

Proposed Renewable Portfolio Standard Program **Enforcement Regulation**

Adopt new sections 60095, 60096, and 60097, Article 7, Subchapter 1.25, Chapter 1, Division 3, Title 17, California Code of Regulations to read as follows:

[Note: All of the text below is new language to be added to the California Code of Regulations]

Article 7. Imposition of Penalties for Violations of the Renewables Portfolio Standard by Local Publicly Owned Electric Utilities.

§ 60095. Purpose.

The purpose of this regulation is to implement section 399.30, subdivision (p) of the Public Utilities Code.

NOTE: Authority cited: Sections 39516, 39600 and 39601, Health and Safety Code; and Section 399.30, Public Utilities Code. Reference: Sections 38580, 39516, 42402, 42402.1, 42402.2, 42402.3, 42402.4, and 42403, Health and Safety Code; and Section 399.30, Public Utilities Code.

§ 60096. Referral of Notice of Violation by the California Energy Commission.

A referral of a notice of violation by the California Energy Commission pursuant to California Code of Regulations, title 20, section 1240, subdivision (h) shall be directed to the attention of the Executive Officer of the California Air Resources Board (Board). The Executive Officer may impose penalties pursuant to the authority delegated by and consistent with this Article.

NOTE: Authority cited: Sections 39516, 39600 and 39601, Health and Safety Code; and Section 399.30, Public Utilities Code. Reference: Sections 38580, 39516, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42403, and 43024, Health and Safety Code; and Section 399.30, Public Utilities Code.

§ 60097. Enforcement Process.

- (a) Upon receipt of the entire record of proceedings required to be delivered pursuant to California Code of Regulations, title 20, section 1240, subdivision (h), the Executive Officer shall promptly provide written notice to the affected local publicly owned electric utility of such referral and the commencement of the Board's enforcement process under this Article.
- (b) The record developed by the California Energy Commission in determining that a violation has occurred shall be considered as fact by the Board and shall not be subject to further review.

- (c) The Executive Officer shall provide the affected local publicly owned electric utility with the opportunity to submit information relevant to the penalty determination in addition to that contained in the record transmitted by the California Energy Commission. Relevant information, includes, but is not limited to information relevant to any of the factors set forth in Health and Safety Code sections 42403, 43024, or otherwise relevant to the Board's implementation of Public Utilities Code Section 399.30, subdivision (p). The local publicly owned electric utility will have 30 calendar days from the date of the referral notification under section 60097(a) to provide all relevant information. The Executive Officer may request additional information during the penalty determination process.
- (d) In implementing this Article, the Executive Officer will utilize the Board's enforcement authority and policies.

NOTE: Authority cited: Sections 38580, 39516, 39600, 39601, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42403, and 43024, Health and Safety Code; and Section 399.30 (p), Public Utilities Code. Reference: Sections 38580, 39516, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42403, and 43024, Health and Safety Code; and Section 399.30, Public Utilities Code.

§ 60098. Determination of Penalty.

- (a) The Executive Officer may determine a civil penalty for some or all violations set out in the notice of violation in a manner consistent with Part 6 (commencing with section 38580) of Division 25.5 of the Health and Safety Code. Any civil penalty imposed shall be comparable, but not necessarily identical to any relevant penalties adopted by the California Public Utilities Commission for noncompliance by retail sellers. Comparability is a case-by-case determination based on the circumstances of a violation and any other common features of both the affected local publicly owned electric utility and retail sellers.
- (b) In determining whether a civil penalty should be imposed or the amount of such civil penalty if a civil penalty is to be imposed, the Executive Officer shall make an independent determination based upon all relevant evidence, including but not limited to the record of proceedings transmitted by the California Energy Commission, any recommendations of the California Energy Commission, and information submitted by the affected local publicly owned electric utility pursuant to section 60097(c) of this Article.

NOTE: Authority cited: Sections 38580, 39516, 39600, 39601, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42403, and 43024, Health and Safety Code; and Section 399.30, Public Utilities Code. Reference: Sections 38580, 39516, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42403, and 43024, Health and Safety Code; and Section 399.30, Public Utilities Code.