

CALIFORNIA ENERGY COMMISSION1516 Ninth Street
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In the matter of:

Docket No. 13-RPS-01

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

Order No. 13-0612-5

California Energy Commission

DOCKETED**13-RPS-01**

TN # 71268

JUN 12 2013

ORDER ADOPTING REGULATIONS AND APPROVING NEGATIVE DECLARATION

ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

I. INTRODUCTION

The California Energy Commission hereby adopts regulations establishing enforcement procedures for the Renewables Portfolio Standard (RPS) for local publicly owned electric utilities (POUs) pursuant to Senate Bill X1-2 (SB X1-2, Stats. 2011, 1st Ex. Sess., ch. 1) and Assembly Bill 2227 (AB 2227, Stats. 2012, ch. 606, sec. 8) as codified in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. The Energy Commission adopts these regulations under the authority of Public Resources Code sections 25213 and 25218(e) and Public Utilities Code section 399.30. The regulations implement, interpret, and make specific several provisions of Public Resources Code sections 25741 and 25747, and Public Utilities Code sections 399.13, 399.15, 399.16, 399.21, 399.30, 9507 and 9508. The regulations will be codified in the California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3200 through 3208, and in Title 20, Division 2, Chapter 2, Article 4, section 1240.

The regulations establish the rules and procedures by which the Energy Commission will assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. The regulations determine what POU action is required by the law; so when the Energy Commission evaluates a POU's actions, it may determine whether the POU complied with the law. The regulations require POUs to submit various information and reports to the Energy Commission, so the Energy Commission may verify and determine compliance with the RPS, and, if appropriate, issue a notice of violation and correction for a POU's failure to comply and refer the violation to the California Air Resources Board for potential penalties.

On March 1, 2013, the Energy Commission published a Notice of Proposed Action (NOPA)¹ concerning the proposed regulations, along with the Express Terms of the proposed regulations, also referred to as the 45-day language Express Terms, and an Initial Statement of Reasons (ISOR) that explained the rationale for the proposed regulations. The Energy Commission also prepared and published its fiscal and economic analysis of the proposed regulations. The NOPA was distributed to every person and entity on the Energy Commission's Renewable Listserver, and to every person who had requested notice of such matters. The NOPA, ISOR, 45-day language Express Terms, and the fiscal and economic analysis for the proposed regulations were also posted on the Energy Commission's website.

The NOPA designated May 8, 2013, as the date for the Energy Commission hearing to consider adoption of the proposed regulations, and provided a 45-day comment period through April 16, 2013. The NOPA indicated that if substantial, sufficiently related modifications are made to the 45-day language Express Terms, the modified text with changes in underline/strikeout would be made available to the public for at least 15 days before the Energy Commission adopts the final version of the regulations.

On April 19, 2013, pursuant to the NOPA and Government Code section 11346.8, the Energy Commission published a Notice of Changes to Proposed Regulations and Notice of 15-Day Comment Period regarding changes to the text of the proposed regulations. This notice was published along with the full text of the revised proposed regulation ("15-Day Language") with the changes clearly indicated in underline/strikeout. The notice and the 15-Day Language were distributed to interested parties consistent with the NOPA and posted on the Energy Commission website. The notice provided a 15-day period through May 6, 2013, to comment on the changes to the proposed regulations. The notice identified May 8, 2013, as the date for the Energy Commission hearing to consider adoption of the proposed regulations.

On May 2, 2013, the Energy Commission notified every person and entity on the Energy Commission's Renewable listserver that consideration of the proposed regulations was being removed from the May 8, 2013, Business Meeting agenda. The notification stated that the proposed regulations would be considered at a future business meeting anticipated to be held June 5, 2013.

On May 22, 2013, pursuant to the NOPA, Government Code section 11346.8, and the notice published on April 19, 2013, the Energy Commission published a Notice of Changes to Proposed Regulations and Notice of Second 15-Day Comment Period regarding additional changes to the text of the proposed regulations. This notice was published along with the full text of the revised proposed regulation ("Second 15-Day Language") with the first 15-day language changes clearly indicated in underline/strikeout and the second 15-day language changes clearly indicated in double-underline/double-strikeout. This notice and the Second 15-Day Language was distributed to interested parties consistent with the NOPA and posted on the Energy Commission website. This notice provided a 15-day period through June 6, 2013, to comment on the additional

¹ http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/2013-03-01_NOPA.pdf

changes to the proposed regulations. The notice informed interested parties that the date of the Energy Commission hearing to consider adoption of the proposed regulations was changed to June 12, 2013.

No comments and materials in the record justify further changes to the proposed regulations as published on May 22, 2013, and reflected in the Second 15-Day Language.

II. FINDINGS

Based on the entire rulemaking record for Docket No. 13-RPS-01, the Energy Commission finds as follows:

A. SBX1-2, as amended by AB 2227. The adopted regulations:

1. Specify procedures for enforcement of the RPS for POUs pursuant to Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code;
2. Include a public process under which the Energy Commission may issue a notice of violation and correction against a POU for failure to comply with the RPS and for referring the violation to the California Air Resources Board for penalties pursuant to Public Utilities Code Section 399.30, subdivision (m).

B. The Administrative Procedure Act. The adopted regulations:

1. Will apply only to POUs as defined in Public Utilities Code section 224.3, which are local agencies and not businesses;
2. Will not result in a significant statewide adverse impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states;
3. Will not create or eliminate jobs in California;
4. Will not create new businesses, eliminate existing businesses, or have an effect on the expansion of businesses in California;
5. Will impose no costs on private persons;
6. Will impose no direct costs, or direct or indirect requirements or mandates, on state agencies or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, but do impose administrative costs on local agencies, which can be recouped through rate increases authorized by Public Utilities Code sections 10001, 11501, and 15501;

7. Will result in no costs or savings in federal funding to the State of California;
8. Will have no significant impact on housing costs;
9. Will have no significant adverse effect on businesses in general or small businesses in particular;
10. Will have no significant costs that a representative private person or business would necessarily incur in reasonable compliance with the regulations;
11. Will not directly impact the health and welfare of California residents, worker safety, or the state's environment;
12. Have no alternatives that would be more effective in carrying out the purposes of the regulations or that would be as effective and less burdensome in carrying out those purposes. The Energy Commission has considered alternatives raised by the public during the comment process.

III. ADOPTION OF NEGATIVE DECLARATION

The California Energy Commission finds, on the basis of the whole record before it, including but not limited to the Initial Study (April 2013, CEC-300-2013-007) prepared in connection with proposed regulations and published on April 5, 2013, and all public comments, that (1) there is no substantial evidence that the adoption of the proposed regulations as published in the Second 15-Day language of May 22, 2013, will have a significant effect on the environment, and (2) that the proposed Negative Declaration published with Initial Study reflects the Energy Commission's independent judgment and analysis. The Energy Commission hereby adopts the Initial Study and proposed Negative Declaration.

IV. ADOPTION OF PROPOSED REGULATIONS

The California Energy Commission, after considering the entire record, including but not limited to the adopted Initial Study and Negative Declaration, and all relevant public comments, hereby adopts the proposed regulations establishing enforcement procedures for the RPS for POUs as published in the Second 15-Day Language of May 22, 2013.

V. DELEGATION OF AUTHORITY AND DIRECTIVE TO STAFF

The California Energy Commission delegates the authority and directs Energy Commission staff to take, on behalf of the Energy Commission, all actions reasonably necessary to have the adopted regulations go into effect as soon as possible, including but not limited to, making any appropriate non-substantive, editorial-type changes to the regulations and preparing and filing all appropriate documents, such as the Final

Statement of Reasons with the Office of Administrative Law and the Notice of Determination with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the forgoing is a true and correct copy of an order duly and regularly adopted at a meeting of the Energy Commission held on June 12, 2013.

AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None



HARRIET KALLEMEYN,
Secretariat