

Attachment A: Questions to Stakeholders Concerning the 33 Percent Renewables Portfolio Standard Draft Regulations

Energy Commission staff seeks stakeholder input on the following topics to help inform decisions concerning these issues. The draft regulations will be available on the Energy Commission's Website at:

www.energy.ca.gov/portfolio/documents/index.html

California Energy Commission

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A. Consistency

Public Utilities Code (PUC) Section 399.30 (c)(3) states that local publicly owned electric utilities (POUs) shall adopt procurement requirements consistent with section 399.16 for retail sellers; PUC Section 399.30 (d)(2) states that POUs may adopt conditions that allow for delaying timely compliance, consistent with Section 399.15 (b) for retail sellers; PUC Section 399.30 (d)(3) states that POUs may adopt cost limitations for procurement expenditures, consistent with Section 399.15 (c) for retail sellers; and PUC Section 399.30 (d)(1) states that POUs may adopt rules permitting the application of excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers in Section 399.13.

In both the Energy Commission's 33 Percent Renewable Portfolio Standard (RPS) Proceeding and the California Public Utilities Commission's (CPUC) RPS Proceeding for Implementation and Administration of the California RPS, the Energy Commission and the CPUC have developed the same provisions for the POUs and retail sellers, as appropriate. Please provide responses to the following questions:

1. Should the Energy Commission determine reasonableness for cost limitations and delay of timely compliance based on the structure to be determined for retail sellers? Should rules for excess procurement for POUs also be consistent with excess procurement rules for retail sellers? If not, explain how the rules should differ. Please discuss any pertinent legal or policy arguments in support of your position.

B. Timing/Seams Issues

Public Utilities Code Section 399.30 (b)(1) states that the first compliance period for procurement of eligible renewable energy resources begins January 1, 2011. The proposed staff draft regulations state that all procurement requirements and excess procurement accrual shall begin on January 1, 2011.

Additionally, PUC Section 399.21 (a)(6) states that a Renewable Energy Credit (REC) shall not be eligible for compliance with the RPS procurement requirements unless it is retired by a retail seller or POU within 36 months from the initial date of the generation of the associated electricity.

Additionally, PUC Section 399.16 (d) states that any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward procurement requirements, if the renewable energy resource was eligible under the rules in place as of the date when the contract was executed. The proposed staff draft regulations interpret “the rules in place” to mean the rules under the *Renewables Portfolio Standard Eligibility Guidebook* as of the date when the contract was executed. The staff draft regulations also interpret “count in full” to mean that the portfolio content category percentage requirements will not apply to generation procured before June 1, 2010, and meeting the requirements of 399.16(d).

Please provide responses to the following questions:

1. Is there any reason why RECs generated before January 1, 2011, could be used for the first compliance period? Should this depend on whether the utility met its procurement target in 2010, or in years before? How would the Energy Commission verify that a POU has met these targets? How would the Energy Commission verify that a REC generated prior to January 1, 2011, has not been claimed for RPS compliance in a previous year?
2. Considering a 36 month timeframe for retiring RECs, can RECs generated under a contract approved prior to June 1, 2010, in accordance with PUC section 399.16 (d), be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?
3. Can RECs produced from contracts that were approved after June 1, 2010 be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?
4. Must electricity products be retired in the same compliance period as when they are procured to be used for compliance?

C. Exemptions

There are no provisions included in SB X1 2 that would exclude a POU from RPS requirements based on a POU's retail load or number of customers served. There are, however, provisions in the law that allow for the adoption of compliance measures, such as reasons for delay of timely compliance, cost limitations, and procurement category reductions. These measures may help reduce the impact of RPS compliance on POUs that would otherwise encounter significant impacts.

1. Are there any additional alternatives that are available and that the Energy Commission should consider to limit the burden on very small POUs?

D. Non-Compliance

PUC Section 399.30 (n) requires the Energy Commission to adopt regulations specifying procedures for enforcement of the RPS statute, and for the regulations to include a process for issuing notices of violation and correction against POU's for failing to comply.

1. How should late reporting, failure to report, or late submittal of an approved enforcement plan or procurement plan be included in findings of RPS non-compliance for a POU? How should these items be evaluated when determining reasonable progress?

E. Adoption of Enforcement Plans

Public Utilities Code Section 399.30 (e) requires a POU to adopt a program for the enforcement of the RPS statute on or before January 1, 2012. The proposed staff draft regulations state that the enforcement plan shall be revised in order to comply with the provisions of the regulations, if necessary, within 90 days of the effective date of the regulations.

1. Is 90 days after the effective date of the 33 percent RPS regulations a reasonable amount of time for a POU to adjust an enforcement plan, to comply with the provisions of the regulations? If not, what is a reasonable timeframe and why?

The proposed staff draft regulations contemplate an enforcement process whereby Energy Commission staff would verify a POU's compliance with the RPS procurement requirements through a public process as specified in the Energy Commission's RPS Guidelines. If, as part of this verification, staff determined a POU had not procured sufficient renewable energy to comply with the POU's RPS procurement requirements, or the POU had otherwise failed to comply with the Energy Commission's regulations, staff would file a complaint against the POU, which would then be considered by the Energy Commission in a public proceeding. The staff draft regulations allow only staff to file a complaint against a POU for failing to comply with the Energy Commission's regulations.

2. Should other individuals or entities be allowed under the Energy Commission's regulations to file a complaint against a POU for failing to comply with the regulations? If so, what other individuals and entities, and why? What public purpose is served by allowing these individuals and entities to file a complaint against the POU, if Energy Commission staff have already determined the POU to be in compliance?
3. If the Energy Commission initiates a public proceeding to consider a staff complaint against a POU, should other individuals or entities be allowed to intervene or otherwise be granted party status in the proceeding? If so, what other individuals or entities, and why? What public purpose is served by allowing these individuals and entities to intervene as parties in the proceeding?