

# Renewables Portfolio Standard CARB Enforcement

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**Workshop**

**October 17, 2019**

# Agenda

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- Introductions
- RPS Background
- CARB Enforcement Policy
- RPS Amendment to Enforcement Policy
- Questions/Comments

# RPS Overview

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- RPS requires a certain percentage of electricity sales be served by renewable energy resources
- RPS apply to all electricity utilities in the state, including publicly owned utilities (POUs), investor-owned utilities (IOUs), electricity service providers, and community choice aggregators
- April 2011, Senate Bill X1-2 increased the RPS to 33 percent renewables by 2020
- October 2015, Senate Bill 350, expanded and increased the target to 50 percent by the end of 2030
- September 2018, Senate Bill 100 further increased targets

# RPS Overview

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- RPS Program targets for POUs and retail sellers through 2030:
  - 20% by December 31, 2013
  - 25% by December 31, 2016
  - 33% by December 31, 2020
  - 44% by December 31, 2024
  - 52% by December 31, 2027
  - 60% by December 31, 2030
- California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) jointly implement the RPS program

# CARB's Responsibility

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**Public Utilities Code, section 399.30 (PUC § 399.30)** states

*“the Energy Commission shall refer the failure to comply with this article to the State Air Resources Board, which may impose penalties to enforce this article consistent with Part 6 (commencing with Section 38580) of Division 25.5 of the Health and Safety Code. Any penalties imposed shall be comparable to those adopted by the commission for noncompliance by retail sellers.”*

# CARB Enforcement Authority

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- Specified in the California Health and Safety Code (HSC)
- Part 6 (commencing with Section 38580) of Division 25.5 applies to sources of GHGs
- Strict liability - a prohibited act constitutes a violation no matter one's intent or the amount of care taken to avoid violations
- In several provisions, maximum penalties are higher when violations are due to negligent or intentional conduct

# CARB Enforcement Policy

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- Applies to all CARB programs
- Consistent with HSC § 42403
- Designed to remove any economic benefit obtained through noncompliance and deter future violations
- Civil, Criminal, Administrative actions
- CARB's enforcement process

# Enforcement Process

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- Identifying a Potential Violation
- Evaluating Information
- Notifying the Responsible Party
- Opportunity to Discuss

# Opportunity to Discuss

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- Alleged violator may provide additional information
- Find an appropriate resolution
- Mutual settlement

# Eight statutory factors

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1. Extent of harm to public health, safety, and welfare
2. Nature and persistence of the violation
3. Compliance history of the defendant
4. Preventive efforts taken by the defendant
5. Innovative nature and magnitude of effort necessary to comply
6. Efforts taken to attain compliance prior to the violation
7. Cooperation
8. Financial burden

# General Considerations

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- Deterrence
- Investigation Costs
- Voluntary Disclosure

# RPS Enforcement

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- Included as an appendix of the Enforcement Policy
- Legislative requirements for CARB in RPS enforcement
- Referral process from CEC to CARB
- CARB's enforcement process for RPS referrals
- CPUC penalty structure for comparability

# Investigation and Referral to CARB

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- CEC could issue NOVs for the following (CCR § 3208):
  - 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
  - Failure to submit complete annual or compliance reports, or other required reports or documentation
- If CEC issues a Notice of Violation (NOV), case referred to CARB

# Investigation and Referral to CARB

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- 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
- CARB will not perform an independent investigation; but will allow parties in violation to submit additional information
- CARB may request information necessary to determine penalties
- CARB will review all information to assess a penalty consistent with requirements as described in the Enforcement Policy

# CARB RPS Enforcement Process

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- CARB staff will provide written notice to the affected POU
- The record developed by CEC in determining that a violation has occurred shall be considered as fact and not be subject to further review
- CARB will provide the affected POU with a copy of the entire referral package from CEC
- CARB will provide the affected POU with the opportunity to submit information relevant to the penalty determination in addition to that contained in the record transmitted by CEC

# CARB RPS Enforcement Process

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- Any penalty imposed shall be comparable, but not necessarily identical to any relevant penalties adopted by CPUC for noncompliance by retail sellers.
- CARB may determine a civil penalty for some or all violations set out in the notice of violation in a manner consistent with HSC § 38580.
- CARB 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.

# RPS Penalty Determination

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- CARB has discretion on penalty
- Penalty based in part on comparability to CPUC penalties
- CARB will use its Enforcement Policy
  - Statutory factors
  - General Considerations
  - RPS enforcement will be included as an amendment to the Enforcement Policy

# CPUC Citations and Penalties

SPECIFIED VIOLATION	SCHEDULED FINE/PENALTY
Failure to file a routine or verified RPS compliance report. Failure to correct a routine or verified report at the time required - <b>CPUC Resolution E-4257</b>	\$500 per day for the first ten days the 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 - <b>CPUC Resolution E-4257</b>	\$500 per day for the first ten days a load serving entity fails to respond to Commission Staff's request and \$1,000 for each day thereafter.
Penalty for shortfall of renewables - <b>CPUC Decision 14-12-023</b>	\$50 per REC (1 megawatt-hour (MWh) of electricity)
Penalty Cap - <b>CPUC Decision 18-05-026</b>	Large IOUs: \$25 million for each annual compliance period. Other retail sellers: 50% of the procurement quantity requirements multiplied by \$50/REC.

# Next Steps

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- A final draft version based on comments from today's workshop will be released
- CARB staff will finalize Enforcement Policy amendment
- CARB staff will notify the Board of amended Enforcement Policy

Current CARB Enforcement Policy:

<https://ww2.arb.ca.gov/resources/documents/enforcement-policy>

# Questions/Discussion

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- Satapana Buthken – Staff Lead
  - Short-Lived Climate Pollutant Enforcement Section
  - (916) 229-0337                      [satapana.buthken@arb.ca.gov](mailto:satapana.buthken@arb.ca.gov)
- Dave Mehl – Manager
  - Short-Lived Climate Pollutant Enforcement Section
  - (916) 229-0745                      [david.mehl@arb.ca.gov](mailto:david.mehl@arb.ca.gov)
- Wesley Dyer – CARB Legal
  - (916) 445-4299                      [wesley.dyer@arb.ca.gov](mailto:wesley.dyer@arb.ca.gov)