STATE OF CALIFORNIA — Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 7, 2011

To: The Commission
(Meeting of March 10, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB1x 2 (Simitian) - Utilities: renewable energy resources**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH AMENDMENTS

SUMMARY OF BILL:

SBx1 2[1] would extend the current 20% renewables portfolio standard (RPS) target in 2010 to a 20% RPS through December 31, 2013, and increase the target to 25% RPS by December 31, 2016 and a 33% RPS by December 31, 2020. The bill would also make several significant changes to the RPS program, such as requiring publicly-owned electric utilities to comply with the RPS targets, modifying the cost containment mechanism, modifying the RPS compliance rules and enforcement framework, and establishing new requirements and limitations on various types of RPS transactions (such as tradable renewable energy credits [RECs]). The bill would also add significant new annual and biannual reporting requirements to the Legislature.

In addition, the bill would change the criteria the CPUC can use to evaluate utility-owned generation and transmission facilities. The bill would require the CPUC to approve a utility application to build a utility-owned renewable facility based on only two criteria. It also requires the CPUC to issue a decision within 18 months on an application for a certificate to build or upgrade an electrical transmission line, and, requires utilities to report to the CPUC on transmission upgrades needed to achieve the RPS goals.

[1] SB 23 and SBx1 2 are identical bills. SBx1 2 appears to be the vehicle the Legislature will use for implementing a 33% RPS. For clarity, this analysis will only refer to SBx1 2.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- The Commission overall should support this bill and several of the changes it makes to the RPS Program, including:
    - RPS obligations are increased to 33% in 2020.
    - RPS obligations are enforceable for publicly-owned electric utilities.
    - The proposed cost containment mechanism, which is consistent with the Commission's procurement planning process, will provide more ratepayer protections than the existing "market price referent" mechanism.
    - Delivery requirements for REC-only transactions are eliminated, which will significantly simplify and reduce the cost of these transactions.
- However, staff recommends that the Commission seek changes to language in the bill that make the program more complex or that make substantial changes to the program with little clear incremental benefit:
    - As a major shift in RPS rules, the bill would identify all excuses a retail seller can use to get out if its RPS obligations. **Identifying excuses in statute will focus retail sellers on building a case for waiving penalties rather than focusing on procuring viable renewable energy projects to achieve the RPS obligations**. In addition, as drafted, the excuses could increase the probability of litigation risk and could delay RPS progress since the language is vague and retail sellers could ask to reduce RPS obligations before the compliance periods end.
    - Provisions in the bill could **interfere with the Commission's legal obligation to consider other factors when reviewing applications:** 1) to site and construct utility-owned generation (UOG) facilities and 2) for a certificate to build or upgrade (CPCN) an electrical transmission line.
- The bill would require approximately **two dozen new RPS requirements**, which would add unnecessary administrative burden and market uncertainty. The CPUC has already adopted 40 decisions to implement the existing RPS Program, and retail sellers have procured thousands of new renewable megawatts under the current structure. The changes that would require the CPUC to revisit policies that have been demonstrated to work (e.g. minimum quota on long-term and new contracts, compliance report requirements) and to add unnecessary complexity (e.g. different banking rules for different RPS transaction types) will take several years to implement without providing incremental benefit to Californians.

SUMMARY OF SUGGESTED AMENDMENTS:

(Suggested amendments are incorporated in the "Division Analysis").

DIVISION ANALYSIS (Energy Division):

Increased RPS Requirements

Proposed Public Utilities (PU) Code Sections[2] 399.15 and 399.30 in SBx1 2 would require investor-owned utilities (IOUs), energy service providers (ESPs), community choice aggregators (CCAs) and publicly-owned utilities (POUs) to increase their procurement of renewable energy. The bill would establish three compliance periods and require that retail sellers maintain an average of 20% of their retail sales from renewables each year through December 31, 2013, procure 25% renewables no later than December 31, 2016 and 33% renewables no later than December 31, 2020. The CPUC would be required to adopt the total quantities of eligible renewable energy to be procured by all retail sellers in each compliance period by January 1, 2012.

The CPUC should support increasing the RPS beyond 20%, and making the mandate enforceable for POUs.

Suggested amendments to § 399.13

- Extend January 1, 2012 date for Commission action on new aspects of the program to January 1, 2013.
- Since RPS transactions do not require the procurement of electricity, we suggest replacing the undefined "electricity products" term that is used throughout this section to "procurement quantities," "renewable energy credits" or another defined term.

Compliance Rules

Proposed §§ 399.15(b) and 399.13(a)(4)(B) replaces the current RPS compliance rules with an entirely new compliance framework. Compliance rules include provisions for the frequency of RPS targets as well as flexible compliance rules that allow for banking excess procurement and deferring compliance deficits.

Current RPS compliance rules

The 20% RPS Program currently has annual compliance requirements. The rules allow retail sellers to "bank" excess renewable generation for future years' renewable targets. If a retail seller cannot satisfy an annual target with procurement from the current year, it can defer the shortfall for up to three years, and the deficit would be added to a future year's RPS procurement requirement meaning that the seller would have to procure that year's target plus the previous year's shortfall. A small percentage of the shortfall can be deferred without justification, and larger deficits can be deferred if a retail seller demonstrates one of the allowable reasons for noncompliance, including:

- insufficient response to the RPS solicitation
- earmarking (contracts executed in that year will provide future deliveries within three years sufficient to satisfy current year deficits),
- inadequate public goods funds to cover above-market renewable contract costs,

[2] Unless otherwise noted, all further references to sections refer to the Public Utilities Code.

- seller non-performance, or
- insufficient transmission.

After an excuse is provided to defer a deficit, it must be satisfied within three years to avoid penalties. A retail seller can make a case to the CPUC to waive penalties if it ultimately cannot fulfill the requirement. Paying a penalty does not eliminate a retail seller's obligation to fill the deficit in a future year; thus there are "compounding deficits."

Proposed 33% RPS compliance rules

SBx1 2 would instead establish a compliance framework based on multi-year compliance periods and no compounding deficits. SBx1 2 would require the CPUC to establish total procurement quantities for each compliance period, from 2011-2013; 2014-2016; and 2017-2020, such that that retail sellers must average 20% renewables through 2013; make reasonable progress each year, and achieve 25% renewables by the end of 2016 and 33% by the end of 2020. The bill would allow banking between compliance periods for generation from long-term bundled contracts, but not from short-term or REC-only transactions.

The CPUC staff supports replacing the annual RPS targets with multi-year compliance periods. This new framework acknowledges that renewable energy does not come online in an incremental linear fashion. Rather, renewable procurement is "lumpy" - when a new facility or transmission line is built, it allows a large block of new energy to come online, and this doesn't occur on a regular basis. The multi-year compliance intervals will provide retail sellers with much-needed compliance flexibility. We note that while the bill would give the CPUC some discretion to set total procurement quantities for the compliance periods, because of the detailed bill language setting targets for the end of each compliance period, the CPUC's options would be limited and the CPUC is indifferent to having this implementation requirement.

This framework would, however, reduce retail sellers' flexibility to bank generation to future compliance periods[3] and to defer all deficits for up to three years.[4] Banking rules should be the same for all RPS transactions so that ratepayers maintain the full value of all RPS procurement and to increase market liquidity. In addition, the bill already has provisions to limit the product types (i.e. short-term and REC-only transactions) that the bill would not allow to be banked, so it is not necessary to provide more limits on the same types of transactions. Lastly, it would be quite difficult to track and verify adherence to this rule.

In addition, PU Code Section 399.15(a) would not allow the CPUC to add previous 20% RPS deficits to future compliance obligations if a retail seller achieved at least 14% RPS in 2010. We interpret this provision to relieve all large utilities' existing compliance obligations, but that all small utilities and some ESPs would continue to be required to satisfy past RPS deficits. **It is unclear, however, how the CPUC would be able to**

[3] Proposed § 399.13(a)(4)(B) would allow banking between compliance periods for generation from long-term bundled contracts, but not from short-term or REC-only transactions.
[4] A retail seller would have less flexibility to defer deficits in the later years of the compliance period.

require retail sellers to satisfy past deficits since proposed § 399.15(b)(3) would not allow the CPUC to require these entities to procure renewable generation in excess of the new RPS targets. In addition, this provision would only apply to the smallest retail sellers that have had the greatest difficulties satisfying the 20% RPS, so the benefit to Californians would be minimal. Lastly, given the different flexible compliance rules between the 20% RPS Program and the proposed 33% rules in SBx1 2, it would be very complex to implement this provision.

In addition, since the bill would eliminate the obligation to make up deficits in future years, California may have less renewable energy generated in total over the next 10 years as compared to the existing program that does not waive compliance obligations when an entity pays a penalty for non-compliance.

Suggested amendments

- **Amend banking rules in § 399.13(a)(4)(B) to equalize the rules for all RPS transactions:**

  (B) Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. ~~In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.~~

- **Amend § 399.15(a) to eliminate the requirement to satisfy past deficits OR clarify how this provision should be implemented:**

  (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each compliance period to achieve the targets established under this article. ~~For any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article.~~

RPS Enforcement

SBx1 2 would require the CPUC to "waive enforcement" of RPS obligations under certain specific pre-determined conditions. The CPUC staff strongly oppose this entire provision because the proposed language would weaken retail sellers' motivation to comply with the RPS program and would limit the CPUC's ability to reasonably assess whether a retail seller is in compliance with the RPS program and whether it should or should not be penalized.

Current enforcement rules

As described above, if a retail seller does not have sufficient procurement in one year to satisfy RPS obligations, the entity can defer annual RPS compliance deficits for up to three years, so long as: 1) they provide a legitimate excuse; and 2) the retail seller procures sufficient renewables in future years to satisfy the deficit. If additional megawatts are not generated within three years to satisfy the deficit, the retail seller will be subject to penalties. After the penalty amount is assessed, retail sellers can make a case to the CPUC to reduce or waive penalties with a showing of good cause. The CPUC does not, in advance, identify what excuses can be used to waive penalties because "we have stressed the importance of all parties focusing more attention on strategies for success rather than on the nuances of compliance and penalty avoidance."[5] In addition, paying a penalty does not eliminate a retail seller's obligation to fill the deficit.

Proposed enforcement rules

Proposed §399.15(b)(5) would allow a retail seller to petition the CPUC to "waive" its enforcement authority of future RPS targets. This presumably means that the CPUC would have to consider requests to reduce future RPS targets if entities can demonstrate that meeting them is beyond their control.

The bill would require the CPUC to grant such a request if the retail seller successfully demonstrates one of the allowable excuses detailed in the bill related to inadequate transmission capacity; permitting, interconnection or other delays; or unanticipated curtailment. As drafted, the CPUC would have no discretion to consider other excuses for non-compliance. **If the CPUC waives its enforcement rights, then it can presumably neither require the retail seller to comply with future RPS targets nor penalize the retail seller for its failure to achieve the them, even if the situations change in the future that would enable them to comply.**

CPUC staff recommend seeking changes the proposed enforcement regime because:

- **Identifying excuses in statute for delaying or waiving compliance could impact a sellers' motivation for achieving RPS targets**. If the statute identifies excuses for non-compliance, retail sellers may focus on building a case

[5] D.06-10-050

for waiving penalties based on those criteria rather than focusing on procuring viable renewable energy projects to achieve the RPS obligations. This provision is contrary to the incentives we would like to provide - it would instead motivate retail sellers to be ignorant about RPS projects' viability because they would be excused from compliance for any conditions that are "beyond their control," or were "unanticipated."

- **The prescriptive and confusing language in the "excuses" provisions could create significant litigation.** The bill's detailed language would require the CPUC to conduct very specific types of assessments in reviewing a retail seller's application to reduce their compliance obligations. The language is both very specific, identifying exactly what the CPUC must assess, and contains many undefined and ambiguous terms (e.g. "inadequate transmission," "sufficient electricity," "insufficient supply" of renewable resources "available"). The combination of these factors will likely lead to contentious proceedings and increase litigation risk. Also, the CPUC would be administratively burdened because the bill would allow retail sellers to request compliance waivers years before the end of an RPS compliance period; thus, it is likely that each of the 15+ retail sellers will petition for waivers to reduce their future RPS obligations just in case they cannot comply.
- **The provision will eliminate the CPUC's discretion to determine if there are other reasonable excuses for noncompliance that arise in the future.** The bill would require the CPUC to waive its enforcement rights if a retail seller demonstrates an allowable excuse, but it would not allow the CPUC to request additional information relevant to the retail seller's situation [not sure I agree here] or allow a retail seller to make a showing about a different issue.

- **The excuses are inequitable to ESPs and CCAs, which have different business models than IOUs.** Many of the excuses are irrelevant to ESPs and CCAs, which do not generally sign power purchase agreements for RPS projects under development. In addition, the provisions would not allow ESPs or CCAs to provide evidence about other barriers that may be more specific to their situations, such as the cost of RPS compliance. The IOUs have compliance "outs" if RPS costs get too high and their cost limitations are exhausted, but the ESPs and CCAs do not..

The CPUC already has the authority to consider excuses for RPS non-compliance. We are not asserting now, and have in the past explicitly rejected the assertion, that penalties are automatic. Rather, current RPS rules allow retail sellers to make a case to reduce or eliminate penalties upon showing of good cause (D.03-12-065). SBx1 2 should be amended to authorize the CPUC to consider excuses for noncompliance proffered by retail sellers.

The enforcement provision also should be amended to allow the CPUC to consider excuses for noncompliance <u>after</u>, rather than before, a compliance period has ended. It may be impossible to know if compliance is possible in

advance. It makes more sense to allow the compliance period to play out and then allow the CPUC to assess whether the market performed as expected or whether there were deviations from the forecasts that were used to determine the RPS compliance obligations. If there are discrepancies and they were not the fault of the retail seller, it is reasonable to consider excuses for noncompliance at that later time.

Suggested Amendments to § 399.15(b)(5)

- **Eliminate § 399.15(b)(5) for all the reasons listed above. If not eliminated, the bill should be modified as follows:**

1. Modify § 399.15(b)(5) to state:

   (5) The commission ~~shall~~ may consider excuses for noncompliance ~~waive enforcement~~ of this section and may waive penalties if it finds that the retail seller has demonstrated any of the following conditions are beyond the control of the retail seller and ~~will prevent~~ have prevented compliance:

2. Modify § 399.15(b)(5)(A-C) to clarify, define or eliminate ambiguous language. For example, the existing § 399.14(a)(2)(C)(ii) has reasonable language for an excuse for insufficient transmission.[6]

Procurement Plans, Compliance Reports and Least-cost Best-fit

Proposed § 399.13 in SBx1 2 would add new requirements for the RPS procurement plans, modify the least-cost best-fit bid evaluation methodology, and would require annual compliance reports.

Current procurement and compliance report requirements

RPS statute currently requires the CPUC to direct each IOU to submit procurement plans that include assessments of supply and demand, bid solicitation documents, and provisions for using flexible compliance. The CPUC can add additional requirements for the procurement plans, as necessary to track progress with the RPS. In addition, existing statute requires that the CPUC adopt a bid evaluation methodology called 'least-cost best-fit' for utilities to use in ranking projects bid into annual RPS solicitations. The CPUC, on its own motion, developed a project viability calculator for IOUs to use in the bid evaluation process.

[6] (ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:
(I) Utilize flexible delivery points.
(II) Ensure the availability of any needed transmission capacity.
(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

While not in statute, the CPUC requires semi-annual RPS compliance reports from all retail sellers and project development status reports from electrical corporations, both due in March and August. The March report includes historic performance in the RPS program, current year targets and procurement data, and forecasts targets and procurement data for at least three years. The August report includes historic RPS performance, current year procurement data, and forecasts targets and procurement levels for each year forward through 2020.

Proposed procurement and compliance report requirements

The bill would add numerous new provisions for the CPUC to implement and for retail sellers to report. The bill would require:

1. Electrical corporations that own transmission facilities to prepare a report as part of FERC Order 890 identifying transmission needed to meet the RPS (§ 399.13(a)(2)).
2. The CPUC to modify least-cost best-fit methodology to include viability metrics and an assessment of "workforce recruitment, training, and retention efforts" (§399.13(a)(4)(A)).
3. The CPUC to develop new rules for banking (i.e. carrying forward) excess procurement from one compliance period to the next. The CPUC would have to create different banking rules with different durations and for different product types. (§ 399.13(a)(4)(B)).
4. The CPUC to adopt a minimum margin of over-procurement for each IOU (§ 399.13(a)(4)(D)).
5. The IOUs to start providing information in their procurement plans regarding potential compliance delays, status update on projects' development, mechanisms for price adjustments, an assessment of each projects' risk (§ 399.13(a)(5)).
6. The CPUC to modify our rules for requiring retail sellers to procure a minimum quantity of long-term contracts or contracts with new facilities before procuring short-term contracts with existing facilities (§ 399.13(b)).
7. The CPUC to reduce the number of compliance reports we require and change the type of information included in the report (§ 399.13(a)(3)).
8. The CPUC to develop rules for preferring "California-based projects" in RPS solicitations (§ 399.13(a)(7)).

Implementing these new provisions will require numerous new proceedings and several years of writing decisions and adopting new RPS rules. However, these new rules will not lead to new RPS generation or a more effective procurement process because they are duplicative of existing requirements, or difficult to quantify and enforce. In addition, the new provisions about requiring compliance reports may limit our ability to require the information we need to track progress and determine compliance.

Suggested amendments

We recommend amendments to eliminate or limit changes to the § 399.13. In lieu of reverting to existing statute on all of these changes, however, we suggest the following priority amendments:[7]

- **Revert § 399.13(b) regarding minimum quantities of long-term contracts to existing statutory language:** The CPUC has already implemented existing § 399.14(b) by adopting a decision that requires a minimum quantity of annual procurement from long-term and/or new contracts before a retail seller can procure short-term contracts with existing facilities. SBx1 2 would slightly modify this statutory provision (and move it to § 399.13(b)) to eliminate the mention of new contracts, which would have significant workload implications for the CPUC. Since we already have rules in place to promote long-term contracts, it is unnecessary to make this change.

- **Eliminate § 399.13(a)(2), which requires a report on transmission facilities:** This provision is largely duplicative and/or inconsistent with the current California Independent System Operator (CAISO) transmission planning process, especially the revised CAISO process that now emphasizes renewables as a basis of transmission planning and approval. As worded, the bill could undercut the effort, hard fought in the recent ISO stakeholder process and supported by the CPUC, to revise the planning process and to provide opportunities for independent transmission developers.

- **Eliminate § 399.13(a)(3), which modifies CPUC's compliance report requirements:** CPUC staff are concerned that the language proposed may limit our ability to collect the information we need to track progress and determine compliance. In general, it is more difficult to adapt to changing market conditions and RPS rules when provisions like this one are codified in statute rather than administered by the CPUC. In addition, it would only allow one report per year, and we currently require two so we can maintain up-to-date information to report to the public and Legislature.

- **Eliminate or clarify § 399.13(a)(7)), which requires preference of California-based projects:** The term "California-based projects" is ambiguous and should be defined. We would appreciate clarity on whether it refers to the geographic location of the generating facility, where the developer headquarters are located, etc. In addition, it appears to conflict with 399.11(e), which requires all generating resources to be treated "identically" regardless of location.

[7] We recommended changes to the banking provisions above and will not repeat the position here.

Cost Containment Mechanism

SBx1 2 would eliminate the current RPS Program's cost containment mechanism based on the Market-Price Referent (MPR) and replace it with a CPUC-determined cost limitation. Proposed § 399.15(c) would establish the rules for the large IOUs' cost limitations and 399.17(f) would require the CPUC to adopt cost limitations for multi-jurisdictional utilities.

Current cost containment rules

The current statute's MPR approach to cost containment has limitations. It essentially caps the amount by which a renewable energy contract's costs can exceed those of gas-fired alternatives and it only applies to a subset of renewable contracts. The above-MPR funds available to IOUs were exhausted in 2009, and IOUs have continued to voluntarily procure contracts with above-MPR prices. Currently, only large IOUs have cost limitations.

Stakeholders have reasonably questioned why there should be a cap on what the state pays for renewable energy when there is not a cap on the cost of fossil-fired power. In addition, a fossil fuel price benchmark may not be the best way to evaluate whether a renewable energy contract price is reasonable. In the present context of climate policy, the more appropriate comparison of marginal cost may be between renewable energy costs and those of other GHG reduction measures. According to the state's energy loading order, the first priority resources are energy efficiency and demand response, followed by renewable energy and then clean fossil power when it is needed to support the cleaner alternatives.

Proposed cost limitation mechanism

The CPUC staff largely supports the cost containment proposal in SBx1 2 because it is consistent with the CPUC's existing statutory obligation, in § 701.1, to ensure that the principal goal of electric utilities' resource planning is to minimize the cost to society of reliable electric services, to improve the environment, and to encourage renewable energy resources.

The bill would allow the CPUC to develop a cost limitation for each electrical corporation – large or multi-jurisdictional. The CPUC would be required to rely on three inputs: the most recent RPS procurement plans, expected procurement expenditures of renewable resources, and project delay or cancellation rates. Since the language does not appear to allow the CPUC to use additional inputs if necessary, including other types of costs or inputs from the long-term resource planning proceeding, we recommend an amendment below.

However, CPUC staff does not support developing cost limitations for multi-jurisdictional utilities. The CPUC does not generally review or approve their overall procurement decisions and very few, if any, contracts are ever signed solely for California RPS

procurement, so it is unclear what a multi-jurisdictional utility's cost limitation would apply to.

Suggested amendments

We offer a few suggested amendments to ensure that the new cost limitation can be implemented successfully:

- **Modify § 399.15(c) to provide CPUC with some discretion to use additional inputs to calculate cost limitations:**

  (c) The commission shall establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard. In establishing this limitation, the commission shall rely on the following at a minimum:
  (1) The most recent renewable energy procurement plan.
  (2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.
  (3) The potential that some planned resource additions may be delayed or canceled.

- **Eliminate § 399.17(f) to develop cost limitations for multi-jurisdictional IOUs.**

Resource Adequacy Requirements

Proposed § 399.26(d) would require the CPUC to perform an Effective Load Carrying Capacity (ELCC) study by July 1, 2011. The CPUC would be required to "use" the ELCC values "in establishing the contribution of wind and solar energy resources toward meeting the resource adequacy requirements."

CPUC staff recommend opposing this provision because it conflicts with the basic goals of the Resource Adequacy (RA) program as described in PU Code § 380. Section 380(c) provides that:

> (c) Each load-serving entity shall maintain physical generating capacity adequate to meet its load requirements, including, but not limited to, *peak demand* and planning and operating reserves. The generating capacity shall be deliverable to locations and at times as may be necessary to provide reliable electric service." (Emphasis added.)

Based on this language, the CPUC found that: "Providing assurance of dependable physical generation resource availability to the CAISO at peak demand periods is the primary focus of the RA program." (D.09-06-028, FOF 15) Because ELCC measures the contribution of a resource to reducing risk, it fundamentally measures a different attribute than the primary focus of the RA program.

If the Legislature wishes to change the focus of the RA program, it should be done in Section 380, rather than creating a significant inconsistency between 399 and 380.

Further, it is unclear if changing the focus of the RA program is a beneficial policy choice. The existing RA program is largely based around the current focus on meeting peak load; a focus on risk (using ELCC and other metrics) would require significant changes. Finally, if the CPUC is required to use ELCC, CPUC will not have the flexibility to adapt if ELCC is found to be inappropriate or unworkable, if other aspects of RA cannot be made compatible, or if other problems arise.

Feed-in Tariff

Existing PU Code § 399.20 establishes a feed-in tariff for small renewable energy generators at a price equal to the MPR and all current and anticipated environmental compliance costs. While SBx1 2 would eliminate the CPUC's responsibility for calculating the MPR for annual RPS solicitations, it would add the MPR provisions to § 399.20(d)(2), so that the CPUC must calculate an MPR for the feed-in tariff.

As suggested in the CPUC legislative analysis on proposed SB 722 last year, the MPR provisions should be deleted from the RPS code, both in the RPS solicitation and feed-in tariff sections. The feed-in tariff price should not be based on the MPR, which is a calculated cost of generation from a fossil-fueled power plant, since the feed-in tariff is for renewable projects. Instead, the CPUC recommends that a reasonable price is determined for feed-in tariff projects and proposes that § 399.20(d) be replaced with:

The tariff shall provide for payment for every kilowatthour of electricity generated by an electric generation facility using a pricing approach as to be determined by the commission for a period of 10, 15, or 20 years, as authorized by the commission.

Renewable Energy Credits (RECs)

SBx1 2 amends and renumbers § 399.16 to § 399.21 require the CPUC to approve the use of RECs and establish a set of new rules for using and trading RECs. SBx1 2 also adds a new § 399.16 to include rules for the use of RECs.

Current REC trading rules

The CPUC finalized its REC trading rules, after many years of deliberation, on March 11, 2010. After a review of petitions for modification and a corresponding stay of the March decision, trading RECs was reinstituted on January 13, 2011. The CPUC decision adopted the following TREC compliance rules for the 20% RPS Program:[8]

[8] See CPUC Decision (D.) 10-03-021 as modified by D.11-01-025. Frequently Asked Questions on the CPUC's TREC rules can be found on our website: http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/TRECs.htm.

- Definitions of bundled and REC-only transactions.
- Rules for considering all RECs generated before March 11, 2010 as bundled and classifying all RPS energy generated afterwards according to the definitions for bundled and REC-only transactions.
- RECs may be traded in the market for no more than three calendar years (inclusive of the year in which the electricity associated with the RECs was generated) after the electricity associated with the RECs was generated.
- RECs may be banked indefinitely and used for any future compliance year once committed to a retail seller's RPS compliance.
- A temporary usage limit for the 2010 through 2013 compliance years. Large utilities and ESPs may use TRECs to satisfy up to 25% of their annual RPS targets. (A special provision allowing retail sellers to exceed the cap is applied to utility contracts in effect before March 11, 2010 and ESP contracts in effect before January 13, 2010).
- A temporary price cap of $50 per REC for IOUs.

Proposed TREC rules

SBx1 2 would make many changes to the rules for defining, using, and trading RECs. The bill would:

- Identify three types of "electricity products" or RPS transaction types: "bundled," "firmed and shaped" providing "incremental energy," and "unbundled RECs". (§ 399.16(b)).
- Establish a minimum amount of a retail seller's compliance obligation that could come from bundled transactions and a maximum amount that could come from unbundled RECs. (§ 399.16(c)).
- Require any contract or ownership agreement for RECs that was originally executed before June 1, 2010 to "count in full towards the [RPS] procurement requirements" under certain conditions. (§ 399.16(d)).
- Allow a retail seller to apply for a reduction of the usage limitations if it can demonstrate that there are impediments to RPS compliance out of its control (§ 399.16(e)).
- Allow RECs to be traded in the market for up to three years from the date the underlying energy was generated (§ 399.21(a)(6)).

CPUC staff recommend supporting the direction of SBx1 2 to eliminate delivery rules for contracts that include only RECs and to more clearly define the attributes of various types of RPS transactions.

However, we suggest that SBx1 2 adopt the same definitions and basic trading rules as the CPUC TREC decision.[9] This includes the classification definitions of bundled and REC-only contracts, banking and trading rules, and grandfathering rules. The CPUC's TREC rules were thoroughly deliberated and are a reasonable compromise between competing interests. They allow CPUC staff and the market to easily distinguish between RPS contract types, which allows us to review the ratepayer value of the contracts. In addition, the CPUC's TREC framework provides retail sellers with compliance flexibility and developers with the incentive to build cost-effective renewable energy generation facilities.

In particular, SBx1 2 would make "firmed and shaped" transactions a unique category of RPS transactions, where the CPUC classifies these transactions as REC-only. From a ratepayer and technical perspective, "firmed and shaped" transactions provide exactly the same type of product as a REC-only transaction because California does not receive the energy from the renewable energy facility, but it is generally provided at a higher cost. To implement this new classification scheme, the CPUC would have to open a proceeding to define what the terms "firmed and shaped" and "incremental energy" mean, which will likely delay RPS procurement and create more market uncertainty.

Also, the CPUC established rules to ensure that the decision does not disrupt the commercial expectations for contracts that are already effective, since it took time to implement the TREC rules and some contracts that were already effective would be considered REC-only, when they include both RECs and energy, and would have the TREC rules applied to them. The bill would change these rules and allow contracts executed before June 1, 2010 to "count in full towards the [RPS] procurement requirements" under certain conditions. This language is unclear what "count in full" means. For example, it could mean that a contract that does not satisfy RPS eligibility rules or the minimum quota on long-term contracts would still be able to be used for RPS compliance, notwithstanding those rules. We do not think that this is the intent; thus it should be modified consistent with the fair and equitable rules that the CPUC established.

Lastly, § 399.16(e) should be modified or clarified. It says that a retail seller can petition the CPUC to reduce the limitations on the use of TRECs if it demonstrates that the entity cannot comply with the RPS requirements pursuant to 399.15(b)(5). The section that this provision refers to, however, would allow a retail seller to eliminate its RPS obligations if it demonstrates that it can not satisfy the targets due to situations out if its control. Consequently, it is unclear why a reduction in TRECs limits is necessary if the entity's RPS obligations are eliminated.

[9] See D.10-03-021, as modified by D.11-01-025. All documents on RECs can be found at: http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/TRECs.htm

Suggested amendments

To harmonize the CPUC's TREC rules with SBx1 2, we suggest the following amendments to § 399.16:

(a) Various ~~electricity products~~ transaction types from eligible renewable energy resources located within the WECC transmission network service area shall be eligible to comply with the renewables portfolio standard procurement requirements in Section 399.15. These ~~electricity products~~ transaction types may be differentiated by their impacts on the operation of the grid in supplying electricity, as well as, meeting the requirements of this article.

(b) Consistent with the goals of procuring the least-cost and best-fit electricity products from eligible renewable energy resources that meet project viability principles adopted by the commission pursuant to paragraph (4) of subdivision (a) of Section 399.13 and that provide the benefits set forth in Section 399.11, a balanced portfolio of eligible renewable energy resources shall be procured consisting of the following types of transactions ~~portfolio content categories~~:

~~(1) Eligible renewable energy resource electricity products~~ that meet either of the following criteria:

(1)(A) A transaction with an eligible renewable energy resource that has its ~~Have a~~ first point of interconnection with a California balancing authority, has ~~have~~ a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or is ~~are~~ scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.

(B) A transaction with an eligible renewable energy resource that has ~~Have~~ an agreement to dynamically transfer electricity to a California balancing authority.

~~(2) Firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.~~

~~(3) Eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2).~~

(2) A transaction for the procurement of only renewable energy credits and not the underlying energy from an eligible renewable energy resource.

(c) In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement credited towards each compliance period:

(1) Not less than 50 percent for the compliance period ending December 31, 2013, 65 percent for the compliance period ending December 31, 2016, and 75 percent thereafter of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (1) of subdivision (b).

~~(2) Not more than 25 percent for the compliance period ending December 31, 2013, 15 percent for the compliance period ending December 31, 2016, and 10 percent thereafter of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (3) of subdivision (b).~~

~~(3) Any renewable energy resources contracts executed on or after June 1, 2010, not subject to the limitations of paragraph (1) or (2), shall meet the product content requirements of paragraph (2) of subdivision (b).~~

~~(d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:~~

~~(1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.~~

~~(2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.~~

~~(3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.~~

~~(e) A retail seller may apply to the commission for a reduction of a procurement content requirement of subdivision (c). The commission may reduce a procurement content requirement of subdivision (c) to the extent the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15. The commission shall not, under any circumstance, reduce the obligation specified in paragraph (1) of subdivision (c) below 65 percent for any compliance obligation after December 31, 2016.~~

Utility-Owned Generation

SBx1 2 proposes to add a new PU Code § 399.14 that would require the CPUC to approve any application from a utility – comprising up to 8.25% of its retail sales - to construct, own and operate an eligible renewable resource provided only that the resource uses a viable technology at a reasonable cost and that the resource provides comparable value to ratepayers when compared to recent RPS solicitations. The proposed section may interfere with the Commission's existing legal obligation to consider other factors when reviewing an application to site and construct generation facilities, including, for example, environmental concerns, the need for the resource, and the project's consistency with the utility's procurement plan.

Suggested Amendments

1. SBx1 2's proposed new PU Code § 399.14 should be rejected.

Transmission Permitting

SBx1 2 would add a new § 1005.1 to the PU Code that would require the CPUC to issue a decision within 18 months on an application for a certificate to build or upgrade an electrical transmission line if the line would access a "high priority renewable energy zone" or "is reasonably necessary to facilitate achievement" of the RPS targets. Further, the CPUC would be required to consider several criteria (e.g. utilizing existing rights-of-way, cost-effective alternatives to transmission) in order for a project to be eligible for this 18-month fast-track review. Staff recommends eliminating this new section for the following reasons:

- This provision is duplicative of existing codes and practices. PU Code § 1701.5 already requires the CPUC to resolve the issues raised in a CPUC Scoping Memo, which sets forth the issues to be addressed in an application for certification, within 18 months of it being issued unless there are specific reasons for a later date and the assigned Commissioner agrees. Also, the provisions of § 1005.1(a)(2)(D) are already set forth in existing §1002.3.
- The criteria that this bill establishes for determining whether an application must be processed within 18 months are things that the CPUC can only determine during the review process itself, and can only rule on at the end of that process. For example, we can only make the "reasonably necessary to facilitate achievement" determination under § 1005.1.(a)(1) after the CEQA review is completed.
- The term "high priority renewable energy zone" is not a legally-defined term. It would require a CPUC proceeding to define and could result in a determination that would be need to be updated regularly as information about resource cost, environmental concerns and other information becomes available.

- If this section is not removed, the language regarding "reasonably necessary to facilitate achievement of the RPS" should be coordinated with any changes to PU Code § 399.2.5.

Suggested Amendments

SBx1 2's proposed addition of a new § 1005.1 should be rejected.

Other

Consistency with Pub. Util. Code § 365.1

Public Utilities Code Section 365.1, enacted by Senate Bill (SB) 695 (Kehoe), Stats. 2009, ch. 337, provides, among other things, for the phased and limited reopening of direct access transactions in the service territories of the three large utilities. The statute also requires that once the Commission has begun the process of reopening direct access, the Commission shall equalize RPS Program requirements between the three large utilities and ESPs.

The statute provides that the Commission shall:

> ... ensure that other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the … renewables portfolio standard provisions of Article 16 (commencing with Section 399.11)... This requirement applies notwithstanding any prior decision of the commission to the contrary. (§ 365.1(c)(1).)

The existing RPS statute, which has been in place before SB 695 was effective, has always been ambiguous about which RPS requirements apply to ESPs. Some provisions of the code mention their applicability only to electrical corporations and other aspects apply to all retail sellers. The CPUC has thus used its discretion and statutory responsibilities to provide a framework for ESPs' RPS requirements. Even though SB 695 did not make any changes to the RPS statute, it was reasonable to conclude that the Legislature intended this language to be a direction to the CPUC to do something different from what it has done. Accordingly, the CPUC revisited all RPS Program requirements to determine whether to apply them to ESPs to implement equalization of the RPS obligations of ESPs and large utilities notwithstanding our carefully considered previous decisions.

The CPUC suggests that SBx1 2 be very clear about which RPS provisions do and do not apply to ESPs. For example, proposed PU Code 399.13 continues to require only electrical corporations to file procurement plans. It is unclear whether the CPUC must continue to equalize all rules between IOUs and ESPs per § 365.1 if the RPS code continues to exclude ESPs from certain provisions. The law should be explicit about what requirements apply to whom.

Deadlines in SBx1 2 Should be Updated

Because time has elapsed since the bill language was originally drafted, it is appropriate to move certain deadlines forward by one year. For example:

1. Public Resources Code § 25741.5: The Energy Commission is directed to report to the Legislature on run-of-river hydroelectric generation facilities in British Columbia by June 30, 2011.

2. PU Code § 399.15(b)(2): Requires the CPUC to establish compliance period quantities by January 1, 2012.

3. PU Code § 399.26(d): Requires the CPUC to determine the effective load carrying capacity of wind and solar energy resources on the electrical grid, by July 1, 2011.

Relationship to the 33% Renewable Energy Standard (RES) Program

If SBx1 2 is passed by the Legislature and signed by the Governor, this state law should unambiguously be California's 33% renewable energy program. Accordingly, SBx1 2 should include a clause to supersede any 33% renewable energy regulation adopted by the California Air Resources Board.

PROGRAM BACKGROUND

The RPS program was adopted in SB 1078 (2002), and subsequently modified by SB 107 (2006) and SB 1036 (2007). The CPUC is statutorily responsible for 1) requiring each utility to submit an RPS Procurement Plan, 2) adopting a pricing benchmark to evaluate RPS contracts, 3) adopting a process that utilities must use to evaluate renewable energy projects bid into their solicitations, 4) adopting RPS compliance rules, 5) reviewing and approving or rejecting utilities' RPS contracts, and 6) reporting to the Legislature, on a quarterly basis, on the RPS program. The CPUC has adopted approximately 40 decisions to implement these aspects of the RPS program and has approved over 140 RPS contracts for approximately 12,000 megawatts (1,000 megawatts of which have already begun delivering RPS-eligible energy).

The CPUC has also become involved in other activities to improve the RPS program, to coordinate agencies statewide to facilitate renewable energy development in California, and to provide robust information to the public and Legislature on the progress of the RPS program and the trends in the renewable energy market. For example, the CPUC initiated the Renewable Energy Transmission Initiative (RETI), and involved the CEC, CAISO, developers, and environmental groups in order to facilitate statewide renewable transmission planning for new renewable energy projects. We maintain numerous databases of project characteristics and viability and produce robust analyses on the barriers facing renewable energy development. We also completed an analysis of the

feasibility and cost of a 33% RPS, which provides a more robust understanding of the barriers and solutions for reaching a higher RPS target in California.

LEGISLATIVE HISTORY:

In 2009, the Legislature passed SB 14 (Simitian) and AB 64 (Krekorian) to implement a 33% RPS standard and comprehensive RPS Program reform. The Governor vetoed both bills. In 2010, SB 722 was offered to address these same issues, but the Legislative session ended before a final vote took place.

FISCAL IMPACT: This bill would require ten additional positions at $1,206,263, plus $1 million per year for RPS program evaluation and technical assistance, for an annual cost of $2,206,263. One PURA IV and three PURA Vs would be needed for the RPS team to implement 33% by 2020 RPS mandate; and one Utilities Engineer, one PURA IV, two PURA Vs would be needed for the transmission team to meet the one-year deadline for permitting transmission lines while processing more complex applications due to 33% mandate. A total of two ALJ II positions are needed for the RPS and transmission proceedings to implement the numerous new bill provisions.

STATUS:

SBx1 2 passed the Senate and Assembly Utilities and Commerce Committee, and is awaiting action in the Assembly Natural Resources Committee.

SUPPORT/OPPOSITION (based on March 3, 2010 Utilities and Commerce Committee Analysis):

Support:

3Degrees
Abengoa Solar
AES
American Lung Association in California
American Wind Energy Association
Amonix
Applied Materials
BrightSource Energy
California Association of Sanitation Agencies (CASA)
California Biomass Energy Alliance (CBEA)
California Center for Sustainable Energy
California Interfaith Power & Light
California Labor Federation
California Municipal Utilities Association (CMUA) (if amended)
California State Association of Electrical Workers
California State Pipe Trades Council

California Wind Energy Association (CalWEA)
Calpine Corporation
Catholic Charities Diocese of Stockton
Clean power Campaign
CleanTech San Diego
Coalition of California Utility Employees (CCUE)
Division of Ratepayer Advocates (DRA)
Element Power
Energy Independence Now (EIN)
Environmental Defense Fund
Environmental Entrepreneurs (E2)
enXco
First Solar
FRV Renewables
FuelCell Energy
GE Energy
Horizon Wind Energy
Iberdrola Renewables
Independent Energy Producers Association
Infinia
Large-Scale Solar Association (LSA)
League of California Cities (if amended)
LS Power Development, LLC
Natural Resources Defense Council (NRDC)
NextEra Energy Resources
Northern California Power Agency (NCPA)
NRG
Oak Creek Energy Systems, Inc.
Ormat Technologies
Recurrent Energy Suntech
San Diego Gas and Electric (SDG&E)
San Joaquin Valley Regional Green Jobs Coalition
Sanitation Districts of Los Angeles County
Schott Solar
Sempra Energy Utilities
Sierra Club California
Solar Millennium
Southern California Edison
Southern California Gas Company
State Building and Construction Trades Council of California
SunPower
Terra-Gen Power
Tessera Solar
The Solar Alliance
Union of Concerned Scientists
Vestas-American Wind Technology, Inc.

Vote Solar
Western States Council of Sheet Metal Workers
Western Power Trading Forum (WPTF) (if amended)

Opposition

Air Liquide Industrial U.S. LP
Air Products and Chemicals, Inc.
Alliance for Retail Energy Markets (AReM)
Anheuser Busch
California Alliance for Choice in Energy Solutions
California Business Properties Association
California Grocers Association
California Large Energy Consumers Association (CLECA)
California League of Food Processors
California Manufacturers & Technology Association (CMTA)
California Retailers Association
California Steel Industries, Inc.
CalPortland Company
CEMEX California Cement
Chemical Industry Council of California
Direct Energy Services, LLC
Kinder Morgan Energy Partners
Lehigh Hanson
Linde
Mitsubishi Cement Corporation
National Cement Corporation
Pacific Gas and Electric Company (PG&E) (unless amended)
Praxair, Inc.
Schnitzer Steel Industries
School Project for Utility Rate Reduction
Specialty Minerals, Inc.
TXI Riverside Cement
Western States Petroleum Association

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