

Decision 16-12-040 December 15, 2016

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)

DECISION IMPLEMENTING COMPLIANCE PERIODS AND PROCUREMENT QUANTITY REQUIREMENTS FOR COMPLIANCE WITH THE REVISED REQUIREMENTS OF THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD MANDATED BY SENATE BILL 350

Summary

This decision implements the new compliance periods and procurement quantity requirements for the California renewables portfolio standard (RPS) program for years beginning in 2021 that are set by Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547. Among other things:

1. Compliance periods from 2021 through 2030 are as follows:
 - a. January 1, 2021 through December 31, 2024;
 - b. January 1, 2025 through December 31, 2027; and
 - c. January 1, 2028 through December 31, 2030.
2. Beginning with the compliance period 2031-2033, RPS compliance will be measured in three-year compliance periods, continuing indefinitely, unless changed by legislative action.
3. For the compliance period 2021-2024, retail sellers must procure no less than 40 percent of their retail sales from eligible renewable energy resources, by December 31, 2024.

4. For the compliance period 2025-2027, retail sellers must procure no less than 45 percent of their retail sales from eligible renewable energy resources, by December 31, 2027.
5. For the compliance period 2028-2030, retail sellers must procure no less than 50 percent of their retail sales from eligible renewable energy resources, by December 31, 2030.
6. Progress toward compliance during intervening years of each compliance period from 2021 through 2030 will be treated using the same “straight-line” method set out in Decision 11-12-020.
7. For each compliance period beginning with the 2031-2033 compliance period, each retail seller must procure not less than 50 percent of retail sales from eligible renewable resources, measured as an average over the compliance period.

1. Procedural History

Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547, enacted wide-ranging changes and updates to a number of areas of California’s energy policy, including but not limited to the renewables portfolio standard (RPS),¹ energy efficiency, integrated resource planning (IRP), and electric vehicles. SB 350 made changes to, among other aspects, the duration of the RPS mandate; the timing of compliance periods; the required proportion of retail sales that California retail sellers must provide from eligible renewable energy resources; and the contractual arrangements that may be used to comply with the RPS procurement requirements.

In this proceeding, implementation of SB 350’s provisions for the RPS program began with the Administrative Law Judge’s Ruling Requesting

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

Comment on Implementation of Elements of Senate Bill 350 Relating to Procurement under the California Renewables Portfolio Standard (Procurement Ruling) (April 15, 2016). Comments were filed on May 5, 2016.² Reply comments were filed on May 16, 2016.³

2. Plan of this decision

This decision is the first in a planned series of decisions implementing SB 350's changes to the RPS program. This decision will implement the new compliance periods and procurement quantity requirements, in a manner analogous to how Decision (D.)11-12-020 implemented the requirements of SB 2 (1X) (Simitian), Stats. 2012, ch. 1, for new RPS compliance periods and procurement quantities.⁴ Other topics addressed in the Procurement Ruling will be the subject of later decisions.

The sections of SB 350 addressed in this decision are reproduced in Appendix A.

² Comments were filed by: Alliance for Retail Energy Markets (AReM); Bioenergy Association of California (BAC); California Farm Bureau Federation (Farm Bureau); California Municipal Utilities Association (CMUA); Center for Energy Efficiency and Renewable Technologies (CEERT); Green Power Institute (GPI); Independent Energy Producers Association (IEP); Liberty Utilities (CalPeco Electric L.L.C.), Bear Valley Electric Service, PacifiCorp (jointly) (collectively, CASMU); Noble Americas Energy Solutions LLC (Noble); Pacific Gas and Electric Company (PG&E); L. Jan Reid (Reid); San Diego Gas & Electric Company (SDG&E); and Southern California Edison Company (SCE).

³ Reply comments were filed by: AReM; CASMU; CMUA; Coalition of California Utility Employees and The Utility Reform Network (jointly) (collectively, TURN/CUE); Large-Scale Solar Association (LSA); Noble; Office of Ratepayer Advocates (ORA); PG&E; SDG&E; SCE; and Sonoma Clean Power Authority.

⁴ See D.11-12-020 at sections 3.4-3.5 for a discussion of the terminology "procurement quantity requirement."

3. Discussion

3.1. Compliance Periods

3.1.1. Compliance periods through 2030

SB 350 amends Section 399.15(b)(1) to add three compliance periods from January 2021 through December 2030. They are:

- January 1, 2021, to December 31, 2024, inclusive.
- January 1, 2025, to December 31, 2027, inclusive.
- January 1, 2028, to December 31, 2030, inclusive.

These new compliance periods are analogous to the compliance periods from 2011-2020 added by SB 2 (1X) and implemented by the Commission in D.11-12-020.⁵ By grouping all compliance periods from 2011 through 2030 in the same subsection of SB 350, the Legislature makes clear that the new compliance periods are essentially continuations of the existing compliance period framework.⁶

⁵ TURN/CUE make the sensible suggestion that the naming convention for the first three compliance periods be carried forward, so that the newly added periods may be referred to as Compliance Period 4, 5, or 6, as appropriate, as well as by the calendar years each period encompasses.

⁶ See comments of AReM, CMUA, GPI, LSA, MCE, ORA, PG&E, SCE, SDG&E, Shell/Commerce, CASMU, TURN/CUE. Reid asserts that SB 350 requires a new configuration of the compliance periods from 2016-2020. (Reid Comments at 4.) This position incorrectly relies on language in Section 399.15(b)(2)(B) that addresses years after 2030. Reid applies the word “subsequent” to the years 2016-2020, rather than the clear application of “subsequent” to mean the years following 2030.

3.1.2. Compliance periods beginning in 2031

New Section 399.15(b)(2)(B) provides, in part:

The commission shall establish appropriate three-year compliance periods for all subsequent years [after 2030] that require retail sellers to procure not less than 50 percent of retail sales of electricity products from eligible renewable energy resources.

Parties present varying positions both on whether the Commission should act on this directive at this time, and what action it should take if it does act. Some parties urge the Commission to establish post-2030 compliance periods now because SB 350 gives express direction to do so.⁷ Some parties argue that the post-2030 period is too far in the future for it to be reasonable to set compliance periods now. They assert that there is plenty of time before these compliance periods are needed, and that it would be sensible to monitor compliance in the near future before deciding how to manage compliance periods post-2030.⁸ Additionally, new legislation could change the compliance requirements, rendering irrelevant any post-2030 compliance periods set now.⁹

The statute is sufficiently clear and prescriptive that there is no reason not to set post-2030 compliance periods now. SB 350 tells the Commission to set

⁷ These include GPI, Reid, and SCE.

⁸ See comments of AReM, CMUA, Farm Bureau, MCE, PG&E, SDG&E, Shell/Commerce, TURN/CUE. ORA more specifically suggests that the Commission should plan to evaluate RPS compliance beginning in 2026 in order to decide whether there are enough data to consider the later compliance periods. Because Energy Division collects data on the RPS program regularly through retail sellers' compliance reports and procurement plans, it is not necessary to set a specific date now for an evaluation directed to post - 2030 issues.

⁹ See Comments of AReM at 3, CASMU at 5, TURN/CUE at 2, and Reid at 5.

three-year compliance periods for years after 2030. This is no more complex than setting the compliance periods for earlier years; it is merely arithmetic. The possibility that new legislation could alter the compliance periods is always present, but is not a reason to delay setting the compliance periods.

Therefore, the Commission establishes RPS compliance periods as the years 2031-2033, 2034-2036, 2037-2039, 2040-2042, and subsequent years in three-periods for the indefinite future. We recognize that these periods could be subject to change by new legislation. If the Legislature acts to change the RPS compliance period scheme, the Commission will implement any new legal requirements when and as necessary.

3.2. Procurement Quantity Requirements

Each compliance period, retail sellers must meet the procurement quantity requirements for that compliance period. Section 399.15(b)(2)(B) mandates new PQRs for the new compliance periods it establishes.

3.2.1. Compliance periods through 2030

3.2.1.1. Compliance period PQRs

Section 399.15(b)(2)(B) establishes new PQRs for the compliance periods through 2030:

40 percent [of retail sales] by December 31, 2024, 45 percent by December 31, 2027, and 50 percent by December 31, 2030.

These requirements are analogous to those set by SB 2 (1X) and implemented by D.11-12-020 (OPs 2-4) for the compliance periods through 2020. The parties

agree that the new PQRs should be viewed as straightforward applications of the existing PQR rules to the compliance periods from 2021 through 2030.¹⁰

3.2.1.2. Reasonable progress in intervening years

In D.11-12-020, the Commission considered the concept of “reasonable progress in each of the intervening years” of a compliance period, set out in then-Section 399.15(b)(2)(B) and operationalized in then-Section 399.15(b)(2)(C), which required that:

Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.

After reviewing a range of proposals from parties, the Commission concluded that reasonable progress would be determined by means of quantitative targets for the intervening years in a compliance period, but retail sellers would not be required to show a specific procurement amount for any intervening year. Within a compliance period, the intervening year targets would be determined by a straight-line trend from the PQR from the past compliance period to the PQR for the current compliance period. (D.11-12-020, section 3.5.)

¹⁰ BAC proposes that setting PQRs should focus on “performance characteristics” of generation resources. (BAC Comments at 5.) This suggestion is not related to the PQR requirements. It might more appropriately be considered in the RPS annual procurement plans process, or in the integrated resource planning (IRP) process set up by Sections 454.51 and 454.54, implemented in the current IRP proceeding, R.16-02-007.

Almost all parties agree that this methodology should be continued under SB 350.¹¹ However, in its Comments (at 3-5), AReM revives its proposal, rejected in 2011, that:

The [percentage] target for the final year of the previous compliance period should remain the target for the initial years of the next compliance period; then the target should jump to the target for the final year.¹²

Neither AReM nor any other party provides any evidence that the straight-line trend methodology adopted in D.11-12-020 has created any problems in complying with RPS procurement obligations to date. SB 350, as TURN/CUE points out, does not change the language about intervening year targets that was used in SB 2 (1X) and implemented in D.11-12-020.¹³ There is therefore no reason to revisit the Commission's analysis in D.11-12-020 in order to implement SB 350's analogous requirements.

Each retail seller must procure sufficient RPS-eligible resources to demonstrate reasonable progress in meeting the procurement targets for each compliance period from 2021 through 2030. The numerical expression of this requirement for the compliance period 2021-2024 is:

MWh of RPS-eligible procurement required =
(.348 * 2021 retail sales) + (.365 * 2022 retail sales) + (.383 * 2023 retail sales)
+ (.40 * 2024 retail sales), where retail sales are expressed in MWh.

¹¹ These include CASMU, CMUA, LSA, ORA, PG&E, Reid, SCE, SDG&E, Shell, and TURN/CUE.

¹² D.11-12-020 at 14.

¹³ TURN/CUE reply comments at 1-2. Compare prior Section 399.15(b)(2)(C) with current Section 399.15(b)(2)(C).

The numerical expression for the compliance period 2025-2027 is:

MWh of RPS-eligible procurement required =
(.417 * 2025 retail sales) + (.433 * 2026 retail sales) + (.45 * 2027 retail sales),
where retail sales are expressed in MWh.

The numerical expression for the compliance period 2028-2030 is:

MWh of RPS-eligible procurement required =
(.467 * 2028 retail sales) + (.483 * 2029 retail sales) + (.50 * 2030 retail sales),
where retail sales are expressed in MWh.

3.2.2. Compliance periods beginning in 2031

While Section 399.15(b)(2)(B) mandates new PQRs for the new compliance periods it establishes, the statutory treatment of the compliance periods beginning in 2031 is somewhat different from the earlier compliance periods. First, in contrast to earlier sets of compliance periods, all compliance periods beginning in 2031 are required to be three-year periods indefinitely, eliminating the four-year compliance periods used in past RPS statutory schemes in order to make three compliance periods per decade. Second, for compliance periods beginning in 2031, SB 350 requires a minimum of 50 percent of retail sales indefinitely.

3.2.2.1 Compliance period PQRs

Parties are divided on whether the Commission should establish PQRs now for the compliance periods beginning in 2031. SCE and CASMU urge the Commission to establish PQRs now, since the statute provides a metric for them. Other parties urge that the Commission should wait until other tasks are completed (e.g., the procurement expenditure limitation identified in Section 399.15(c)), or until the IRP proceeding has provided further insight into RPS

procurement needs.¹⁴ Parties commenting on the issue unanimously oppose setting any PQR of greater than 50 percent of retail sales for these compliance periods.¹⁵

SB 350 treats the requirements for compliance periods beginning in 2031 in a way similar to the treatment of compliance periods beginning in 2021 in SB 2 (1X). SB 350, in new Section 399.15(b)(2)(B), directs the Commission to ". . . require retail sellers to procure not less than 50 percent of retail sales of electricity products from eligible renewable energy resources" in compliance periods beginning in 2031. SB 2 (1X), in prior Section 399.15(b)(2)(B), directed the Commission to "require retail sellers to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources" in all years after 2020.

It is therefore reasonable to set up the PQRs for compliance periods beginning in 2031 in a manner analogous to the way PQRs for compliance periods beginning in 2021 were set in D.11-12-020.¹⁶ For each compliance period commencing after 2030, each retail seller must procure not less than 50 percent of retail sales from RPS-eligible resources. Because the PQR does not escalate from one post-2030 compliance period to the next, there is no need for any measure of

¹⁴ Farm Bureau and CMUA advance these views. Also counseling delay are AReM, MCE, ORA, Shell/Commerce, and SDG&E. Reid's argument that Commission cannot set PQRs for these compliance periods because it lacks authority appears to be based on the SB 2 (1X) language of prior Section 399.15(b)(2)(B), not on SB 350's language for that section.

¹⁵ They include AReM, CASMU, CMUA, MCE, ORA, PG&E, Reid, SCE, and SDG&E.

¹⁶ The Commission's plan for post-2020 compliance periods in D.11-12-020 has been superseded by SB 350's new requirements. As several parties point out, this could happen in the future to the requirement we set in this decision. That possibility is not, however, a reason to ignore the compliance periods beginning in 2031 that SB 350 directs the Commission to implement.

reasonable progress within a compliance period. As SCE suggests, the PQRs for compliance periods beginning in 2031 should be considered to be an average of 50 percent of retail sales over the compliance period.¹⁷ The numerical expression of this requirement is:

MWh of RPS-eligible energy required =
.50 * (Year 1 of period retail sales + Year 2 of period retail sales + Year 3 of period retail sales), where retail sales are expressed in MWh.

Although it may appear that the compliance periods and PQRs established for the years beginning in 2031 are so far in the future as to be unreasonable, that view is not consistent with RPS procurement practice. For example, a 15-year RPS contract signed in 2016, to begin deliveries in 2018, will still be delivering in the 2031-2033 compliance period. In order to support effective and efficient procurement planning, retail sellers should know what the minimum RPS procurement requirements will be over the life of commonly used contracts.

Next Steps

Retail sellers should promptly incorporate the compliance periods and PQRs established by this decision into their RPS procurement planning processes.

The balance of the procurement and compliance issues addressed in the comments and reply comments on the Procurement Ruling will be the subject of Commission decisions in the near future. The new penalty and enforcement requirements of SB 350 will be the subject of ruling, comment, and decision early in 2017.

¹⁷ As a matter of historical interest, we note that this is the same method as that required by D.11-12-020 for the compliance period 2011-2013.

Since nothing in SB 350 changes any of the compliance requirements for the current compliance period (2014-2016), retail sellers should continue to follow the instructions of the Director of Energy Division in reporting on their RPS compliance.

4. Comments on Proposed Decision

The proposed decision (PD) of ALJ Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 5, 2016, by GPI, PG&E, Reid, and SCE and SDG&E (jointly). Reply comments were filed on December 12, 2016 by PG&E and SCE and SDG&E. The PD has been revised to eliminate inconsistencies identified in comments and to increase clarity.

5. Assignment of Proceeding

Carla A. Peterman is the assigned Commissioner and Anne E. Simon is the assigned ALJ for this portion of this proceeding.

6. Findings of Fact

1. SB 350 includes new compliance periods and new procurement quantity requirements for compliance with RPS procurement requirements, beginning in 2021.
2. It is reasonable to implement at this time the RPS compliance periods and PQRs for years after 2030.

7. Conclusions of Law

1. In order to implement the requirements of SB 350, RPS compliance periods should be set for all years beginning in 2021.
2. In order to implement the requirements of SB 350, PQRs should be set for all compliance periods, beginning with the 2021-2024 compliance period.

3. Reasonable progress for the compliance periods 2021-2024, 2025-2027, and 2028-2030 should be determined by means of quantitative targets for the intervening years, determined by the straight-line method set by D.11-12-020.

4. Retail sellers should not be required to demonstrate a specific quantity of procurement for any intervening year in a compliance period.

5. Retail sellers should show compliance with the PQR for a compliance period by procuring the cumulative quantity of RPS-eligible resources required for the compliance period.

6. For the compliance period 2021-2024, the RPS PQR of each retail seller should be:

$$\begin{aligned} &\text{MWh of RPS-eligible procurement required} = \\ &(.348 * 2021 \text{ retail sales}) + (.365 * 2022 \text{ retail sales}) + (.383 * 2023 \text{ retail sales}) \\ &+ (.40 * 2024 \text{ retail sales}), \text{ where retail sales are expressed in MWh.} \end{aligned}$$

7. For the compliance period 2025-2027, the RPS PQR of each retail seller should be:

$$\begin{aligned} &\text{MWh of RPS-eligible procurement required} = \\ &(.417 * 2025 \text{ retail sales}) + (.433 * 2026 \text{ retail sales}) + (.45 * 2027 \text{ retail sales}), \\ &\text{where retail sales are expressed in MWh.} \end{aligned}$$

8. For the compliance period 2028-2030, the RPS PQR of each retail seller should be:

$$\begin{aligned} &\text{MWh of RPS-eligible procurement required} = \\ &(.467 * 2028 \text{ retail sales}) + (.483 * 2029 \text{ retail sales}) + (.50 * 2030 \text{ retail sales}), \\ &\text{where retail sales are expressed in MWh.} \end{aligned}$$

9. For the compliance period 2031-2033, and for each compliance period thereafter, the RPS PQR of each retail seller should be:

$$\text{MWh of RPS-eligible energy required} =$$

.50 * (Year 1 of period retail sales + Year 2 of period retail sales + Year 3 of period retail sales), where retail sales are expressed in MWh.

10. The Director of Energy Division should be authorized to make any changes to RPS reporting and compliance documents to facilitate compliance with this order.

11. In order to allow retail sellers to plan effectively for continued RPS compliance, this order should be effective today.

O R D E R

IT IS ORDERED that:

1. For compliance with the California renewables portfolio standard (RPS) in the compliance period beginning January 1, 2021 and ending December 31, 2024, each retail seller must procure sufficient renewable energy resources eligible under the RPS to demonstrate reasonable progress in meeting the procurement target of 40 percent of retail sales by December 31, 2024, and to procure no less than the quantities associated with the intervening years in the period. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the RPS required =
(.348 * 2021 retail sales) + (.365 * 2022 retail sales) + (.383 * 2023 retail sales)
+ (.40 * 2024 retail sales),
where retail sales are expressed in megawatt-hours.

2. For compliance with the California renewables portfolio standard (RPS) in the compliance period beginning January 1, 2025 and ending December 31, 2027, each retail seller must procure sufficient renewable energy resources eligible under the RPS to demonstrate reasonable progress in meeting the procurement target of 45 percent of retail sales by December 31, 2027, and to procure no less

than the quantities associated with the intervening years in the period. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the RPS required =
(.417 * 2025 retail sales) + (.433 * 2026 retail sales) + (.45 * 2027 retail sales),
where retail sales are expressed in megawatt-hours.

3. For compliance with the California renewables portfolio standard (RPS) in the compliance period beginning January 1, 2028 and ending December 31, 2030, each retail seller must procure sufficient renewable energy resources eligible under the RPS to demonstrate reasonable progress in meeting the procurement target of 50 percent of retail sales by December 31, 2030, and to procure no less than the quantities associated with the intervening years in the period. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the California renewables portfolio standard required =
(.467 * 2028 retail sales) + (.483 * 2029 retail sales) + (.50 * 2030 retail sales),
where retail sales are expressed in megawatt-hours.

4. For compliance with the California renewables portfolio standard (RPS) in the compliance period beginning January 1, 2031 and ending December 31, 2033, and in each three-year compliance period thereafter, each retail seller must procure sufficient renewable energy resources eligible under the RPS to meet the procurement target of 50 percent of retail sales on average during the compliance period. The numerical expression of this procurement quantity requirement is:

Megawatt-hours of procurement eligible under the RPS required =
.50 * (Year 1 of period retail sales + Year 2 of period retail sales + Year 3 of period retail sales), where retail sales are expressed in megawatt-hours.

5. The Director of Energy Division is authorized to make any changes necessary to reporting and compliance documents for the California renewables portfolio standard to facilitate compliance with this order.

This order is effective today.

Dated December 15, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX A
Public Utilities Code Section 399.15(b): Excerpt

(b) The commission shall implement renewables portfolio standard procurement requirements only as follows:

(1) Each retail seller shall procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:

(A) January 1, 2011, to December 31, 2013, inclusive.

(B) January 1, 2014, to December 31, 2016, inclusive.

(C) January 1, 2017, to December 31, 2020, inclusive.

(D) January 1, 2021, to December 31, 2024, inclusive.

(E) January 1, 2025, to December 31, 2027, inclusive.

(F) January 1, 2028, to December 31, 2030, inclusive.

(2) (A) No later than January 1, 2017, the commission shall establish the quantity of electricity products from eligible renewable energy resources to be procured by the retail seller for each compliance period. These quantities shall be established in the same manner for all retail sellers and result in the same percentages used to establish compliance period quantities for all retail sellers.

(B) In establishing quantities for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, 33 percent by December 31, 2020, 40 percent by December 31, 2024, 45 percent by December 31, 2027, and 50 percent by December 31, 2030. The commission shall establish appropriate three-year compliance periods for all subsequent years that require retail sellers to procure not less than 50 percent of retail sales of electricity products from eligible renewable energy resources.

(C) Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.

(3) The commission may require the procurement of eligible renewable energy resources in excess of the quantities specified in paragraph (2). . . .