

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration, and Consider
Further Development, of California Renewables
Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON THE PROPOSED DECISION REGARDING
SB 350 PROVISIONS ON PENALTIES AND WAIVERS IN THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

INDEPENDENT ENERGY PRODUCERS
ASSOCIATION

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The Independent Energy Producers Association (IEP) is pleased to comment on the Proposed Decision (PD), issued on May 1, 2018, implementing Senate Bill (SB) 350's provisions on penalties and waivers in the Renewables Portfolio Standard (RPS) program and denying the petition for modification of Decision (D.) 17-06-026 filed by Shell Energy North America.

IEP commented previously that the Commission should employ a penalty and waiver program that incents actual RPS procurement rather than incent retail sellers to pay penalties or, in the alternative, seek to defer their procurement obligations. We remarked that the Commission should not establish a penalty/waiver environment in which retail sellers conclude it is more desirable to pay a penalty to meet RPS obligations rather than engage in the actual procurement of RPS-eligible resources including renewable energy credits (RECs). Moreover, the Commission should not weaken the penalty schedule currently in place or expand the conditions for granting waivers. Rather, the Commission should consider instituting a program

that automatically increases the penalty schedule whenever the incidence of retail sellers paying the penalty measurably increases, indicating retail sellers' preference to pay the penalty rather than conduct an actual RPS procurement.

IEP supports the PD. However, we raise a slight concern regarding the PD's determination that the greenhouse gas (GHG) effects of waiving RPS compliance obligations should be based on a retail seller's overall emission cap set in the Cap and Trade (Program, rather than the emissions associated with the procurement of replacement power. IEP discusses the PD in greater detail below.

I. PENALTIES AND WAIVERS

Overall, the PD determines that the most reasonable path forward is to integrate SB 350 into the on-going RPS penalty and waiver scheme, rather than revisit that scheme for purposes of SB 350 implementation. As a result, the PD declines to change the existing penalty and waiver structure. IEP concurs with the PD's reasoning and final determinations on this matter. However, as noted above, we recommend reconsideration of the methodology for assessing the GHG impacts of granting a waiver request.

A. Penalties

The PD determines that the existing RPS penalty scheme is consistent with and applicable to meet SB 350's direction to the Commission to adopt a "schedule of penalties." As noted by the PD, the current penalty scheme applies to all Commission jurisdictional retail sellers subject to the RPS. The current scheme has a time component, a predetermined penalty amount (\$50/REC), and a maximum penalty amount (\$25 million/year). The PD notes that lowering the current penalty level will undermine compliance by creating an economic

disincentive to comply.¹ Moreover, the PD correctly points out that the purpose of the RPS enforcement rules is to incentivize compliance, i.e., to incentivize actual RPS procurement to meet retail seller obligations.² IEP fully concurs with these observations and conclusions. Moreover, IEP notes that the Commission has ample authority to revisit the issue of penalties in the future if the evidence suggests retail sellers are relying increasingly on alternative compliance mechanisms (e.g., penalty payments) rather than procurement to meet their RPS obligations.

B. Waivers

Currently, a retail seller's waiver request under Public Utilities Code Section 399.15(b)(5)(C) must show (a) that an unanticipated curtailment of eligible renewable resources occurred and (b) that the waiver, if granted, would not result in an increase in GHG emissions. Moreover, the retail seller must demonstrate that actual sales exceeded prior forecasts and that the retail seller has taken reasonable measure to procure sufficient resources to account for the unanticipated increase.³ Finally, the merits of a retail seller's waiver request will be determined by the Commission on a case-by-case basis.⁴

The PD also concludes that nothing prescribed in SB 350 warrants modifications of the Commission's existing rules as expressed in Ordering Paragraphs 2-13 of D.14-12-023. The Commission has the authority to determine the merits of individual retail seller waiver requests on a case-by-case. However, the PD sets additional standards for the submission of a waiver request by a retail seller. The waiver request must include a description of the curtailment event, the reason for the curtailment event, and the reason why the curtailment event

¹ PD, p. 9.

² Ibid, p. 10.

³ Ibid, p. 16.

⁴ Ibid, p. 18.

was unanticipated. In addition, in the waiver request the retail seller must address whether any replacement energy was available, the extent to which the retail seller procured replacement energy, and whether any increased GHG emissions occurred (or are expected to occur) associated with the curtailment that is the rationale for the waiver request.⁵

IEP generally supports the PD with regard to the determinations referenced above. Moreover, the additional standards proposed in the PD reflect a reasonable and prudent request for information needed to determine the merits of a retail seller's waiver request.

Finally, the PD determines that all retail sellers must annually demonstrate that transportation electrification is quantitatively accounted for in their RPS plans. Moreover, the PD determines that all retail sellers must explicitly reference forecast transportation electrification in their procurement plans, accompanied with detailed description of data and methods underlying retail settler' forecasts. IEP agrees with the PD on the need to integrate forecasts of transportation electrification in their RPS Plans. Electrification of the transportation sector is a critical step in achieving SB 350 carbon-reduction goals. As a result, the electrification of the transportation sector will drive total retail sales and, thus, is directly linked to RPS procurement as a percentage of retail sales. The linkage of electrification of the transportation with RPS procurement is direct and clear. The pace of electrification of the transportation sector ought not be a surprise and, therefore, it does not justify a waiver in RPS procurement barring extraordinary circumstances that will be considered on a case-by-case basis.

On the other hand, IEP believes the PD errs when it determines that the increased GHG emissions related to a retail seller's waiver request ought to be measured against the retail seller's total covered emissions compliance obligation in the Cap-and-Trade Program.⁶ The

⁵ Ibid, p. 19.

⁶ Ibid, p. 19.

PD's approach, while designed to simplify administration and implementation of the RPS program (with regards to waiver requests), has the effect of de-linking the GHG impact assessment from the decision to purchase RPS-eligible energy. For example, a retail seller's covered emissions compliance obligation may well include emissions associated with the electrification of transportation. The covered emissions may be so large, the retail seller reasonably may conclude that it is simpler to avoid RPS procurement because any increase in associated GHG emissions may easily be accommodated.

To avoid what might be a prudent decision to avoid RPS procurement and the associated increase in GHG emissions, the GHG emissions "test" must be directly linked to GHG emissions associated with the procurement of energy replacing the "lost" RPS energy. To accomplish this, the Commission need only establish the geographic area within which the replacement energy derives, e.g., within a service territory, within California, or within the Western Electricity Coordinating Council (WECC). (In prior comments, IEP supported using the WECC as the basis for this assessment.) Retail sellers have ample information available to them to empirically demonstrate in its waiver request that its decision to avoid RPS procurement does not and will not result in higher GHG emissions associated with energy procurement.

II. PETITION FOR MODIFICATION

Shell Energy North America filed a petition to modify D.17-06-026 (Shell Petition). The Shell Petition sought to change the rules of RPS counting to enable a retail seller to count against its specific RPS obligation for long-term RPS contracting the long-term contracts entered into by its discrete retail customers. In addition, the Shell Petition sought to enable "re-packaged" portions of long-term contracts to count toward an individual LSE's RPS obligation. In response, because these issues were addressed and determined in D.17-06-026, the PD denies the Shell Petition.

IEP supports the PD's determination with regard to the Shell Petition for the reasons presented in the PD. The issues have been fully litigated elsewhere.

Respectfully submitted May 21, 2018 at San Francisco, California.

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

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