

BEFORE THE CALIFORNIA ENERGY COMMISSION

Rulemaking to Establish Enforcement Procedures for Renewables Portfolio Standard for Publicly Owned Electric Utilities

Docket No. 13-RPS-01

M-S-R PUBLIC 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*

The M-S-R Public Power Agency¹ (M-S-R) offers the following comments on the California Energy Commission (Commission or CEC) Second 15-Day Changes to the proposed regulations for *Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities* (Proposed Regulations).²

I. INTRODUCTION

On May 22, 2013, the Commission released a second round of revisions to the proposed regulation for implementation of Senate Bill (SB) X 1-2 (2011) and the creation of enforcement procedures for the renewable portfolio standard (RPS) for publicly owned electric utilities (POUs). M-S-R filed comments on the *February 1, 2013 Proposed Regulations*³ and the *April 19, 2013 15-Day Changes*⁴ and rather than reiterate the arguments set forth therein, M-S-R incorporates them herein.⁵

¹ 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.

² The Notice of Proposed Action (NOPA packet) included the Initial Statement of Reasons (ISOR), the Supporting Materials for the Economic and Fiscal Impact Statement and Assessment, and the POU Cost Analysis, as well as the February 2013 draft of the Proposed Regulations.

³ http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/comments/45-day/MSR_45_day_comments.pdf

⁴ http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/comments/15-day/MSR_5-6-2013.pdf.

⁵ M-S-R's members are members of the California Municipal Utilities Association (CMUA), and the cities of Redding and Santa Clara are also members of the Northern California Power Agency (NCPA). The individual M-S-R members support comments submitted to the Commission by the organizations of which they are members.

M-S-R encourages the Commission to proceed with adoption and implementation of RPS Regulations. However, prior to finalizing the regulations, M-S-R encourages the Commission to ensure that section 3204(a)(3) retains the “stair step” approach for the third compliance periods originally set forth in the February 2013 Proposed Regulations, rather than adopting changes that would impose linear procurement targets for the intervening years of the third compliance period.

II. INTERIM TARGETS FOR YEARS 2017-2019 ARE NOT APPROPRIATE

The RPS Regulations should not require procurement targets for the interim years of any compliance period. As this Commission properly concluded in the ISOR, quantitative annual targets are **not** required by the statute, nor do they guarantee that a POU will meet its compliance target at the end of the compliance period.⁶ Since SBX1-2 does not mandate interim procurement targets for the intervening years of the second and third compliance period, the language originally set forth February 2013 Proposed Regulations should be retained, and the Commission should strike the April 2013 changes to section 3204 that would add specific targets in compliance period three.

Stakeholders that advocated for a change to the interim procurement targets believe that this Commission should implement the same requirements that the California Public Utilities Commission (CPUC) adopted for retail sellers.⁷ However, this Commission should not defer to the determinations made by the CPUC merely because such a program design feature works for retail sellers. Advocates for such an approach fail to recognize not only the legal distinctions between the CPUC’s role versus that of this Commission, but also the extent to which the Legislature granted discretionary authority to the POUs in SBX1-2 to make the determination of reasonable progress during the intervening years of compliance periods two and three.⁸

Authority to establish interim targets vests with the POU governing boards pursuant to Public Utilities Code (PUC) section 399.30(b)(2), and which states that: the **governing board shall implement procurement targets** for a local publicly owned electric utility . . . (2) 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 electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31,

⁶ ISOR, p. 19.

⁷ See D.11-12-020.

⁸ ISOR, p. 19.

2020 . . . ”. This is clearly distinguished from the authority granted to the CPUC vis-à-vis retail sellers, which is found in PUC section 399.15(b)(2)(B), which *requires the CPUC* to make a determination regarding reasonable progress. Nothing in the comments filed by stakeholders acknowledges or adequately distinguishes between these distinct legal differences.

As originally set forth in the February 2013 Proposed Regulations (and reflected in the pre-rulemaking drafts of the regulation), the procurement target for compliance period three was legally valid, was based on sound public policy, and recognized many different factors that are embodied in the statute. It recognizes the nature of a multi-year compliance period; the fundamental purpose of a multi-year compliance period is to allow entities the flexibility to develop procurement strategies that best meet their individual needs, as long as those strategies result in the mandated level of renewable procurement at the end of the second and third compliance periods. Interim targets would render moot the fact that the legislation *does not* require a specific level of procurement during any intervening years. These interim targets would also negate the flexibility that should be inherent in the multi-year compliance period and fails to recognize the “lumpy” by nature of renewable procurement. Allowing entities to develop long term strategies to address this variability and incorporate those strategies into their procurement plans is crucial to the success of the program and explicitly recognized in the Legislation. The original stair-step approach is also supported by the rules of statutory interpretation, whereby it would have distinguished between the requirements imposed by PUC section 399.30(c)(1) for the first compliance period. The fact that the Legislature did require averaging of the procurement obligation for the intervening years of the first compliance periods is notably different than the language in PUC section 399.30(c)(2).

It is absolutely imperative that the RPS Regulation for POUs be based on the specific statutory requirements applicable to publicly owned utilities, which is distinguished in several materials respects from the PUC sections applicable to retail sellers. One of those distinctions applies to the discretion to adopt interim procurement targets discussed herein, and accordingly, the Commission should revise section 3204 and adopt the RPS regulations without procurement targets for the intervening years of the third compliance period.

III. ADDITIONAL TIME TO REPORT AND RETIRE RECS ASSOCIATED WITH HISTORIC CARRYOVER IS APPROPORATE

In the April 19 revisions, the Commission correctly revised the requirements regarding retirement of RECs that would be used for calculating and applying the historic carryover

provisions defined in section 3206(a)(5). M-S-R supports the Commission's further recognition in the May 22 changes that completing the necessary calculations and properly identifying and retiring the RECs at issue could require significantly more time than originally contemplated, and that allowing 90 days after the effective date of the regulation more adequately allows both the affected POU's and Commission staff the time necessary to complete these transactions. This revision recognizes that eligible renewable resource may not have been registered with WREGIS or the Commission's Interim Tracking System (ITS) during the 2004 to 2010 timeframe and further allows the Commission and stakeholders the time necessary to define the process for reporting and retiring RECs, and complete the certification process for applications currently pending before the Commission.

IV. CHANGED TERMS IN SECTION 3203(b) SHOULD BE DEFINED

In the first round of 15-day changes, the Commission proposed revisions to section 3203(b) that replaced the references to "firmed and shaped" with "matched," and replaced "substitute" with "incremental." In the May 6 comments, M-S-R advocated for greater clarification regarding these terms, as they are not common lexicon in the industry, nor are they generally defined in the Commission's various RPS-related documents (such as the RPS Eligibility Guidebook). The proposed revisions should be clarified; for example, it should be made clear that the Commission intends to require that the incremental energy be matched *with* electricity *products* from eligible renewable resources. Accordingly, section 3203 (b)(2)(B) would read, in pertinent part: "The **incremental** electricity used to **match with** the electricity **products** from the eligible renewable energy resource must be incremental to the POU." While the second 15-day changes did not include additional definitions or clarifications, M-S-R urges the Commission to work closely with stakeholders during the initial stages of implementation of the regulations to ensure that there is a single, common understanding of the terms and further ensure that characterization of portfolio content category 2 resources is not jeopardized.

V. CONCLUSION

The RPS mandate established by SBX1-2 is an important step in the State's overall energy plan. M-S-R's members have been working on implementing the various provisions since the passage of the legislation, even in the absence of a CEC regulation. M-S-R's members also complied with the statutory requirements to timely adopt procedures for enforcement of the RPS and have in place renewable energy procurement plans. Those procurement plans adhere to the statutory requirements regarding both the type and quantity of resources necessary to meet short, intermediate, and long term RPS procurement goals set forth in SBX1-2. California is

currently more than two-thirds of the way through the first compliance period; the significant divergence from the statutory requirements regarding interim compliance targets that is currently reflected in section 3204 would severely prejudice some POU's long-term procurement planning strategies. Accordingly, M-S-R strongly encourages the Commission to revise the currently proposed regulations and ensure that the procurement requirements for the third compliance period accurately reflect the statutory requirements and not impose specific targets for years 2017-2019.

The Enforcement Procedures are very important to M-S-R and its members. M-S-R appreciates the Commission's careful and deliberate review of the arguments addressed herein, as well as the issues set forth in the April 16 and May 6 M-S-R filings. To the extent that the issues raised in the previous M-S-R filings that have not been addressed and corrected in the Second 15-Day Changes, M-S-R asks the Commission to review the items addressed in those filings and revise the regulations accordingly. Finally, M-S-R urges the Commission to retain the original procurement targets for the third compliance period set forth in the February 2013 Proposed Regulations when the final regulation is adopted.

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Respectfully submitted,



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