

Public Workshop

May 5, 2016

Renewables Portfolio Standard Enforcement Regulation

Governing Legislation

- Senate Bills 2 and 350
- ARB has an enforcement role in RPS program
 - **Public Utilities Code Section 399.30(p):** *Upon a determination of the Energy Commission that a local publicly owned electric utility has failed to comply with this article, the Energy Commission shall refer the failure to comply with this article to the State Air Resources Board, which may impose penalties to enforce this article consistent with Part 6 (commencing with Section 38580) of Division 25.5 of the Health and Safety Code. Any penalties imposed shall be comparable to those adopted by the commission for noncompliance by retail sellers.*

Major SB 2 Amendments

- State RPS program compliance provisions applicable to POUs
- New RPS procurement targets for POUs and retail sellers through 2020:
 - 20% by December 31, 2013
 - 25% by December 31, 2016
 - 33% by December 31, 2020
- Three portfolio “content categories” and “balance requirements” for eligible electricity products used for RPS compliance
- New planning and reporting requirements for POU adopted RPS programs
- CEC and ARB have RPS program enforcement authority over POUs

Major SB 350 Amendments

- RPS Program targets for POUs and retail sellers through 2030:
 - 40% by December 31, 2024
 - 45% by December 31, 2027
 - 50% by December 31, 2030
- Provisions affecting issues related to: cost limitations, compliance delays, excess procurement calculations, long-term contracting, penalty schedules, green program pricing, and hydropower exemptions
- CEC and CPUC may need to modify their regulations/programs to address these changes

Potential RPS Violations

- CEC complaints could be issued for the following potential violations:
 - Failure to meet RPS procurement targets
 - Failure to meet portfolio balance requirements
 - Failure to adopt procurement or enforcement plans, or meet other notice and disclosure requirements
 - Failure to submit complete annual or compliance reports, or other required reports or documentation

CEC Enforcement Process

- Section 1240 of CEC's adopted regulation establishes enforcement process for POU's
- Creates public process for CEC to issue and adjudicate RPS compliance complaints and refer notice of violation (NOV) to ARB
- Only CEC staff may file a complaint, but public may participate in verification process and complaint proceeding

CEC Enforcement Process

- Creates process for a POU to “answer” a complaint and CEC staff to “respond” prior to public hearing
- Hearing held by full commission or designee; if designee, decision forwarded to full commission
- Establishes process by which POUs may challenge commission decision in court
- NOV referral to ARB finalizes process if CEC finds violation

CPUC Penalty Process

- Citation program for all retail sellers failing to file complete procurement and compliance activity reports
- Penalties based on evaluation of several factors, conditions, and deficiency calculations
- Penalty of \$50/REC for portfolio target deficiencies or balance requirement shortfalls
- Where both REC target and balance requirement shortfalls exist, penalty is based on the higher amount.

CPUC Penalty Caps

- IOU penalty caps
 - \$75 million for first and second compliance periods
 - \$100 million for third compliance period
 - \$25 million for each year after 2020
- Penalty cap for other retail sellers set at \$50/REC times 50% of the RECs required for the compliance period.

Proposed ARB Regulation

- Builds on CEC's Enforcement Process (Section 1240 of CEC's adopted regulation)
- CEC notice of violation decision, along with the proceedings record, would be referred to ARB for penalty determination
- ARB will treat CEC's violation determination as fact

Proposed ARB Regulation con't

- Referred CEC decision may include a suggested penalty and findings for the application of mitigating or aggravating factors
- ARB will independently determine penalty based on Health and Safety Code Section 38580 and “comparability” to CPUC penalties for retail sellers
- ARB would use normal enforcement authority and policies

Amendments to Draft Regulation

- Adds new “Enforcement Process” section to draft regulation
- POU Notification
 - ARB to provide written notice concerning start of process
- Supplemental Information
 - POU's may submit information not contained in CEC record
 - ARB may request other information from POU's
 - ARB will not re-evaluate CEC's violation decision

Amendments to Draft Regulation

- Clarifies “Penalty Determination” section of regulation
- CPUC Comparability
 - Clarifies case-by-case determination will be used
 - Common features and circumstances of POU and any retail seller violations considered
- ARB Determination
 - ARB to independently determine penalty amount
 - ARB will consider CEC proceeding record (including any mitigating/aggravating factors and suggested penalties), and any supplemental POU information provided

Regulation Development Schedule

February 4, 2016	——	1 st Public workshop
May 5, 2016	——	2 nd Public workshop
Spring 2016	——	Start of formal 45-day public review period for proposed regulation
Summer of 2016	——	ARB Board Meeting

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