

STATE OF CALIFORNIA

**ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the matter of:)
) Docket: 16-OIR-01
Developing Regulations, Guidelines)
and Policies for Implementing)
SB 350 and AB 802) Order No. 16-0113-05

ORDER INSTITUTING RULEMAKING PROCEEDING

I. PURPOSE OF THE PROCEEDING

The California Energy Commission hereby institutes a rulemaking proceeding pursuant to Public Resources Code section 25213, Public Utilities Code sections 9621 and 9622, and California Code of Regulations, Title 20, section 1222(a). This proceeding will serve several separate but related purposes dealing with changes in law under Senate Bill 350 (de León, Chapter 547, Statutes of 2015) and Assembly Bill 802 (Williams, Chapter 590, Statutes of 2015).

This proceeding will help the Commission to develop and implement regulations and guidelines that support California’s energy efficiency, renewable energy, and greenhouse gas reduction goals and policies that combat climate change.

Senate Bill 350 requires California to procure half of its electricity for retail sales from eligible renewable energy resources and double energy efficiency savings in electricity and natural gas final end uses of retail customers by 2030. The legislation derives from the Governor’s goals as stated in his Inaugural Address and ensures they are permanent, enforceable, and quantifiable.

Senate Bill 350 also requires the Commission to produce guidelines for and to review integrated resource plans from local publicly owned electric utilities (POUs). These plans are comprehensive electricity system planning documents intended to ensure that POUs meet greenhouse gas emission reduction targets and lay out the resource needs, policy goals, physical and operational constraints, and general priorities or proposed resource choices of an electric utility, including customer-side preferred resources. These plans will provide a framework to evaluate how utilities have chosen to align with the energy and other policy goals outlined in Senate Bill 350.

Senate Bill 350 requires that the integrated resource plans must:

- Ensure utilities are meeting greenhouse gas emission reduction targets (set by the California Air Resources Board, in coordination with the Commission and the California Public Utilities Commission (CPUC)) for the electricity sector and each POU.
- Ensure the procurement of at least 50 percent of eligible renewable energy resources by 2030.
- Address procurement for energy efficiency, demand response, energy storage, transportation electrification, diversified procurement, and resource adequacy.

This proceeding will start the rulemaking process to amend existing Commission regulations and guidelines associated with the Renewables Portfolio Standard (RPS), and data collection, and adopt new integrated resource planning requirements. A rulemaking process for additional energy efficiency regulations could be implemented in the future, if that need is determined. The proceeding will be implemented through separate sub-proceedings focused on the RPS, data collection, integrated resource plans, and energy efficiency as necessary, with separate docket numbers to distinguish each sub-proceeding.

The proceeding will address the following:

Renewables Portfolio Standard

The proceeding will consider amending the Commission's regulations specifying enforcement procedures for the RPS for POUs, as set forth in the California Code of Regulations, title 20, sections 1240 and 3200 through 3208. The amendments will implement Senate Bill 350, including the expanded RPS requirement of 50 percent, and may clarify existing provisions in the regulations.

Revisions to the Commission's RPS eligibility guidelines, which are in the *Renewables Portfolio Standard Eligibility Guidebook*, will also be considered as part of the proceeding. Policies related to the Commission's implementation of RPS under Senate Bill 350 and existing law may also be considered.

Data Collection

The proceeding will consider amending the Commission's regulations specifying data collection and disclosure for load-serving entities, which are found in California Code of Regulations, Title 20, sections 1301 et seq. and 2501 through 2511. The amendments will help the Commission implement provisions within Senate Bill 350 and Assembly Bill 802, and may clarify existing provisions in the regulations.

The proceeding may look at policies related to the Commission's implementation of electricity, natural gas, and transportation energy demand forecasting under Senate Bill 350 and existing law. Data collection needs for efficiency programs and policy assessments may be part of the proceeding in order to track realized energy use reductions over time from efforts across California and to support energy efficiency markets.

The proceeding may also look at whether the Commission will adopt guidelines governing the submission of information, data, and reports needed to support the review of or recommendations for integrated resource plans that the POUs will submit. POUs with annual demand exceeding 700 gigawatt hours averaged over three years will be filing these plans with the Commission.

Energy Efficiency

Energy efficiency is not the main focus of this proceeding; however, implementation of Senate Bill 350 may prompt a future change to an existing regulation or guideline. Senate Bill 350 requires the Commission to cumulatively double energy efficiency savings in electricity and natural gas by 2030 by:

- Developing and publishing baseline building energy use and greenhouse gas emissions estimates for existing buildings in California. This baseline will help establish methods to monitor whether California is making progress in achieving the energy efficiency goals.
- Requiring the Commission to update the Assembly Bill 758 Program on a regular basis. Assembly Bill 758 (Skinner, Chapter 470, Statutes of 2009) requires the Commission, in collaboration with the CPUC and stakeholders, to develop a comprehensive program to achieve greater energy efficiency in existing residential and nonresidential buildings.
- Directing the Commission, in collaboration with the CPUC and POU, to establish annual targets for statewide energy efficiency and demand reduction.

II. BACKGROUND

Renewables Portfolio Standard

RPS Enforcement Regulations

The Commission's enforcement regulations for the RPS for POU were adopted on June 12, 2013, pursuant to Public Utilities Code section 399.30. The regulations were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013, and took effect on October 1, 2013. The enforcement regulations were subsequently amended and adopted by the Commission on October 14, 2015, to implement changes in law under Senate Bill 591 (Canella, Chapter 520, Statutes of 2013) and to clarify existing provisions in the regulations. It is anticipated that the final rulemaking package for these enforcement regulations amendments will be submitted to the OAL for its review and approval in January 2016.

The enforcement regulations establish the rules and procedures the Commission will use to assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. The regulations require POU to submit various information and reports to the Commission, so the Commission may verify and determine compliance with the RPS, and, if appropriate, issue a notice of violation and correction to a POU for failure to comply, and refer the violation to the California Air Resources Board for potential penalties.

RPS Eligibility Guidelines

The Commission's RPS eligibility guidelines were initially adopted on April 21, 2004, pursuant to Public Resources Code section 25740 et seq. and Public Utilities Code section 399.11 et seq., and took effect immediately. Since the initial adoption, the Commission has amended the RPS eligibility guidelines periodically to address changes in law, market and regulatory developments, and to respond to lessons learned in implementing the RPS program. The most recent amendments were adopted by the Commission on June 10, 2015, and are set forth in the *Renewables Portfolio Standard Eligibility Guidebook, Eighth Edition*.

The RPS eligibility guidelines describe how the Commission implements and administers its responsibilities under California's RPS statute. The guidelines specify the requirements and procedures for certifying eligible renewable energy resources for the RPS and for verifying the

electricity procured from such resources by retail sellers and POU's for purposes of RPS compliance.

Senate Bill 350

Senate Bill 350 changes several aspects of California's RPS program. These changes are reflected in amendments to Public Utilities Code sections 399.12, 399.13, 399.15, and 399.30, and include the following:

- (1) Establishes new RPS procurement targets for all load serving entities (LSE) including electrical corporations, community choice aggregators, electric service providers, and POU's. These targets are 40 percent renewables by December 31, 2024, 45 percent by December 31, 2027, and 50 percent by December 31, 2030. (Public Utilities Code sections 399.15(b)(1) and 399.30(b))
- (2) Revises conditions for delaying timely compliance of RPS procurement targets, which may now include unanticipated increases in retail sales due to transportation electrification. In addition, the conditions may include unanticipated curtailment of renewable resources only if the compliance waiver would not result in an increase in greenhouse gas emissions. (Public Utilities Code sections 399.15(b)(5)(C) and 399.30(d)(2)(A))
- (3) Revises requirements for establishing cost limitations for RPS procurement expenditures. The procurement expenditures used to determine the cost limitations need not rely on the utility's most recent procurement plan and need not exclude indirect expenses, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities. (Public Utilities Code sections 399.15(c) and 399.30(d)(2)(B))
- (4) Excludes from RPS eligibility any facility engaged in the combustion of municipal solid waste, but specifies that the exclusion does not apply to contracts entered into before January 1, 2017, for the procurement of renewable energy resources from a facility located in Stanislaus County that was operational prior to September 26, 1996. (Public Utilities Code sections 399.12(e)(2) and (h)(3)(D))
- (5) Requires LSEs to procure more renewable resources through long-term contracts. Beginning January 1, 2021, at least 65 percent of the procurement a LSE counts toward its RPS procurement requirement for each compliance period must now be from contracts of 10 years or more in duration or from ownership agreements of eligible renewable energy resources. (Public Utilities Code sections 399.13(b) and 399.30(d)(1))
- (6) Revises rules for accumulation and use of excess procurement to satisfy LSE's procurement requirements for subsequent compliance periods. Beginning with the compliance periods after December 31, 2020, LSEs may now bank as excess procurement portfolio content category (PCC) 1 electricity products procured under contracts of any length that are in excess of the LSE's RPS target. The revised rules do not permit PCC 2 and PCC 3 electricity products to be banked as excess procurement. Under certain conditions the revised rules for excess procurement may be used for the 2017-2020 compliance period. (Public Utilities Code sections 399.13(a)(4)(B) and 399.30(d)(1))
- (7) Establishes requirements for offsetting retail sales served by a POU's voluntary green pricing program or shared renewable generation program. Beginning January 1, 2014, a POU may now exclude from its total retail sales used to calculate its RPS procurement requirements any electricity generated by an eligible renewable energy resource that is

credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program, subject to specified conditions. (Public Utilities Code section 399.30(c)(4))

- (8) Creates a procurement exception for POU's procuring electricity from qualifying large hydroelectric generation. A POU that receives greater than 50 percent of its retail sales from qualifying large hydroelectric generation in any given year of a compliance period is not required to procure eligible renewable energy resources for that year that exceed either the portion of retail sales unsatisfied by the qualifying large hydroelectric generation or the soft procurements target for that year adopted by the Commission, whichever is less. (Public Utilities Code section 399.30(1))
- (9) Creates a procurement exception for POU's that have qualifying unavoidable long-term contracts or ownership agreements for electricity from coal-fired power plants that are located outside of the state. If the conditions are satisfied, a POU may adjust its RPS procurement target for the 2021-2024 compliance period so that its total procurement of electricity from eligible renewable energy resources and coal-fired power plants, under qualifying unavoidable long-term contracts and ownership agreements, does not exceed its retail sales for this compliance period. (Public Utilities Code section 399.30(m))

Data Collection

Electric Industry Restructuring

In the mid-1990s, California's legislature restructured (deregulated) California's electric industry in hope of lowering electricity rates with Assembly Bill 1890 (Brulte, Chapter 854, Statutes of 1996). Vertically integrated investor-owned utilities were unbundled and most electric generation assets were divested. Investor-owned utility customers could choose to buy electricity from independent energy service providers. In 2001, the Commission adopted revised regulations that addressed data collection needs as a result of the restructured electric industry.

New Policies and Planning Process to Avoid Energy Shortages

To address data collection needs arising from new policies and planning processes intended to prevent energy shortages, the Commission adopted revised regulations in 2008. The need to update the data collection regulations were driven by the following:

- (1) The 2000-2001 energy crisis demonstrated a need for a planning process designed to prevent future energy shortages in the restructured electric industry. The California legislature initiated a biennial planning process that included information and analyses to be used by state agencies in energy decisions. Senate Bill 1389 (Sher and Bowen, Chapter 568, Statutes of 2002) requires the Commission to prepare an Integrated Energy Policy Report (IEPR) with recommendations to the Legislature and Governor on California's most critical energy trends.
- (2) Working in conjunction with Senate Bill 1389, Assembly Bill 57 (Wright, Chapter 835, Statutes of 2002) reinstated the concept of integrated resource planning to reduce uncertainty in procuring electric generation resources by California utilities. Beginning with the Commission's 2005 *Integrated Energy Policy Report*, CPUC long-term

procurement proceedings rely on Commission forecasts and analyses as the “state’s official forecast.”

- (3) Senate Bill 1037 (Kehoe, Chapter 366, Statutes of 2005) requires utilities to make energy efficiency programs a priority before acquiring other sources of electricity. Under Senate Bill 1037, the CPUC, in consultation with the Commission, must identify all potentially achievable cost-effective electric and natural gas energy efficiency savings for investor owned utilities and set goals for achieving this potential. In addition, Senate Bill 1037 requires that POU report investments in energy efficiency programs annually to their customers and to the Commission.
- (4) Assembly 2021 (Levine, Chapter 734, Statutes of 2006) adds more specific direction for POU. Like the investor-owned utilities, they are to treat efficiency as a procurement investment. Additionally, AB 2021 requires identifying all potentially achievable cost-effective energy savings every three years, establishing annual efficiency savings targets for the next 10-year period, and reporting on program cost-effectiveness and third-party evaluation of program savings. The Commission is directed to provide, in consultation with the CPUC, a statewide estimate of energy efficiency potential and targets for a 10-year period. A summary of savings and any recommendations are to be included in each integrated energy policy report.
- (5) Assembly Bill 2227 (Bradford, Chapter 606, Statutes of 2012) changed the requirement for updated targets from every three years to every four years.

Senate Bill 350

Senate Bill 350 changes several aspects of California’s demand forecasting, and analytical and data collection processes. These changes are reflected in amendments to Public Resources Code sections 25301, 25303, and 25310, and Public Utilities Code sections 454.55 and 454.56, and include the following:

- (1) Establish requirements for new annual targets, on or before November 1, 2017, for energy efficiency savings and demand reduction that will achieve a cumulative doubling of statewide energy efficiency savings in electricity and natural gas final end uses of retail customers by January 1, 2030, based on the mid-case estimate of additional achievable energy efficiency savings contained in the California Energy Demand Updated Forecast, 2015-2015, using an average annual growth rate to extend savings from 2024 to 2030, to the extent doing so is cost effective, feasible, and will not adversely impact public health and safety. (Public Resources Code section 25310(c)(1))
- (2) Establish the possibility of aggregating electricity and natural gas final end use energy efficiency savings after adopting a methodology through a public process. (Public Resources Code section 25310(c)(2))
- (3) Establish the requirement to assess the hourly and seasonal impacts of these targets on statewide and local electricity demand. (Public Resources Code section 25310(c)(3))
- (4) Establish the requirement that energy efficiency savings reported for purposes of achieving the targets should be measured taking into consideration the overall reduction in normalized metered electricity and natural gas consumption where these measurement techniques are feasible and cost effective. (Public Resources Code section 25310(c)(5))
- (5) Establish the requirement beginning with the *2019 Integrated Energy Policy Report*, and every two years thereafter, to provide recommendations and an update on progress toward

achieving the doubling of energy efficiency savings, along with an assessment of the effect of these savings on electricity demand statewide, in local service territories, and on an hourly and seasonal basis, and in disadvantaged communities. (Public Resources Code section 25310(e))

Assembly Bill 802

Assembly Bill 802 (Statutes 2015, Chapter 590) provides new authority and new requirements that work in conjunction with the goals established in Senate Bill 350, including the following:

- (1) Establishes authority for the Commission to acquire individual utility customer usage and billing data for use in studies that will improve demand forecasting, and technical knowledge of the role of energy efficiency in reducing customer demand, and to provide characterizations of specific energy demands that will facilitate energy efficiency market actions. (Public Resources Code section 25301(a))
- (2) Requires the Commission to maintain reasonable policies and procedures to protect customer information from unauthorized disclosure. (Public Resources Code section 25301(a))
- (3) Requires studies of the potential for new savings and the acceleration of otherwise planned energy efficiency measure savings that the CPUC can use as a guide to authorize a new set of energy efficiency existing buildings programs that can help achieve the targets established in Senate Bill 350. (Public Utilities Code 381.2(d))
- (4) Requires the Energy Commission to consider how a new emphasis on market conditions and existing baselines might necessitate adjustments to the Commission's electricity and natural gas demand forecasts to evaluate impacts from new building standards and appliance code policies and programs. (Public Utilities Code 381.2(d))
- (5) Authorizes an Energy Use Benchmarking and Disclosure requirement for certain buildings, which allows building owners and/or their agents to access and disclose their building's energy consumption data, assisting them to better manage their building energy use and drive building energy efficiency improvements statewide. (Public Resources Code 25402.10(c)(1))
- (6) Repeals the existing Nonresidential Buildings Energy Use Disclosure Program authorized by Assembly Bill 1103 (Saldana, Chapter 533, Statutes of 2007) and Assembly Bill 531 (Saldana, Chapter 323, Statutes of 2009), effective January 1, 2016.

Integrated Resource Plans

Senate Bill 350 establishes requirements for POUs with an annual electrical demand exceeding 700 gigawatt hours, as determined on a three-year average commencing January 1, 2013, to adopt on or before January 1, 2019, an integrated resource plan and a process for updating the plan at least once every five years. (Public Resources Code section 9621(b))

The changes in law are reflected in Public Utilities Code sections 9621 and 9622, and include the following requirements for the plans:

- (1) Ensure the utilities meet greenhouse gas emission reduction targets (set by the California Air Resources Board, in coordination with the Commission and the CPUC) for the

electricity sector and each POU that reflect the electricity sector's percentage in achieving the economy wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030. (Public Resources Code section 9621(b)(1))

- (2) Ensure the procurement of at least 50 percent of eligible renewable energy resources by 2030. (Public Resources Code section 9621(b)(2))
- (3) Address procurement for energy efficiency, demand response, energy storage, transportation electrification, diversified procurement, and resource adequacy. (Public Resources Code section 9621(c))
- (4) Meet other energy goals, including electricity supply reliability and minimizing impacts on ratepayer bills. (Public Resources Code section 9621(b)(3))

The Commission shall review the plans and plan updates for each POU. If the Commission determines a plan or plan update is inconsistent with the requirements, the Commission shall provide recommendations to correct the deficiencies.

III. DELEGATION OF AUTHORITY

At this time the Commission will not appoint a committee to preside over this rulemaking proceeding (pursuant to Public Resource Code section 25211), but reserves the right to appoint a committee at a later date. Commission staff shall be responsible for taking all appropriate actions necessary to comply with all applicable legal requirements, including requirements of the Public Resources Code, the Public Utilities Code, the Administrative Procedure Act (APA), and the California Environmental Quality Act (CEQA). Staff will also ensure the timely submittal of all necessary rulemaking documents to the OAL for adoption of regulation amendments.

In conducting this proceeding, and each sub-proceeding, Commission staff shall seek policy guidance from the Commission chair, the lead Commissioner for renewables, and the lead Commissioner for energy efficiency, and shall collaborate with staff from the CPUC and the California Air Resources Board on RPS-related and data-related issues pertinent to these agencies.

IV. SCOPE OF THE PROCEEDING

Renewables Portfolio Standard Sub-Proceeding

The sub-proceeding for the RPS will address amendments to the RPS enforcement regulations needed to implement Senate Bill 350, and to clarify existing provisions in the regulations to the extent necessary. The purpose of these latter amendments will be to clarify the regulations as originally contemplated and adopted by the Commission in 2013, as well as the amendments to the regulations adopted in 2015. Amendments adopted for these regulations are subject to the formal rulemaking requirement of the APA.

The sub-proceeding will also address amendments to the RPS eligibility guidelines needed to implement Senate Bill 350, and to clarify existing provisions in the guidelines to the extent necessary. Amendments to the RPS eligibility guidelines may be adopted by the Commission through revisions to the *Renewables Portfolio Standard Eligibility Guidebook* or through a Commission resolution or order, which may be subsequently incorporated into a future revision of the *Renewables Portfolio Standard Eligibility Guidebook*. Amendments adopted for the RPS

eligibility guidelines are exempt from the formal rulemaking requirements of APA pursuant to Public Resources Code section 25747.

Additionally, the sub-proceeding may consider policies related to the Commission's implementation of the RPS under Senate Bill 350 and existing law. To address the differences in the substantive and procedural requirements for adoption of amendments to the enforcement regulations, which are subject to the APA, and adoption of guideline amendments, which are exempt from the APA, Commission staff may divide the sub-proceeding into phases and establish the scope of each phase following one or more scoping workshops if necessary, and with appropriate attention to staffing needs and resources. Similarly, Commission staff may establish separate phases in the sub-proceeding to consider policies related to the Commission's implementation of the RPS under Senate Bill 350 and existing law. Separate dockets may be established for each phase of the sub-proceeding.

The sub-proceeding for the RPS will replace the Commission's existing RPS proceeding, *Developing Regulations and Guidelines for the 33 Percent Renewables Portfolio Standard*, Docket No. 11-RPS-01, for purposes of amending the RPS eligibility guidelines, processing applications for certification and related matters under the amended guidelines, and preparing any legislative or policy reports going forward. Work on legislative and policy reports commenced under the *Developing Regulations and Guidelines for the 33 Percent Renewables Portfolio Standard* proceeding, such as work on the RPS Verification Reports for the 2011-2013 compliance periods, will continue under Docket No. 11-RPS-01.

Data Collection Sub-Proceeding

The sub-proceeding for data collection will consider amendments to the Commission's regulations specifying data collection and disclosure for load-serving entities, which are found in California Code of Regulations, Title 20, sections 1301 et seq. and 2501 through 2511. The amendments will implement Senate Bill 350 and Assembly Bill 802 and may also clarify existing provisions in the regulations to the extent necessary.

Additionally, the sub-proceeding may consider policies related to the Commission's implementation of electricity, natural gas, and transportation energy demand forecasting under Senate Bill 350 and Assembly Bill 802 and existing law.

The sub-proceeding will also consider data collection needs to support efficiency program and policy assessments, to track realized energy use reductions over time from efficiency efforts across the state, and to facilitate energy efficiency markets.

Commission staff may divide the sub-proceeding into separate phases following one or more scoping workshops if necessary, and with appropriate attention to staffing needs and resources. Separate dockets may be established for each phase of the sub-proceeding related to these activities.

Integrated Resource Plan Sub-Proceeding

The sub-proceeding for integrated resource plans will consider establishing guidelines to govern the submission of information, data, and reports needed to support the Commission's review of and

recommendations for the integrated resource plans submitted by POU's as directed by Senate Bill 350. The sub-proceeding may also consider the Commission's review of integrated resource plans and plan updates. Commission staff may divide the sub-proceeding into phases and establish the scope of each phase following one or more scoping workshops if necessary, and with appropriate attention to staffing needs and resources.

V. PUBLIC PARTICIPATION

The Commission encourages public participation in its proceedings. Any person present at any hearing or workshop shall be afforded a reasonable opportunity to make oral comments on the subject of the proceeding. Written comments are also welcome and encouraged. Unless otherwise specified in the notice of any hearing or workshop, written comments must be submitted to:

California Energy Commission – Docket Unit
Attn: Docket No. 16-OIR-01
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

To foster public participation in this proceeding, the Commission's Executive Director, in conjunction with the Public Adviser, shall ensure that information regarding this order and any notices of hearings or workshops related to the proceeding are distributed to all interested persons and made available on the Commission's website. The Executive Director shall also ensure that sufficient advance public notice is provided prior to the Commission's consideration or adoption of any amendments to the RPS or data collection regulations or guidelines.

The Commission's Public Adviser is available to assist individuals that want to participate in this proceeding. For additional information, please contact the Public Adviser at (916) 654-4489 or toll-free in California at (800) 822-6228, or via email at publicadviser@energy.ca.gov.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on January 13, 2016.

AYE:

NAY:

ABSENT:

TIFFANI WINTER
Secretariat