

**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 ALJ RULING REGARDING SB 350  
PROVISIONS ON PENALTIES AND WAIVERS IN THE  
RENEWABLES PORTFOLIO STANDARD**

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The Independent Energy Producers Association (IEP) is pleased to respond to the Administrative Law Judge's Ruling (Ruling) requesting comments on implementing provisions of SB 350 related to penalties and waivers associated with the renewables portfolio standard (RPS). Below, IEP provides a brief overview of its preferred approach to the treatment of penalties and waivers in the context of the RPS. Following these comments, we respond to specific questions posed in the Ruling.

The Commission's consideration of penalties and waiver provisions in light of SB 350 is timely. In Decision 14-12-023 the Commission adopted a schedule of penalties that have proven successful in incenting RPS compliance through procurement rather than through the option of paying a penalty. That is a good outcome. We note with some concern, however, an increase lately in Motions filed by retail sellers seeking waivers from their RPS obligations, avoidance of

any penalty, and/or deferral of their obligation.<sup>1</sup> Without taking a position on the Motions at this time, the Motions appear to represent a growing incidence of retail sellers seeking waivers from the RPS compliance/procurement obligations; waivers from any penalties that would otherwise be imposed; and/or, a deferral of the procurement obligations.

As the Commission considers penalties and waivers in light of SB 350, it is critical that the Commission 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 obligation(s). Accordingly, 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 RECs. The Commission should not weaken the penalty schedule currently in place nor 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, thereby indicating an preference on behalf of retail sellers to pay the penalty rather than conduct an actual RPS procurement.

Below, IEP provides answers to questions posed in the Ruling.

**I. Regarding 2.1 Penalties:**

***1. The existing penalties for RPS noncompliance as adopted in D.14-12-023 can be represented as a schedule, shown in Attachment 2. What, if any changes, would you***

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<sup>1</sup> Motion of Liberty Power Holdings LLC for a Waiver of the Renewables Portfolio Standard Compliance Period 1 Procurement Quantity Requirement, or, in the Alternative, to Defer its Renewables Portfolio Standard Compliance Period 1 Procurement Quantity Requirement Shortfall Until a Subsequent Compliance Period and for Hearing If Necessary (Filed January 19, 2018). Motion of Gexa Energy California, LLC for a Waiver of the Renewables Portfolio Standard Procurement Quantity Requirement for Compliance Period 1 and Requesting Evidentiary Hearings [Filed January 19, 2018)

***recommend to this schedule?*** The Schedule presented in Attachment 2 should apply to all compliance periods through at least 2030. All retail sellers should be subject to equivalent penalties for not meeting the adopted schedule.

***2. D.14-12-023 maintained the penalty amount of \$50 per renewable energy credit (REC).***

***Should that penalty amount be changed? If so, how and for what reason?*** Actual procurement of viable renewables lessens GHG emissions, not necessarily the payment of a penalty for non-procurement. Accordingly, the Commission should not lessen the existing penalties for non-compliance. The evidence suggests that the penalty schedule is incenting timely RPS procurement among retail sellers generally given the relative limited amount of waiver requests submitted by retail sellers to date. If, however, the incidence of non-compliance by retail sellers increases and/or the incidence of waiver requests increases, then the Commission should act expeditiously to increase the penalty(s) to a level that will incent actual procurement. Were the incidence of non-compliance to increase, IEP recommends setting the penalty for non-compliance at 200% of the market-price for renewable energy as evidenced by the median price of renewable energy clearing the last Commission-authorized RPS auction.

***3. Should the penalty amounts vary according to other factors, such as Portfolio Balance Requirement (PBR) or Procurement Quantity Requirement (PQR)? If so, how?*** At this point, the evidence does not warrant imposing penalty amounts that vary by PBR and PQR.

***4. Should the schedule of penalties include escalations for the length or severity of noncompliance? If so, please provide a recommended framework and include reasoning for***

*your proposal.* Yes. Deficits in retail seller PQR amounts are determined at the end of the Compliance Period (currently 3-year terms). Penalties are paid and/or waiver requests submitted within 30 days of the Executive Director's determination of compliance (D. 14-12-023, Ordering Para #16). For every quarter that transpires after the Executive Director's determination of compliance, during which the retail failed to pay its penalty and/or achieve a waiver, then the penalty should increase automatically by 25 percent per quarter as a tool to incent compliance in a timely manner.

***5. D. 14-12-023 set a cap on penalties for a retail seller's failure to meet the RPS requirement. For investor-owned utilities (IOUs), the cap is set according to the numbers of years in the compliance period: \$75 million for the first RPS compliance period (2011-2013), \$75 million for the second RPS compliance period (2014-2016), \$100 million for the third compliance period (2017-2020), and \$25 million each year for all following years. For all other retail sellers, the penalty cap was set as the lesser of the penalty cap for the large investor-owned utilities or a cap figured as 50% of the retail seller's PQR for the compliance period multiplied by the penalty amount of \$50 per REC.***

***a. Should the current cap on penalties be extended into future compliance periods? Explain your reasoning.*** Yes. If the incidence of retail sellers hitting the cap increases, however, then the cap should be increased sufficiently high to act as a deterrent to non-compliance. [See answer to Question 2, 4 above.]

***b. Should the amount of the penalty cap be adjusted in any way? If so, please provide a recommendation and explain your rationale.*** No. If the incidence of retail sellers hitting

the cap increases, however, then the cap should be increased sufficiently high to act as a deterrent to non-compliance. [See answer to Question 2, 4 above.]

***6. Noting that there are some differences between penalties for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company and other retail sellers, such as maximum penalties, are there any other instances where the current penalties are not comparable between the large IOUs and other retail sellers? Please specify those instances and any suggested modifications to ensure that electrical corporations and other retail sellers are treated comparably.*** IEP has no comment at this time.

**II. Regarding 2.2 Waivers:**

***1. In D.14-12-023 the Commission established a process for the consideration of a waiver request. Can Ordering Paragraphs 2 - 13 of D.14-12-023 apply to the new provisions added by SB 350 for a retail seller seeking a waiver of its RPS procurement requirements?*** IEP believes that the Ordering Paragraphs 2-13 of D. 14-12-023 still apply.

***2. Unlike the other statutory provisions related to waivers, Section 399.15(b)(5)(C) does not specify conditions that must be met before a waiver will be granted. To determine if an “increase in GHG emissions” would occur, should the Commission consider an increase in GHG emissions beyond the retail seller’s service territory or California, such as within Western Electricity Coordination Council (WECC) geographic boundaries?*** Yes. The Commission should consider an increase in emissions that occurs outside of the retail seller’s service territory, if the increase in GHG emissions is attributable to a PQR deficit.

*How should the Commission make the same determination for electric service providers that do not necessarily have geographic service territories?* In the context of RPS curtailment, if the curtailment resulted in the need for replacement energy and that replacement energy was associated with an increase in GHG emissions, then an increase in GHG emissions will have resulted from the avoidance of purchasing RPS-eligible RECs.

*What information should the Commission require from the retail seller seeking a waiver under Section 399.15(b)(5)(C) to help determine whether the waiver would not result in increased GHG emissions?* The retail seller should be obligated to reveal the replacement energy, if any, that was consumed in light of the curtailment of contracted renewables.

*3. SB 350 also added language to Section 399.15(b)(5)(D) allowing retail sellers to seek a waiver of their RPS obligations if they are impacted by an unanticipated increase in retail sales due to transportation electrification.” Section 399.15(b)(5)(D)(i) directs the Commission to account for whether transportation electrification significantly exceeded forecasts in the service territory of the retail seller seeking a waiver using the best and most recently available information filed with the Air Resources Board, California Energy Commission or other state agency. What factors should the Commission consider to determine whether transportation electrification significantly exceeded forecasts for electric service providers that do not necessarily have geographic service territories?* Through various state planning activities (e.g. CARB 2030 Scoping Plan, CPUC IRP, etc.), EV adoption has been planned through at least 2030. Retail sellers are on notice of planned penetrations of EVs and they should be planning for

this increase in their retail sale forecasts. For a waiver to be granted related to an “unanticipated increase in retail sales due to transportation electrification,” the retail seller should have to meet a high bar and show that the increase in transportation electrification exceeded 120% of the forecast level in its IRP Plan. From IEP’s perspective, any level of transportation electrification that is not at least 20 percent above the forecast amount cannot not be categorized as “unanticipated.”

***4. Sec. 399.15(b)(5)(D)(ii) requires that retail sellers must take reasonable measures “to procure sufficient resources” to account for unanticipated increases in retail sales due to transportation electrification.***

***a. What procurement actions might be available to a retail seller in such a situation?***

***Provide examples.*** The RPS statute sets a minimum level of RPS procurement. Retail sellers are not prohibited from hedging their compliance obligation by buying more RECs in anticipation of higher rates of electrification of the transportation sector associated with their retail load. Moreover, due to the banking rules, retail sellers may carry-over unused RECs to future compliance periods. Thus, retail sellers have ample tools at their disposal to hedge against modestly higher rates of electrification of the transportation sector than forecast (e.g. up to 20% above forecast amounts).

***b. Are any changes needed to retail sellers’ RPS procurement plans to implement Section***

***399.15(b)(5)(D).*** At a minimum, retail sellers should be required to integrate into their RPS procurement plans forecasts of load that are aligned with the forecasts associated with the Commission-adopted Reference Plan in the IRP or, alternatively, the retail sellers’ adopted IRP, whichever precedes the date of submission of the RPS Plan). In

addition, the Commission should require retail sellers to include a contingency in the RPS Plan that includes a rate of electrification of the transportation that is 120% above the “default” forecast in the Reference Plan or adopted-IRP referenced above.

IEP looks forward to working with the Commission on these important issues associated with SB 350 implementation.

Respectfully submitted February 1, 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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