

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

California Energy Commission

DOCKETED

13-RPS-01

TN # 70323

APR. 16 2013

Enforcement Procedures for
the Renewables Portfolio Standard
for Local Publicly Owned Electric Utilities

Docket No. 13-RPS-01

COMMENTS OF THE UTILITY REFORM NETWORK ON
THE ADOPTION OF REGULATIONS ESTABLISHING ENFORCEMENT
PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD
FOR LOCAL PUBLICLY OWNED UTILITIES

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April 16, 2013

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In response to the March 1, 2013 Notice of Proposed Action and request for comments, The Utility Reform Network (TURN) submits these comments on the adoption of regulations establishing enforcement procedures for the Renewables Portfolio Standard (RPS) for Local Publicly Owned Utilities (POUs). TURN urges the Commission to make several key changes to the rules to ensure that they conform to the statutory language and 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

In enacting SBx2 (Simitian), the Legislature intended to adopt equivalent renewable procurement targets for both POU's and retail sellers. These targets apply to multi-year compliance periods that require the POU or retail seller to demonstrate a cumulative quantity of procurement by the end of the compliance period. The total quantities are intended to be a function of both the final year target and the assumption of "reasonable progress in each of the intervening years" (PU Code §399.30(c)(2)).

The Commission's own initial statement of reasons acknowledges that the statutory requirements require the establishment of procurement targets that assume "reasonable progress" during the intervening years:

Specifically, SB X1-2 requires the governing board of a POU take the following actions, unless otherwise exempted by the law... The governing board of a POU shall ensure that the quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of eligible renewable energy resources achieves 25 percent of the POU's retail sales by December 31, 2016, and 33 percent of the POU's retail sales by December 31, 2020.¹

Despite the clear statutory language, and this recognition by the Commission, the POU regulations fail to adopt any specific requirements relating to the "reasonable progress" requirement for procurement within the second and third compliance periods. Instead, the regulations include targets for the second and third compliance periods based on a 'stair-step' approach that would allow (and effectively encourage) POU's to first maintain a 20% renewable portfolio through 2015 and then maintain a 25% renewable portfolio from 2016-2019. The regulations effectively delete the "reasonable progress" requirement from the POU RPS program.

¹ Initial Statement Of Reasons: Proposed Regulations Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities, page 4

The regulations are fundamentally 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 regulations. 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%

In the Initial Statement of Reasons, the Commission attempts to justify the differential procurement requirements as follows:

Public Utilities Code section 399.30 (c)(2) does not require a specific amount of procurement in each of the intervening years but provides flexibility with the goal of reaching the procurement target by the end of the compliance period. Moreover, procuring an increasing quantity of electricity products during each intervening year of a compliance period does not guarantee that a POU will meet its required procurement target by the end of a compliance period. A POU that makes reasonable progress by procuring increasing quantities of electricity products during each of the intervening years may nevertheless come up short in reaching the 25 percent target by the end of 2016. Similarly, a POU that takes reasonable actions to increase its procurement during the second compliance period, but does not necessarily increase the quantities of electricity products procured during each of the intervening years, may ultimately meet the 25 percent target by the end of 2016. In contrast, the “reasonable progress”

parameters used by the CPUC presume retail sellers are procuring increasing quantities of electricity products during each intervening year of a compliance period.... POU's are subject to the procurement requirements of Public Utilities Code section 399.30 (c), which does not include provisions similar to Public Utilities Code section 399.15 (b)(2)(C) and does not cross reference or require consistency with Public Utilities Code section 399.15 (b)(2)(C). In addition, staff determined that, in part because the POU's had not been subject to the steadily increasing annual procurement targets applied to retail sellers in 2004-2010, reasonable progress for the POU's would not necessarily follow a linear progression.²

This explanation is unsupported by the law, the facts and basic logic. The Commission suggests that there is no reason to implement the "reasonable progress" requirement because a target in an intervening year does not guarantee that the POU will meet the final year target. In making this statement, the Commission presumes that the final year target in each compliance period represents the most important demonstration of overall progress. This presumption is mistaken. The Legislature adopted multi-year targets based on the assumption that cumulative procurement is the most important demonstration of true progress. In offering this explanation, the Commission reveals its inability to grasp the rationale for multi-year targets, the basis for the "reasonable progress" requirement, or the relationship between the targets set by POU's and those enforced by the Commission.

By focusing exclusively on the importance of the final year target, the Commission fails to recognize the fact that any POU's exceeding the 'stair step' targets and demonstrating "reasonable progress" would end up with excess compliance that can be banked and applied towards the next compliance period. In other words, a POU actually satisfying the "reasonable progress" standard would gain a windfall of excess compliance that could be used to reduce its compliance obligation in the subsequent period. A POU satisfying the basic legal requirements for "reasonable progress" in one period should not be rewarded with relaxed obligations in a subsequent period.

² Initial Statement Of Reasons: Proposed Regulations Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities, page 19.

Moreover, the lack of a cross-reference between code sections is irrelevant because there is no material difference between the language establishing procurement target for POU's and retail sellers. Indeed, the Commission elsewhere acknowledges that the "reasonable progress" standard applies to POU's in their establishment of procurement targets.³ This internal inconsistency within the document demonstrates that the Commission has not resolved this issue properly.

Given the huge supply of renewable energy available in the California market, it is hard to fathom the basis for adopting the weakest possible targets for the POU's and not requiring any increase beyond 20% until 2016. The impact on the development of new renewable generation will be significant. TURN estimates 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 2014-2020.⁴ For the second compliance period (2014-2016), the reduction is equivalent to almost 500 MW of new solar capacity.⁵ For the third compliance period, the reduction is equivalent to approximately 900 MW of new solar capacity. As a result, the revised draft would result in the development of 1,400 fewer MW (solar) than would be expected under the 'linear trend' approach.

The Commission provides a weak rationale for deviating from the CPUC determinations. 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.

³ Initial Statement Of Reasons: Proposed Regulations Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities, page 4

⁴ This estimate assumes total 2010 retail sales of 60,317,768 GWh for all POU's with load growth of 1% per year through 2020.

⁵ 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 regulations 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 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 regulation does not include 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 regulations 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 and independently determine whether it is reasonable given the facts.

Absent this change, any POU could unilaterally decide to eliminate the product content

category 1 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

Section 3208 requires 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 prohibits 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 regulations therefore fail 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 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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Dated: April 16, 2013