



NIL/sf3 1/4/2018

FILED
01/04/18
11:58 AM

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

ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON IMPLEMENTING SENATE BILL 350 PROVISION ON PENALTIES AND WAIVERS IN THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Introduction

This ruling seeks comments on how Senate Bill (SB) 350 (De León), Stats. 2015, Ch. 547, impacts determination of Renewables Portfolio Standard (RPS) penalties for noncompliance with and waivers of RPS procurement requirements to inform a future Commission decision on revisions to RPS enforcement rules in light of SB 350.¹

Primary statutory sections addressing penalties and waivers are Sections 399.15(b)(5) - 399.15(b)(8). These sections are reproduced in Attachment 1 to this ruling.

1. Comments

Comments should be addressed to each issue identified in this ruling, and should be as specific and precise as possible. Legal arguments should be

¹ The RPS statute is codified at Public Utilities Code §§ 399.11-399.32. All further references to sections are to the Public Utilities Code, unless otherwise noted.

supported with specific citations. Where appropriate and useful, quantitative examples should be provided.

All comments should use publicly available materials. If the commenter believes that information that is not publicly available is important to its argument, it should identify (but not cite or include) the source of any non-public information and specifically note which elements of its argument are based on or supported by the non-public information. Comments may identify and discuss issues that are not addressed in the questions; commenters doing so should clearly explain the relevance of the additional issue(s).

Opening comments of not more than 30 pages may be filed and served not later than January 18, 2018. Reply comments of not more than 15 pages may be filed and served not later than January 29, 2018. Parties are encouraged, but not required, to file and serve opening comments, in order to give all parties the best opportunity to respond to other parties' positions.

2. Questions

2.1 Penalties

SB 350 added the following language to Sec. 399.15(b)(8):

"...a schedule of penalties shall be adopted by the commission that shall be comparable for electrical corporations and other retail sellers." (Italics added.)

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 recommend to this 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?
3. Should the penalty amounts vary according to other factors, such as Portfolio Balance Requirement (PBR) or Procurement Quantity Requirement (PQR)? If so, how?

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.
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.²
 - a. Should the current cap on penalties be extended into future compliance periods? Explain your reasoning.
 - b. Should the amount of the penalty cap be adjusted in any way? If so, please provide a recommendation and explain your rationale.
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.

² D.14-12-023 Ordering Paragraph (OP) 29 and OP 30.

2.2 Waivers

SB 350 added language to Sec. 399.15(b)(5)(C)-(D) specifying the basis on which parties may seek a waiver of their RPS obligations, including for unanticipated curtailment of eligible renewable resources, “*if the waiver would not result in an increase in GHG [greenhouse gas] emissions,*” and if the retail seller is impacted by an “*unanticipated increase in retail sales due to transportation electrification.*”

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.
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?
How should the Commission make the same determination for electric service providers that do not necessarily have geographic service territories?
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?
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?

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.
 - b. Are any changes needed to retail sellers’ RPS procurement plans to implement Section 399.15(b)(5)(D).

IT IS RULED that:

1. Comments of not more than 30 pages addressing the questions in this ruling may be filed and served not later than January 18, 2018.
2. Reply comments of not more than 15 pages may be filed and served not later than January 29, 2018.
3. In addition to service by electronic mail, paper copies of comments and reply comments must be promptly provided to Administrative Law Judge Nilgun Atamturk.

Dated January 4, 2018, at San Francisco, California.

/s/ NILGUN ATAMTURK
Nilgun Atamturk
Administrative Law Judge

ATTACHMENT 1

Public Utilities Code Sections

Waivers: 399.15(b)(5) – 399.15(b)(7).

Penalties: 399.15(b)(8)

(5) The commission shall waive enforcement of this section if it finds that the retail seller has demonstrated any of the following conditions are beyond the control of the retail seller and will prevent compliance:

(A) There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator. In making its findings relative to the existence of this condition with respect to a retail seller that owns transmission lines, the commission shall consider both of the following:

(i) Whether the retail seller has undertaken, in a timely fashion, reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations, to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources. In determining the reasonableness of a retail seller's actions, the commission shall consider the retail seller's expectations for full-cost recovery for these transmission lines and upgrades.

(ii) Whether the retail seller has taken all reasonable operational measures to maximize cost-effective deliveries of electricity from eligible renewable energy resources in advance of transmission availability.

(B) Permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the retail seller. In making a finding that this condition prevents timely compliance, the commission shall consider whether the retail seller has done all of the following:

(i) Prudently managed portfolio risks, including relying on a sufficient number of viable projects.

(ii) Sought to develop one of the following: its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources. This clause

shall not require an electrical corporation to pursue development of eligible renewable energy resources pursuant to Section 399.14.

(iii) Procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply.

(iv) Taken reasonable measures, under the control of the retail seller, to procure cost-effective distributed generation and allowable unbundled renewable energy credits.

(C) Unanticipated curtailment of eligible renewable energy resources if the waiver would not result in an increase in greenhouse gas emissions.

(D) Unanticipated increase in retail sales due to transportation electrification. In making a finding that this condition prevents timely compliance, the commission shall consider all of the following:

(i) Whether transportation electrification significantly exceeded forecasts in that retail seller's service territory based on the best and most recently available information filed with the State Air Resources Board, the Energy Commission, or other state agency.

(ii) Whether the retail seller has taken reasonable measures to procure sufficient resources to account for unanticipated increases in retail sales due to transportation electrification.

(6) If the commission waives the compliance requirements of this section, the commission shall establish additional reporting requirements on the retail seller to demonstrate that all reasonable actions under the control of the retail seller are taken in each of the intervening years sufficient to satisfy future procurement requirements.

(7) The commission shall not waive enforcement pursuant to this section, unless the retail seller demonstrates that it has taken all reasonable actions under its control, as set forth in paragraph (5), to achieve full compliance.

(8) If a retail seller fails to procure sufficient eligible renewable energy resources to comply with a procurement requirement pursuant to paragraphs (1) and (2) and fails to obtain an order from the commission waiving enforcement pursuant to paragraph (5), the commission shall assess penalties for noncompliance. A schedule of penalties shall be adopted by the commission that shall be comparable for electrical corporations and other retail sellers. For electrical corporations, the cost of any penalties shall not be collected in rates. Any

penalties collected under this article shall be deposited into the Electric Program Investment Charge Fund and used for the purposes described in Chapter 8.1 (commencing with Section 25710) of Division 15 of the Public Resources Code.

(END OF ATTACHMENT 1)

ATTACHMENT 2**Illustrative Representation of RPS Penalties (D.14-12-023)**

Compliance Period	Entity	PQR deficit³	PBR deficit⁴	Maximum Penalty
CP 3 (2017 – 2020)	Investor-owned utilities	\$50/REC	\$50/REC	\$100M (4-year compliance period)
	All other retail sellers	\$50/REC	\$50/REC	<i>The lesser amount of:</i> PQR (in RECs) * 0.5 * \$50/REC, and \$100M (4-year compliance period)
CP 4 (2021 – 2024)	Investor-owned utilities	\$50/REC	\$50/REC	\$100M (4-year compliance period)
	All other retail sellers	\$50/REC	\$50/REC	<i>The lesser amount of:</i> PQR (in RECs) * 0.5 * \$50/REC, and \$100M (4-year compliance period)
CP 5 (2025 – 2027)	Investor-owned utilities	\$50/REC	\$50/REC	\$75M (3-year compliance period)
	All other retail sellers	\$50/REC	\$50/REC	<i>The lesser amount of:</i> PQR (in RECs) * 0.5 * \$50/REC, and \$75M (3-year compliance period)

(END OF ATTACHMENT 2)

³ Procurement Quantity Requirement, as defined by PU Code Sec. 399.159(b)(2)(B), and implemented in Decision 11-12-020.

⁴ Portfolio Balance Requirement, as defined by PU Code Sec. 399.16(c), and implemented in Decision 11-12-052.