one or more of the following):*
- (1) Does not meet procurement target requiring the utility to procure a minimum quantity of eligible renewable energy resources for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance*
 - (2) Does not meet portfolio content category required minimum or maximum percentages for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance*
 - (3) Not timely filing sufficient documentation for the Energy Commission to determine POU compliance with the law at the end of a compliance period, without successful application for a late filing*
 - (a) More than 30 days late*
 - (b) More than 60 days late*
 - (c) More than 90 days late*
 - (d) Not submitted*
 - (e) Other*
 - (4) One or more required annual reports is not received in a timely manner*
 - (a) More than 30 days late*
 - (b) More than 60 days late*
 - (c) More than 90 days late*
 - (d) Not submitted*
 - (e) Other*
 - (5) Procurement plan is adopted late*
 - (6) Does not provide adequate documentation to demonstrate that conditions exist beyond the control of the POU that would delay timely compliance, and that reasonable measures were taken to overcome those conditions*
- ii) Staff recommendation: Options (1), (2), (3)(c), (3)(d), (6); the law clearly sets targets for each compliance period and minimum and maximum percentages for each portfolio content category. Additionally, the Energy Commission will need to timely determine each POU's status in achieving the goals of the RPS targets for each compliance period and will rely on reports and documentation submitted by the POU's for those compliance years.*

M-S-R notes that Option 5 is not an appropriate option under any circumstances, since there is no statutory requirement that the POU's submit or adopt a procurement plan by a specific date. Except as clarified below, M-S-R concurs with Staff's recommendation. The reference to the "demonstration by the POU" should be revised to reflect the POU's adoption of measures that authorize a delay for timely compliance pursuant to § 399.30(d)(2) and § 399.15(b)(5). Accordingly, options 1 and 2 should be revised to read: (1) Does not meet procurement target requiring the utility to procure a minimum quantity of eligible renewable energy resources for a compliance period, ~~without a demonstration of conditions beyond the control of the POU that would delay timely compliance~~ without complying with the provisions regarding a delay in timely compliance consistent with

measures adopted pursuant to § 399.30(d)(2) and § 399.15(b)(5).” Further, as it is entirely duplicative, option 6 should be stricken.

3. Criteria and Process for Determining Whether POU's have met Procurement Requirements.

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| <ul style="list-style-type: none">i) Procurement targets for each compliance period<ul style="list-style-type: none">(1) Process used to determine POU compliance<ul style="list-style-type: none">(a) Options:<ul style="list-style-type: none">(i) Same process as that used for retail sellers(ii) Same process, but require POU's to procure renewable resources for the remaining unmet need after long-term contracts executed after June 1, 2010, are removed, up to the total number of kWhs that represents the percentage of total retail sales required for that compliance period(b) Staff recommendation: None at this time |
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Without more information, M-S-R cannot comment on whether or not a procedure employed at the California Public Utilities Commission should be used by this Commission in this context. Stakeholders need more information regarding the procedures before being able to provide substantive comments on this issue. With regard to any review process, however, the Commission must conduct this review on a utility-by-utility basis, looking at the factors adopted by each POU's as part of their procurement plans, including their treatment of resources subject to § 399.16(d).

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| <ul style="list-style-type: none">(2) Time period used to determine compliance for compliance period ending December 31, 2016 (Public Utilities Code Section 399.30 (c)(2))<ul style="list-style-type: none">(a) Options:<ul style="list-style-type: none">(i) January 1, 2016 to December 31, 2016(ii) January 1, 2014 to December 31, 2016(iii) Other time period(b) Staff recommendation: None at this time |
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The legislation clearly calls for compliance by the last date of the compliance period; for the second compliance period the appropriate date is December 31, 2016. Any other interpretation of § 399.30(c)(2) ignores the plain language of the statute that says “*achieves 25 percent of retail sales by December 31, 2016.*”

(3) Time period used to determine compliance for compliance period ending December 31, 2020 (Public Utilities Code Section 399.30 (c)(2))

(a) Options:

(i) January 1, 2020 to December 31, 2020

(ii) January 1, 2017 to December 31, 2020

(iii) Other time period

(b) Staff recommendation: None at this time

As noted above, the correct time for determining compliance is the last day of the compliance period; in this case, December 31, 2020. This is the only interpretation that is consistent with the plain language of the legislation.

ii) Percentage limitations for portfolio content categories

(1) Portfolio content category 1 (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))

(a) Options (one or more of the following):

(i) Use contract information, which could demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable resource and whether generation in this category is procured as a bundled product

(ii) Use NERC e-Tags to verify generation scheduled into a California balancing authority; the NERC e-Tag must show that the generation came from the same RPS-eligible resource as the RECs with which the NERC e-Tag is matched

(iii) Use dynamic transfer agreements to verify generation dynamically transferred to a California balancing authority

(b) Staff recommendation: Options (i), (ii), (iii); contract information would provide appropriate assurance, as needed, that generation counted toward this category is scheduled into a California balancing authority and/or bundled. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority from the renewable resource. Dynamic transfer agreements with the balancing authority sufficiently demonstrate that the generation represented belongs in this category.

It is appropriate to allow the use of a range of options to verify compliance. M-S-R supports staff's recommendation as the most appropriate way to ensure that all of the relevant resources are accurately accounted for within Category 1. However, M-S-R cautions against an over-reliance on NERC e-Tags, as they may not accurately reflect the information that is sought to be verified. M-S-R also recommends that the Commission explore the option of verifying the resources through the Western Renewable Energy Generation Identification System (WREGIS). Entities would identify their Category 1, 2, and 3 resources through WREGIS, where they can be tracked and the POU would retire the necessary number of WREGIS certifications each year to meet and demonstrate its compliance with the RPS. While M-S-R understands that there may be a need to make certain

revisions to the way in which WREGIS is currently utilized to affect this type of system, it is a viable alternative that would simplify the process.

(2) Portfolio content category 2 (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))
(a) Firmed and shaped:
(i) Options (one or more of the following):
1. Use contract information to demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable and incremental resources and/or a contractual link between the renewable resource and the incremental resource
2. Use NERC e-Tags to verify firmed and shaped generation scheduled into a California balancing authority; NERC e-Tags must include the RPS ID # of the resource with which the NERC e-Tag is matched
(ii) Staff recommendation: Options 1, 2; contract information would provide appropriate assurance, as needed, that generation counted toward this category is scheduled into a California balancing authority and/or demonstrates a contractual connection. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority and can show a link to the RPS-eligible resource via the RPS ID#.

Category 2 firmed and shaped resources should be treated in the same manner as Category 1, discussed above. Furthermore, it is important to note that the Commission does not have jurisdiction pursuant to § 399.30(n) to impose extra-statutory definitions on Category 2 resources.

(2) Portfolio content category 2 (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))
(b) Incremental:
(i) Options:
1. Contract information to demonstrate, as necessary, the timing of contract execution for and/or the contractual relationship between the renewable and incremental resources
(ii) Staff recommendation: Option 1; contractual information should be adequate to demonstrate the incremental nature of the generation that is used to firm and shape renewable generation.

There should be no distinction between the treatment of firmed and shaped and incremental energy resources within Category 2, and they should be treated in the same manner as Category 1, discussed above.

(3) Portfolio content category 3 (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))

(a) Options:

(i) Any generation that does not qualify for the first two categories is automatically counted in this category

(ii) All unbundled renewable energy credits, regardless of whether the renewable resource has its first point of interconnection with a California balancing authority, automatically count toward this category

(b) Staff recommendation: None at this time

Because all renewable generation resources located in California are eligible for Category 1, consistent with the discussion above, the first option is appropriate for purposes of reviewing resources in Category 3. For purposes of verifying the transactions, the same procedure would apply as for Categories 1 and 2.

iii) Reasonable progress in intervening years of each compliance period (Public Utilities Code Section 399.30 (c)(2))

(1) Options (one or more of the following):

(a) Summarize how POUs define their own reasonable progress without opinion

(b) Define reasonable progress in the regulations as a percentage

(c) Define the process and criteria in the regulations used to determine reasonable progress for POUs

(d) Release verified data

(i) Adopted by full Commission

(ii) Not adopted by full Commission

(e) Release unverified data

(i) Adopted by full Commission

(ii) Not adopted by full Commission

(2) Staff recommendation: Options (c), (e)(ii); statute limits the authority to mandate demonstration of specific quantities of procurement for intervening years. If a reasonable process was identified in regulations for POUs to follow in achieving their ultimate RPS achievement goals at the end of each compliance period, the Energy Commission could release unverified data submitted in the POUs' annual reports to serve as a snapshot of POU progress in intervening years.

A determination of reasonable progress is solely within the jurisdiction of the POU, and not the Commission. Imposing a single set of interim targets was rejected by the legislature, and is not included in the legislation for that very reason. Similarly, § 399.30(n) does not authorize the Commission to “[d]efine the process and criteria in the regulations used to determine reasonable progress for POUs” as staff recommends. Rather, reasonable progress is going to be very entity-specific, and a single set of criteria will not necessarily apply to all entities. It is incumbent upon all POUs to reach the mandated RPS levels during by the end each compliance period, and to make

reasonable progress in a manner that best fits the individual POU in the intervening years towards meeting those standards. It is up to the Commission to review the POUs' compliance at the end of each compliance period to verify they have complied with the provisions of the RPS. The Commission will also be able to track the POUs' progress through their annual reporting pursuant to §§ 399.30(g) and (l).

- iv) Deficits associated with a previous renewables portfolio standard (Public Utilities Code Section 399.15 (a))
- (1) Options:
- (a) No deficits shall be applied to future compliance periods if a POU procured at least 14 percent of retail sales from renewable energy resources in 2010 (from 399.15 (a))
 - (b) No deficits shall be applied to future compliance periods if a POU procured at least 10 percent of retail sales from renewable energy resources in 2010
 - (c) No deficits shall be applied to future compliance periods regardless of the percentage of retail sales procured from renewable energy resources in 2010
- (2) Staff recommendation: None at this time

The inclusion of this inquiry is inappropriate in the context of developing procedures for enforcement of the RPS for POUs, since the provisions of § 399.15(a) are not applicable to POUs. Accordingly, option c is the only option supported by the legislation.

- v) *Excess procurement from previous compliance periods (Public Utilities Code Sections 399.13 (a)(4)(B) and 399.30 (d)(1))*
- (1) When can excess procurement begin to be applied to future compliance periods, for those POUs that adopt rules permitting the use of excess procurement?*
- (a) Options:*
- (i) January 1, 2011 (date provided in 399.13(a)(4)(B))*
 - (ii) June 1, 2010*
 - (iii) Another date*
 - (iv) At the discretion of POUs*
- (b) Staff recommendation: Option (i); staff can see no compelling reason to apply a different standard from that applying to retail sellers.*

The rules governing measures that would allow a POU to carry over excess procurement from one compliance period to the next are clearly set forth in § 399.30(d)(1) and § 399.13(a)(4)(B). For POUs that have adopted such measures, as long as the adopted measures are applied in the manner set forth in § 399.13(a)(4)(B), their application is solely up to the discretion of the individual POU.

(2) Can excess procurement from portfolio content category 3 be applied toward a future compliance period, for those POU's that adopt rules permitting the use of excess procurement?

(a) Options:

(i) Yes

(ii) No (from 399.13 (a)(4)(B))

(b) Staff recommendation: Option (ii); staff can see no compelling reason to apply a different standard from that applying to retail sellers.

As noted above, as long as the POU has adopted a measure to address excess procurement and applies the rules set forth therein, as long as the adopted measures are applied in the manner set forth in § 399.13(a)(4)(B), their application is solely up to the discretion of the individual POU.

(3) Length of contracts allowed for excess procurement that can be applied to a future compliance period, for those POU's that adopt rules permitting the use of excess procurement?

(a) Options:

(i) At least 10 years (from 399.13(a)(4)(B))

(ii) At least 5 years

(iii) At least 3 years

(iv) At the discretion of POU's

(b) Staff recommendation: Option (iv); as contracts remain under the purview of POU's and are not approved by the Energy Commission, it is reasonable to leave this issue to the discretion of POU's.

As long as the POU has adopted a measure to address excess procurement and applies the rules set forth therein, as long as the adopted measures are applied in the manner set forth in § 399.13(a)(4)(B), their application is solely up to the discretion of the individual POU.

4. Conditions Allowing Waiver of Enforcement

i) Reasonable conditions that allow for delay of timely compliance (including inadequate transmission, unanticipated curtailment of resources, and permitting, interconnection or other circumstances that delay procurement), for those POU's that adopt such conditions (Public Utilities Code Sections 399.15 (b)(5)-399.15 (b)(9) and 399.30 (d)(2))

(1) Options (one or more of the following):

(a) Use the same criteria for timely compliance delays as those used for retail sellers

(b) Establish criteria in regulations by which Energy Commission will determine reasonableness of timely compliance delays; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POU's that do not meet targets

(c) Tiered compliance based on size of POU

(d) Exemption from demonstrating compliance for POU's under a certain size

(2) Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of timely compliance delays should be similar for retail sellers and POU's, there may be different considerations that need to be taken into account, requiring slight disparities. In addition, no language in the statute indicates that exemptions or variations in the rules are necessary for smaller POU's.

Approval of the waiver for delay of timely compliance is solely within the discretion of the POU, and if the conditions are met, the statute provides that the waiver “shall” be granted. If a POU adopts a measure pursuant to § 399.30(d)(2) and § 399.15(b)(5), then their compliance with that measure is the only review to be conducted by the Commission. It is inappropriate and outside of the Commission’s jurisdiction to include within the enforcement procedure criteria for evaluating the timely compliance delays, as the criteria are already set forth in the § 399.15(b)(5).

ii) Reasonable conditions that allow procurement expenditures to meet or exceed cost limitations, for those POUs that adopt such conditions (Public Utilities Code Sections 399.15 (c) and 399.30 (d)(3))

(1) Options:

(a) Use the same criteria for cost limitations as those used for retail sellers

(b) Establish criteria in regulations by which Energy Commission will determine reasonableness of cost limitations; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POUs that do not meet targets

(2) Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of exceeding cost limitations should be similar for retail sellers and POUs, there may be different considerations that need to be taken into account, requiring slight disparities.

Determinations regarding the limitations to be placed on procurement expenditures are solely within the purview of the POUs. The POUs are authorized to adopt measures to address expenditure limitations, and are provided with guidance in the legislation regarding the factors to be considered (see § 399.15(c)). While the POU measures are required to be consistent with the provisions of § 399.15(c), application of the same considerations will clearly result in different conclusions for various entities. This factor is very entity specific, and any attempt by the Commission to define criteria that go beyond what is specifically set forth in § 399.15(c), is not only outside the Commission’s authority, but inappropriate. It is also important to note that § 399.30(m) expressly clarifies that the POU retains sole discretion over both of the following: “(1) The mix of eligible renewable energy resources procured by the utility and those additional generation resources procured by the utility for purposes of ensuring resource adequacy and reliability and (2) The reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility.”

At the end of each compliance period, should a POU claim the use of the procurement expenditure limitation, the Commission would review the determination that expenditures would have exceeded cost limitations and ensure that it is consistent with the measure adopted by the POU. The

Commission may not, however, make determinations regarding the reasonableness of those limitations.

5. Dispute Resolution Process

i) If POUs dispute Energy Commission findings
(1) Options:
(a) Same process currently used for retail sellers that dispute Energy Commission findings
(b) Different process from that used for retail sellers
(2) Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that applying to retail sellers.

M-S-R requests clarification from Staff on this issue; would the dispute resolution process apply specifically to the procedures for enforcement, or to the Commission's verification process overall. If it is the former, then there may be reasons unique to the regulation being developed to incorporate a distinct dispute resolution process.

ii) If another party disputes Energy Commission findings
(1) Options:
(a) Same process outlined in the Renewable Energy Program Overall Program Guidebook
(b) Different process from that outlined in the Renewable Energy Program Overall Program Guidebook
(2) Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that presented in the RPS Guidebook.

Pending Staff's review and updating of the current procedure for third party disputes of a Commission finding, M-S-R reserves comment on this issue.

E. REPORTING

a) Regulatory streamlining
i) Options (one or more of the following):
(1) Modify existing forms submitted to the Energy Commission by POUs to reflect reporting requirements imposed by SB X1 2
(2) Allow consolidated/aggregated reports at the discretion of POUs; those whose reports are aggregated by another party must submit an attestation verifying that all of the information representing their POU is correct and complete
(3) Do not allow consolidation of reports
ii) Staff recommendation: Options (1), (2); staff feels that reporting should be streamlined in any possible way, including aggregated reports and modifications to existing reports already submitted to the Energy Commission.

M-S-R agrees with Staff's recommendation to streamline and consolidate reporting.

IV. CONCLUSION

It is important that SBX1 2 and the 33% RPS are implemented in a manner that is consistent with the legislative intent, and the clear direction set forth therein, including the distinctions between POU and IOU programs. M-S-R appreciates the opportunity to provide these comments on the Concept Paper, and looks forward to continuing to work with the Commission and its staff as the agency moves forward with updating the RPS Guidebook to reflect the statutory changes, and as it implements regulations consistent with the provisions of § 399.30(n) .

September 12, 2011

Respectfully submitted,



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