

BEFORE THE CALIFORNIA ENERGY COMMISSION

**RULEMAKING TO ESTABLISH
ENFORCEMENT PROCEDURES FOR
RENEWABLES PORTFOLIO
STANDARD FOR PUBLICLY OWNED
ELECTRIC UTILITIES**

Docket No. 13-RPS-01

**NORTHERN CALIFORNIA POWER AGENCY COMMENTS
ON THE *SECOND 15-DAY CHANGES TO THE PROPOSED REGULATIONS FOR
ENFORCEMENT PROCEDURES FOR THE RENEWABLE PORTFOLIO STANDARD
FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES***

On May 22, 2013, the California Energy Commission (Commission) released a second round of revisions to the *Proposed Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (Second 15-Day Changes) in Rulemaking 13-RPS-01. The Proposed Regulations¹ set forth the procedures by which this Commission will enforce the 33% renewable portfolio standard (RPS) mandated by Senate Bill (SB) X1-2. Pursuant to the May 22 Notice, the Northern California Power Agency² (NCPA) provides these comments to the Commission.

NCPA submitted comments to this Commission on the Proposed Regulations that were part of the March 1, 2013 Notice of Proposed Action (NOPA) on April 16, 2013,³ and additional comments on the first round of 15-Day Changes on May 6, 2013.⁴ In each of those comments,

¹ On March 1, the Commission issued the NOPA, Initial Statement of Reasons (ISOR), the Supporting Materials for the Economic and Fiscal Impact Statement and Assessment, and the POU Cost Analysis.

² 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. Plumas-Sierra Rural Electric Cooperative is an associate member of NCPA.

³ http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/comments/45-day/NCPA_45_day_comments.pdf.

⁴ http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/comments/15-day/NCPA_5-6-2013.pdf.

NCPA raised issues of import that warrant further review and revisions prior to the adoption of the RPS Regulations. To the extent that those issues have not been addressed and corrected in the Second 15-Day Changes, NCPA urges the Commission to review the items addressed in those filings and revise the regulations accordingly.

I. THE SECOND 15-DAY CHANGES

The Second 15-Day Changes make only minimal changes to what the Commission had proposed in the April 19 revisions. NCPA supports the further clarification regarding the eligibility of resources for calculating historic carryover and the Commission's recognition of the time necessary to finalize and submit the relevant data necessary to complete the historic carryover calculations. NCPA urges the Commission to revert to the original findings regarding the applicability of procurement targets for the intervening years of the third compliance period.

II. PROCUREMENT TARGETS FOR THE THIRD COMPLIANCE PERIOD SHOULD NOT INCLUDE INCREMENTAL INCREASES IN THE YEARS 2017-2019

In the April 19 revisions, the Commission proposed – for the first time – altering the procurement targets for the third compliance period to include procurement targets for each of the intervening years of the compliance period, to be used when calculating the overall POU compliance obligation for the third compliance period. In comments on the April 19 revisions, several parties opposed this addition, noting that the proposal was not supported by the language of SBX1-2, was not legally sound, and did represent the best public policy. Other parties, however, supported the revision, primarily on the grounds that the changes were consistent with the approach that has already been adopted by the California Public Utilities Commission (CPUC) for retail sellers. Many of those same parties also advocated for imposing incremental procurement targets for each of the intervening years of the second compliance period, as well. NCPA supports the Commission's rejection of the proposals to alter the procurement targets for the second compliance period. However, the decision to retain incremental targets for the third compliance period is incorrect and should be changed.

Mandatory incremental targets are not required by SBX1-2; neither are they supported by the law nor the record in this proceeding, and as applied, would hinder long-term investments in large-scale renewable projects. NCPA urges the Commission to strike the proposed revisions to section 3204(a)(3) of the Proposed Regulations.

The language originally included in the March 1 NOPA should be retained. Advocates for interim targets base their support on the fact that the CPUC has adopted such targets for retail sellers.⁵ Simply because the CPUC acted first in implementing its own role under SBX1-2 does not justify or warrant a similar approach for the RPS Regulations for POU, and it is improper and contrary to the express provisions of SBX1-2 for this Commission to defer to conclusions reached by the CPUC. Indeed, interim procurement targets are not authorized under SBX1-2. As originally drafted, the “stair step” approach for procurement in the third compliance period properly recognized the reasonable progress requirement set forth in Public Utilities Code (PUC) section 399.30, as well as the express statutory authority granted to local governing boards of the POU to determine reasonable progress.

As originally proposed, the procurement targets for the intervening years of the second and third compliance periods properly reflected a floor of no less than the prior compliance period standard, but also required the POU to acquire **at least** 25% eligible renewable energy resources by 2016 and **at least** 33% eligible renewable energy resources by 2020, as mandated by PUC section 399.30(c). The legal analysis set forth in the ISOR clearly explained the legal basis for distinguishing between the original proposal and the position adopted by the CPUC.⁶ Neither this Commission, nor any party that has filed comments in this proceeding has provided a sustainable legal basis for a contrary finding. The statute clearly sets forth the POU’s compliance obligations in each of the three compliance periods by adopting multi-year compliance periods; those same statutory provisions refer to a quantitative target for *the final*

⁵ The CPUC adopted procurement targets for retail sellers in D.11-12-020 consistent with the authority granted to that agency under PUC section 399.15(b)(2)(B), which states: “In establishing quantities for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources . . .”

⁶ ISOR, pp. 18-19.

year of the second and third compliance periods, with no reference to interim or average targets. Accordingly, for the second and third compliance periods, interim procurement targets are neither statutorily mandated, nor necessary. Furthermore, the authority to set procurement targets in the intervening years of each compliance period vests with the POU local governing board, pursuant to PUC section 399.30(b)(2). Rules of statutory interpretation clearly support the “stair-step” procurement targets originally proposed by the CEC in the first draft of the enforcement regulation. The extensive reporting requirements set forth in the Proposed Regulations allow the Commission to track a POU’s procurement progress without the imposition of draconian targets and requiring those interim targets to be quantified is not necessary to ensure that POU’s are working toward meeting their compliance-period obligations. Finally, adopting the CPUC-like procurement targets is not appropriate for POU’s, as it fails to recognize traditional POU procurement practices and would encourage short-term contracts over long-term investments in new generation facilities.

NCPA urges the Commission to revise the current draft of the Proposed Regulations to strike the procurement targets for the intervening years of the third compliance period. SBX 1-2 does not mandate a numerical calculation or require minimum procurement requirements during the intervening years of the second and third compliance periods, and accordingly, the enforcement regulations should not impose any such targets. The current draft of the RPS regulations properly defines the interim targets for the second compliance period, and the same approach should be utilized for the third compliance period.

III. ADDITIONAL TIME FOR SUBMITTING 2011 AND 2012 PROCUREMENT INFORMATION AND HISTORIC CARRY-OVER CALCULATIONS IS WARRANTED.

NCPA supports the Commission’s determination that additional time is warranted to fully and accurately submit all necessary data and REC retirement information for purposes of determining historic carryover under section 3206(a)(5). The need to finalize any pending facility certifications at the Commission, and account for REC retirement in either WREGIS or the Commission’s Interim Tracking system can more reasonably be accomplished within 90 days of the effective date of the regulation.

Likewise, compiling the data necessary to fulfill the annual reporting requirements for 2011 and 2012 under section 3207(c) will require significant staff time. The POU's will also need the Commission to finalize all necessary reporting forms for the relevant data before this can be done. Accordingly, it is reasonable for the Commission to also allow 90 days from the effective date of the regulation for the POU's to submit the annual reports for 2011 and 2012 and NCPA urges the Commission to revise the RPS regulations to allow for this additional time.

IV. CONCLUSION

NCPA has been an active participant in this proceeding since the adoption of SBX1-2 and the Commission's initial release of a concept paper in August 2011, and appreciates all of the time and effort that has been dedicated to drafting the enforcement regulation. With the end of the first compliance period quickly approaching, NCPA recognizes that the Commission must move forward with finalizing the enforcement regulations. However, the need for expediency does not negate the need for careful analysis and deliberate steps in the implementation process. Adoption of the RPS Regulations should not be seen as the end-point of this process, but rather as the first procedural milestone in implementing the State's renewable procurement goals. NCPA looks forward to continuing to work with the Commission and its staff on implementing the enforcement regulations, including the reporting and verification procedures addressed in both the regulations and RPS-related guidebooks.

Prior to adopting the final regulations, for the reasons set forth above, and in the April 16 and May 6 comments submitted by NCPA, the Commission should revise the regulations to:

- (1) Recognize the jurisdictional authority vested in POU local governing boards;
- (2) Remove requirements for interim procurement targets during the intervening years of the third compliance period;
- (3) Strike the provisions of PUC section 399.15(d) from the requirements in section 3206(a)(5) regarding cost limitations for procurement expenditures adopted by the POU's;
- (4) Strike any references to the Commission's discretion to apply a lawfully adopted alternative compliance measure in section 3206(e); and

(5) Allow additional time after the effective date of the regulation for POUs to submit compliance reports for 2011 and 2012 procurement activities.

Respectfully submitted, this 6th day of June, 2013.



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