

## RENEWABLES PORTFOLIO STANDARD

The California Air Resources Board (CARB) has been given responsibility from the State Legislature to consider penalties for any referrals from the California Energy Commission (CEC) of publicly owned utilities (POUs) found to be non-compliant with requirements for the Renewables Portfolio Standard (RPS). CARB Enforcement Policy for the Renewables Portfolio Standard is included as Appendix F.

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## Appendix F

### CARB Enforcement Policy for the Renewables Portfolio Standard (RPS)

Established in 2002 under Senate Bill (SB) 1078, California's Renewables Portfolio Standard require utilities to serve a portion of electricity sales with renewable energy resources. RPS applies to all electricity retailers in the state, including POUs, investor-owned utilities, electricity service providers, and community choice aggregators (with all but POUs collectively referred to as retail sellers). SB 2 in the first extraordinary session of 2011 revised RPS targets to 33 percent renewables by 2020 for all utilities. In October 2015, SB 350 increased targets of RPS to 50 percent by 2030. SB 100 in 2018 increased the 2030 target to 60 percent.

The statutes mentioned above require the California Public Utilities Commission (CPUC) and CEC to jointly implement RPS. CEC is required to set standards for what qualifies as an eligible renewable resource for both POUs and retail sellers, regulate POUs by adopting an RPS enforcement regulation<sup>1</sup> (completed in 2013), and to refer any POUs found to be non-compliant to CARB for penalty assessment. CPUC is responsible for all aspects of regulating and enforcing against retail sellers.

#### Legislative Requirements for CARB

Public Utilities Code, section 399.30 (PUC § 399.30) states that upon a determination by CEC that a POU has failed to comply with RPS, CEC shall refer the POU to CARB, which may impose penalties. These penalties must be comparable to penalties adopted by the CPUC for noncompliance by retail sellers.

Additionally, PUC § 399.30 requires CARB's RPS penalties to be consistent with Division 25.5, Part 6 (commencing with section 38580) of the Health and Safety Code (HSC § 38580). HSC § 38580 pertains to the enforcement of the California Global Warming Solutions Act of 2006 and states that CARB may use HSC § 42400 *et seq.* to determine and collect penalties. HSC § 42403(b) lists (non-exhaustively) eight factors that may be considered in setting a penalty amount; these eight factors can justify adjustment of a penalty up or down. Any RPS penalties collected by CARB shall be deposited in the Air Pollution Control Fund.

#### Investigation and Referral to CARB

Section 3208 in title 20 of the California Code of Regulations (CCR § 3208) allows CEC to investigate any failure to meet RPS procurement targets, failure to meet portfolio balance requirements, failure to adopt procurement or enforcement plans or meet other notice and disclosure requirements, and failure to submit complete annual compliance reports or other required reports or documentation.

CCR § 1240 provides that if any POU fails to meet an RPS requirement, a complaint will be filed and the CEC will hold a hearing on the complaint. The CEC's decision on the complaint will include findings regarding mitigating and aggravating factors related to noncompliance. With a decision from CEC, CCR § 1240(h) requires a referral to CARB, including all findings, record of proceedings, notice of violation, and any transcripts of the hearings for determination of a penalty.

CARB will accept as settled and final CEC's determination(s) of noncompliance and the facts relied upon to support such determination(s) within its referral. CEC may submit a suggested penalty with the referral, which CARB may use as a factor in determining penalty.

### **Enforcement Process**

Upon receipt of the entire record of proceedings required to be delivered pursuant to CCR § 1240 subdivision (h), CARB will provide written notice to the affected POU of such referral and the commencement of CARB's enforcement process. Included with the notice will be a copy of the entire referral record from CEC.

CARB will not perform an independent investigation of the violation, but, consistent with its eight adjustment factors, will provide the affected POU an opportunity to submit information relevant to the penalty determination, in addition to that contained in the CEC record. CARB may also directly request additional information necessary to determine penalties. CARB will review all information to assess a penalty consistent with regulatory requirements as described in the Enforcement Policy.

Any penalty imposed shall be comparable, but not necessarily identical, to any relevant penalties adopted by the CPUC for noncompliance by retail sellers. Comparability is a case-by-case determination based on the circumstances of a violation and any other common features of both the affected POU and retail sellers. CARB may, within its discretion and in conformance with its Enforcement Policy, use CPUC's penalty structure as a foundation upon which to determine penalties for similar RPS violations by POUs as a means to ensure comparability.

CARB also notes that it has discretion per HSC § 42403(b) and CARB's Enforcement Policy to adjust the penalty amount away from the CPUC's penalty structure, either up or down, depending on the circumstances of each case. In determining the amount assessed or in reaching a settlement, CARB will consider all relevant evidence provided the final penalty is still comparable to those imposed by CPUC on retail sellers.

## CPUC Penalty Structure

CPUC Resolution E-4257<sup>ii</sup> (October 29, 2009) specifies violations of late or incorrect reports (Table F-1). As these penalty amounts are within CARB's statutory maximums, CARB may, within its discretion and in conformance with its Enforcement Policy, use this as a foundation for all similar POU violations referred to CARB from CEC as a means to ensure comparability.

Table F-1 – CPUC's Penalty Schedule for RPS Violations by Independently Owned Utilities

SPECIFIED VIOLATION	SCHEDULED FINE
Failure to file a Routine RPS Compliance Report at the time required. This includes the Project Development Status Report that the investor owned utilities must file.	\$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a corrected Routine RPS Compliance Report within 10 business days after receiving notice from Staff that the report is incorrect or incomplete. This includes the Project Development Status Report that the investor owned utilities must file.	\$500 per day for the first ten days the corrected filing was late and \$1,000 for each day thereafter.
Failure to file a Verified RPS Compliance Report at the time required.	\$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a corrected Verified RPS Compliance Report within 10 business days after receiving notice from Staff that the report is incorrect or incomplete.	\$500 per day for the first ten days the corrected filing was late and \$1,000 for each day thereafter.
Failure to comply with a request for information from Commission Staff that is related to RPS compliance reports in the time or in the manner required.	\$500 per day for the first ten days an LSE fails to respond to Commission Staff's request and \$1,000 for each day thereafter.

CPUC Decision 14-12-023<sup>iii</sup> (December 4, 2014) outlines penalties used for any shortfall in a retail seller's RPS procurement obligation. CPUC applies a \$50 per renewable energy credit (REC) penalty to a retail seller's shortfalls in meeting both procurement quantity requirements and portfolio balance requirements within a compliance period. This includes a per-compliance-period penalty cap of \$25 million for large IOUs and a penalty cap for all other retail sellers at 50 percent of the retail seller's procurement quantity requirements for the compliance period multiplied by \$50 per REC.

<sup>i</sup> <https://www.energy.ca.gov/2016publications/CEC-300-2016-002/CEC-300-2016-002-CMF.pdf>

<sup>ii</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/109286.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/109286.pdf)

<sup>iii</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M143/K520/143520009.PDF>