

Comments of the Center for Energy Efficiency and Renewable Technologies to the California Energy Commission on the 33% Renewables Portfolio Standard Pre-Rulemaking Draft Regulations

Docket Number 11-RPS-01

Submitted by:

Danielle Osborn Mills
Policy Director
Center for Energy Efficiency and Renewable Technologies
1100 11th Street, Suite 311
Sacramento, CA 95814
danielle@ceert.org

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The Center for Energy Efficiency and Renewable Technologies (CEERT) appreciates the opportunity to offer comments on the California Energy Commission (CEC) Draft Regulations for Publicly-Owned Electric Utilities (POUs) as part of its implementation of the 33% Renewables Portfolio Standard (RPS) under SB X1-2. Our concerns and interests fall into two distinct categories:

1. Need for consistency among all regulated entities, and in particular with the California Public Utilities Commission (CPUC) Decision Setting Procurement Quantity Requirements for RPS Compliance (D. 11-12-020) and CPUC Decision Implementing Portfolio Content Categories for the RPS Program (D. 11-12-052).
2. Need for further detail and/or information from the CEC and the California Air Resources Board (CARB) with regard to qualifying electricity products, procurement and enforcement plans, and RPS enforcement.

Need for Consistency for all Regulated Entities

As stated in our public comments at the March 1, 2012 workshop, CEERT believes that the most straightforward approach to achievement of the 33% RPS is consistent requirements across the board for all regulated entities. CEERT and a number of other stakeholders have spent quite a bit of time arguing for appropriate definitions and requirements at the CPUC and would like to see the

effort and the outcomes reflected in the CEC's regulation of POU's. While CEERT acknowledges that some differences do exist in the historical procurement and regulation of POU's versus retail sellers regulated by the CPUC, we do not believe that the differences warrant any across-the-board differences in definitions and requirements. Rather, the CEC should strive to adopt a near-identical version of the CPUC regulations, creating differences only when absolutely necessary. Given the complexity of SBX1-2 itself, and the regulations that have followed its passage, it is best not to reinvent the wheel. With that in mind, CEERT believes that consistency is particularly necessary as it relates to the portfolio content categories and the RPS procurement requirements already defined and established for retail sellers by the CPUC.

Section 3203: Portfolio Content Categories

CEERT sees no reason for the CEC to adopt even slightly different definitions for the portfolio content categories from what the CPUC adopted. Where slight differences are necessary, CEERT requests that the CEC clarify the purpose of that distinction. Small differences exist between the CPUC adopted definitions of the various portfolio content categories and the definitions included in the CEC draft regulations, which CEERT would like to highlight in these comments:

Portfolio Content Category 1

While CEERT sees no apparent disconnect in the definitions, we do note the lack of information in the CEC draft regulations regarding tracking and verification. In D. 11-12-052, the CPUC includes a lengthy discussion of tracking and verification and concludes: "It is clear, at the least, that information on e-Tags will become increasingly in demand as transactions with RPS-generation outside a California balancing authority scheduled into a California balancing authority become increasingly complex and sophisticated." The draft regulations for POU's make no suggestion as to how POU's might make an up-front showing that their resources meet the requirements of category 1. Given unresolved questions in

this area, CEERT suggests that the CEC work in close coordination with the CPUC and CARB to ensure that monitoring and verification can be useful for all regulated entities and used both for compliance with the 33% RPS program *and* the Cap-and-Trade program.

Portfolio Content Category 2

The CPUC requires firmed and shaped transactions to encompass the following elements:

1. “The buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generator;
 2. the availability of the purchased energy to the buyer (i.e., the purchased energy must not in practice be already committed to another party); and
 3. the initial contract for substitute energy is acquired no earlier than the time the RPS-eligible energy is purchased and no later than prior to the initial date of generation of the RPS-eligible energy under the terms of the contract between the buyer and the RPS-eligible generator.
- In order to count in this category, a firmed and shaped transaction must also provide "incremental electricity" that is "scheduled into a California balancing authority area."¹

CEERT sees two possibly problematic discrepancies between the CPUC and CEC requirements for category 2 resources. First, the CEC regulations do not stipulate “*without selling the energy back to the generator*” as the CPUC does in the first requirement. This is a critical distinction, and such a statement must be included in the CEC regulations. Second, there is a small difference in language between the third CPUC requirement above and Section 3203(b)(2)(c), which states: “The procurement of the substitute resource is adopted by the governing board of the POU at the same time or after the procurement for the electricity from the RPS-certified facility is adopted.” The difference in time frames allowed between the CPUC and CEC regulations creates different standards for the retail

¹ CPUC D. 11-12-052 Implementing Portfolio Content Categories for the RPS Program. http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/156060-02.htm#P164_34116. Section 3.6.1.

sellers and POUs. Therefore, CEERT suggests that the CEC modify the language to bring it in line with the CPUC's adopted requirement.

Section 3204: RPS Procurement Requirements

While the CEC suggests a number of options for reasonable progress in the years between compliance periods in Section 3204 (d), CEERT believes the draft regulations should further require procurement of renewable resources in a linear fashion in the intervening years in order to ensure steady progress toward each compliance period and ultimately 33% renewable energy. Adopting a linear trend would also bring the regulations for POUs in line with those in place for retail sellers. The CPUC has already adopted this approach, stating:

“Over all, the straight-line trend provides the most sensible approach to setting quantitative targets that represent retail sellers' ‘reasonable progress’ for the ‘intervening years’ of a compliance period. The ultimate goal of 33% of retail sales by the end of 2020 (and each year thereafter) remains...a challenging one. Encouraging steady progress toward that goal is in keeping with the legislative mandate to ensure reasonable progress.”²

Need for Additional Information Prior to Adoption of Regulations

CEERT understands that the pre-rulemaking draft regulations are, as the name implies, in draft form, and, therefore, do not encompass the CEC's final thoughts on implementation. However CEERT seeks clarity on a number of sections within the draft, specifically qualifying electricity products, procurement and enforcement plans, and penalties.

Section 3202: Qualifying Electricity Products

In Section 3202(a)(3), it is unclear which “electricity products that were procured pursuant to a contract or ownership agreement before June 1, 2010” will be

² CPUC D. 11-12-020 Setting Procurement Quantity Requirements for Renewables Portfolio Standard Compliance.
http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/154695-02.htm#P138_27660.
Section 3.5.1. Reasonable Progress in Intervening Years

eligible given the criteria of 3202(a)(3)(A and B). CEERT would appreciate further clarification of the intent and implications of these criteria.

Section 3205: Procurement and Enforcement Plans

It is CEERT's belief that with regard to Section 3205(a)(2) in the pre-rulemaking draft, each POU must submit *significant* revisions to the renewable energy resources procurement plan, including all requirements of Section 3205(a)(1) and an analysis of project viability. Requiring POUs to take a critical look at project viability rates in the previous year should help inform subsequent annual revisions to procurement plans.

Thoughtful procurement planning will be key to achieving a steady increase up to 33%, and CEERT supports annual revisions to these plans. The CEC should reserve the right to go back to the POUs with data requests if they feel that the procurement plans do not provide an adequate level of detail to decipher whether the utility will be able to meet its targets. Further, the CEC should look at procurement and compliance plans together, asking questions if procurement plans came up short of the utility appears to be off-course. The CEC's role as the enforcement agency can not only help uphold the requirements of the law, but can help guide POUs toward the most efficient and thoughtful path toward 33%.

Title 20, CCR, Section 1240: Renewables Portfolio Standard Enforcement

CEERT requests clarification of the purpose and intent of Title 20, CCR Section 1240 (b), which essentially prevents any person or organization other than Commission staff from filing a complaint for the failure of a POU to meet its RPS requirements. This section does not seem to be in line with the normal public participation accommodations made to POU customers and public interest groups and should be reconsidered.

CEERT appreciates the coordination between the CEC and CARB and suggests continued and increased collaboration throughout all phases of the implementation of the 33% RPS, including procurement and enforcement plans and compliance reporting. CEERT hopes that the CEC will not hesitate to guide the POUs toward compliance in a manner that's both equitable to California ratepayers and assures the most steady and sustainable path to 33% renewable electricity.

Conclusion

CEERT appreciates the efforts of the CEC staff and commission on its implementation of the 33% RPS and establishing enforcement capabilities over the POUs. This is a substantial undertaking for the CEC, and CEERT is looking forward to working with the agencies, utilities, and other stakeholders in finding a sustained and orderly path to compliance.