

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

California Energy Commission DOCKETED 11-RPS-01
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In the matter of:)
)
Developing Regulations and Guidelines)
for the 33 Percent Renewables Portfolio)
Standard) Docket No. 11-RPS-01
)
and) Docket No. 02-REN-1038
)
Implementation of Renewables Investment)
Plan Legislation)

COMMENTS OF THE UTILITY REFORM NETWORK AND THE COALITION OF
CALIFORNIA UTILITY EMPLOYEES ON THE PRE-RULEMAKING DRAFT
REGULATIONS FOR PUBLICLY OWNED UTILITY COMPLIANCE WITH THE
CALIFORNIA RENEWABLES PORTFOLIO STANDARD

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COMMENTS OF THE UTILITY REFORM NETWORK AND THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE PRE-RULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED UTILITY COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD

In response to the July 20, 2012 workshop notice and request for comments, The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CUE) submit these comments on the draft regulations for Publicly Owned Utility (POU) compliance with the 33% Renewable Portfolio Standard program. TURN and CUE urge the Commission to make several key changes to the draft rules to ensure that they conform to the requirements established by the California Public Utilities Commission (CPUC). Specifically, the Commission must do the following:

- Adopt procurement targets for the second and third compliance period based on the 'linear trend' approach rather than the far weaker 'stair-step' approach.
- Specify that all requests for a reduction in the portfolio balance requirements must be reviewed and approved by the Commission as part of the compliance review process.
- Allow individuals and stakeholders to file a complaint seeking enforcement against a POU.

These changes are needed to ensure critical RPS program requirements are uniform for retail sellers and POUs.

I. PROCUREMENT TARGETS MUST BE ADJUSTED TO REFLECT REASONABLE PROGRESS

The revised draft would abandon any specific requirements relating to the “reasonable progress” requirement for procurement within the second and third compliance periods. Instead, the draft includes targets for the second and third compliance periods based on a ‘stair-step’ approach that would allow POU’s to comply by maintaining a 20% renewable portfolio through 2015 and a 25% renewable portfolio from 2016-2019. This approach is not consistent with the SBx2 requirement that the targets established for each compliance period should reflect “reasonable progress in each of the intervening years” (PU Code §399.30(c)(2)). The revised draft removes all references to the “reasonable progress” requirement without any explanation.

The revised draft is inconsistent with the CPUC’s recent decision (D.11-12-020) addressing the meaning of the “reasonable progress” provision as it applies to retail sellers. In the CPUC proceeding (R.11-05-005), several parties argued for the same ‘stair-step’ approach contained in the revised Energy Commission draft. The CPUC explicitly rejected this proposal on the basis that it “would require no progress in the intervening years of a compliance period. This proposal is not consistent with the statutory standard of showing reasonable progress in intervening years and is not adopted.” (D.11-12-020, page 15). Instead, the CPUC adopted the ‘linear trend’ approach on the basis that it represents “the most sensible approach to setting quantitative targets that represent retail sellers’ ‘reasonable progress’ for the ‘intervening years’ of a compliance period.” (D.11-12-020, page 14).

The difference between these two approaches is as follows:

	2014	2015	2016	2017	2018	2019	2020
CEC	20%	20%	25%	25%	25%	25%	33%
CPUC	21.7%	23.3%	25%	27%	29%	31%	33%

The revised draft fails to provide any rationale for the adoption of targets that would not require any increase in renewable procurement for POUs (beyond 20% of retail sales) until 2016. Given the huge supply of renewable energy available in the California market, it is hard to fathom the basis for adopting such weak targets. Moreover, the impact on the development of new renewable generation will be significant.

TURN/CUE estimate that the difference between the ‘stair-step’ and ‘linear trend’ targets would result in a cumulative reduction in over 11,000 GWh of POU renewable procurement between 2014-2020.¹ For the second compliance period (2014-2016), the reduction is equivalent to almost 500 MW of new solar capacity.² For the third compliance period, the reduction is equivalent to approximately 900 MW of new solar capacity.

The Commission provides no rationale for deviating from the CPUC determinations and ignores the explicit ‘reasonable progress’ requirement that applies equally to retail sellers and POUs. It is not reasonable for two state agencies to review the exact same statutory language and reach opposite conclusions. As a result, the procurement targets violate state law. The Commission should modify the targets to adopt the ‘linear trend’ approach approved by the CPUC.

¹ This estimate assumes total 2010 retail sales of 60,317,768 GWh for all POUs with load growth of 1% per year through 2020.

² Assumes a 25% capacity factor for new solar operating in all years of the compliance period. The use of solar capacity is intended to provide a measure of the impact on intermittent resource development.

II. REDUCTIONS IN PORTFOLIO BALANCE REQUIREMENTS MUST BE SUBJECT TO COMMISSION REVIEW AND APPROVAL

Section 3206(a)(4) of the revised draft would allow a POU to unilaterally reduce its portfolio content category 1 requirement without advance CEC approval so long as the reduction does not go below 65 percent (of post-June 1, 2010 procurement) for the final compliance period. The POU need only hold a public meeting before making the change, notify the Commission 10 days in advance, include the change in its procurement plan and offer a rationale based on cost or factors beyond the control of the POU. The revised draft does not specify any process for CEC review of such a reduction or explain the possible consequences in the event that the POU unreasonably abuses this provision merely to avoid procuring category 1 products.

In its recent decision addressing this issue, the CPUC considered the statutory language and found that “a retail seller should be allowed to request a reduction of the portfolio balance requirements set by this decision only at the time the retail seller submits its annual report for the last year of the compliance period for which it seeks the reduction.” (Decision 12-06-038, Conclusion of Law 38). The CPUC determined that the request would be considered at that time.

The revised draft would instead allow a POU to unilaterally reduce the portfolio content requirements at any time without any Commission review or approval. This approach would encourage POUs to modify these requirements without any fear that they could be found out of compliance. The Commission should modify proposed section 3206(a)(4) by adding the requirement that a POU must submit any proposed reduction to the Commission as part of the compliance reports specified in section 3207(c). The Commission should review any proposal as part of compliance enforcement and independently determine whether reductions are reasonable given the facts.

Absent this change, any POU could unilaterally decide to eliminate the product category limits for the first two compliance periods without any threat that such an action will lead to a finding of noncompliance by the Commission. Such an outcome would be unacceptable and contrary to clear legislative intent. The Commission must fix this loophole and preserve its authority to review any modifications to the product category requirements.

III. COMPLAINTS AND ENFORCEMENT

Proposed Section 3208 would require that “any complaint pertaining to the enforcement of a RPS requirement” be filed in accordance with proposed Section 1240 which limits the filing of complaints to Commission staff. This section would prohibit any other stakeholder from filing a complaint against a POU. It is not clear why the Commission seeks to curtail possible complaints by consumer and environmental organizations.

The revised draft makes one modification to Section 1240(c) to clarify that other organizations may “provide oral and written comments in the proceeding”. While this addition is reasonable, it fails to accomplish the goal of allowing any member of the public to initiate a complaint alleging noncompliance with the RPS rules. The Commission should modify the draft regulations to conform to Section 1231 which allows for far greater public involvement. Rather than seeking to limit participation, the Commission should encourage stakeholders to raise concerns about POU noncompliance.

Stakeholders are often able to provide additional insights and new data that will assist the Commission in discharging its oversight responsibilities. The Commission should encourage such participation and be willing to entertain complaints filed by a range of interested parties.

Respectfully submitted,

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