

BEFORE THE AIR RESOURCES
BOARD OF THE STATE OF
CALIFORNIA

In the matter of:

*CARB's Enforcement Policy Amendment for
Renewables Portfolio Standard*

) RE: CARB's Draft Enforcement Policy
) Amendment for Renewables Portfolio
) Standard.
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**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) TO THE
CALIFORNIA AIR RESOURCES BOARD (CARB) ON ENFORCEMENT POLICY AMENDMENT FOR
RENEWABLES PORTFOLIO STANDARD**

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Dated: November 4, 2019

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LADWP appreciates the opportunity to review and comment on the CARB's amendment of its Enforcement Policy to include Renewables Portfolio Standard procedures specific to local publicly owned electric utilities (POUs).

The City of Los Angeles (City of LA) is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a proprietary department of the City of LA, pursuant to the Los Angeles City Charter, whose governing structure includes a mayor, a fifteen-member City Council, and a five-member Board of Water and Power Commissioners. LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation's largest municipal utility, serving a population of over four million people within a 465 square mile service territory that covers the City of Los Angeles and portions of the Owens Valley. LADWP's mission is to provide clean, reliable water and power in a safe, environmentally responsible, and cost-effective manner.

Below are LADWP's comments on CARB's Draft *Enforcement Policy - Appendix F* which is dated October 7, 2019.

SPECIFIC COMMENTS

1. In the draft CARB Enforcement Policy, it states that “CARB may use HSC Section 42400 et seq. to determine and collect penalties.” However, the generally referenced Health and Safety Code sections include language that the violator is guilty of a misdemeanor and is subject to a fine or imprisonment. For example, section 42400 subsection (a) states:

“(a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or both.” (emphasis added)

Please confirm that CARB will not seek criminal enforcement for violations by POUs of the RPS.

2. LADWP requests a more defined penalty cap for large POUs. The amendment references the \$25 million per year cap that is set by the CPUC for Investor Owned Utilities (IOUs). A penalty cap of \$25 million per year for POUs, however, would not be comparable when differences in scale between POUs and IOUs are taken into account. LADWP requests that CARB considers a penalty cap that proportional to the size of the utility. For example, LADWP’s load is roughly 34.5% that of Southern California Edison. Thus, LADWP’s proportional penalty cap would be approximately \$8.6 million per year of the compliance period, with approximately \$29 million (3 * \$8.6 million) for a three year compliance period. A defined penalty cap would further deter RPS non-compliance by allowing entities to better understand their risk exposure.
3. The “Investigation and Referral to CARB” section of *Appendix F* states that “CARB will accept as settled and final CEC’s determinations of noncompliance and the facts relied upon to support such determinations within its referral.” LADWP requests that, in regards to applications for Optional Compliance Measures (OCM) that are rejected by the CEC, in whole or in part, that CARB will conduct an independent review of the OCM to determine mitigating factors to any penalty.
4. LADWP requests that CARB add language to clarify the timeframe and potentially a time limit that CARB will abide by in assessing its penalty for RPS non-compliance. Per California Code of Civil Procedure Section 338 (k), this time limit is three years beginning with “the discovery of the State Air Resources Board... of the facts constituting grounds for commencing the action under its jurisdiction”. It is reasonable to interpret the date of discovery as the date on which the CEC finds the POU in violation of the RPS since the CEC is statutorily obligated to refer the violation to CARB. The statute specifically states “upon a determination by the Energy Commission” that a

POU has failed to comply with Article 16, which is also already emphasized in Appendix F. (PUC Section 399.30 (o)(1)). Therefore, the time should commence on the date of determination. LADWP requests that this be written within Appendix F for clarity.

5. LADWP asks that CARB consider a penalty diminishment factor based on the amount of time that has elapsed since the compliance report is filed. The purpose of the penalty is to act as deterrence for RPS non-compliance. If an excessive amount of time has passed, however, it is likely that the violating entity has already taken steps to mitigate the non-compliance or even corrected it entirely for compliance periods that followed. It is reasonable to conclude that the effectiveness of a monetary penalty as a deterrent diminishes with time, and in the absence of a deterrent effect, a large monetary penalty can only serve to unnecessarily burden ratepayers. LADWP proposes this penalty diminishment factor be a 10% reduction per year with the duration being calculated from the due date of the POU RPS compliance period report to when the year when the penalty is assessed to the entity.

If 10 years have passed since the end of the compliance period in which the entity was found by CEC to be noncompliant and a penalty has not been assessed, no penalty should be assessed. This would prevent a situation where CARB must assess a penalty based on a stale claim and would allow for both CARB and the entity to move forward.

6. The CPUC has stated in Rulemaking 11-05-005 that it shall set the “total penalty for shortfall in RECs needed to meet both PQR and PBR as the larger of the penalty for PQR shortfall alone or PBR shortfall alone”. LADWP requests that CARB add language to Appendix F that clarifies whether or not CARB will take the same approach in assessing a penalty comparable to what the CPUC would assess.
7. LADWP suggests CARB add a POU equivalent of table F-1 to the amendment. LADWP further suggests that the fine amount be written as “up to \$X per day” in this table in order to preserve CARB’s discretion.
8. LADWP suggests CARB consider having a process for RPS non-compliant entities to procure additional RECs in a subsequent compliance period as a way to reduce penalty amounts. That is, once the penalty is assessed, an option for a POU should include the ability to procure RECs in excess of its current obligations as an alternate to paying the assessed penalty. This process would incentivize entities to procure renewable energy above and beyond their RPS obligations.

CONCLUSION

In closing, LADWP appreciates the opportunity to participate in the development of CARB's RPS Enforcement Policy and looks forward to continue working with the CARB to help shape effective regulations and associated policies that will benefit the health, safety, and security of all California residents. If you have any questions, please contact myself at (213) 367-2525, or Mr. Scott Hirashima at (213) 367-0852.

Respectfully Submitted,

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