

# Renewables Portfolio Standard CARB Enforcement

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**Working Group Meeting**

**September 3, 2019**

# Agenda/Contacts

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- Staff Introductions
- RPS Background
- Proposed Penalty Process
- CARB Enforcement Policy
- Questions/Comments

Satapana Buthken – Staff Lead

Dave Mehl – Manager

Wesley Dyer – CARB Legal

# 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, 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 increased target for 2030 to 60 percent

# 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

# CPUC's Responsibilities

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- Regulation and enforcement for investor-owned utilities (IOU) and retail sellers
- Determine annual procurement targets and enforce compliance
- Review and approve each IOU's renewable energy procurement plan
- Review IOU contracts for RPS-eligible energy
- Establish the standard terms and conditions used by IOUs in their contracts for eligible renewable energy

# CEC's Responsibilities

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- Certify renewable facilities as eligible for the RPS
- Design and implement an accounting system to verify RPS compliance by retail sellers and POUs, ensure electricity generated by eligible renewable facilities is counted only once for purposes of meeting the RPS, and for verifying retail product claims in this state or any other state
- Adopt regulations specifying procedures for enforcement of the RPS for POUs
- Verifies RPS procurement by retail sellers and POUs
- **Refer POUs found to be non-compliant to CARB, which may impose penalties**

# 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 35.5 of the Health and Safety Code. Any penalties imposed shall be **comparable** to those adopted by the commission for noncompliance by retail sellers.”* (emphasis added)

# Potential RPS Violations

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- CEC complaints could be issued for the following potential violations:
  - 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 finds any violations, a Notice of Violation (NOV) referral will be sent to CARB
  - Referred CEC decision may include a suggested penalty and findings for the application of mitigating or aggravating factors



# Penalty Determination

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- CARB has discretion on whether to impose a penalty in a given case
- If CARB imposes a penalty, CARB will determine the penalty based in part on comparability to CPUC penalties for retail sellers
- CARB will use its Enforcement Policy (adopted October 2017)
  - CARB plans to amend Enforcement Policy
  - RPS enforcement will be included in the amendment

# Proposed CARB RPS Penalty Process

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- CEC NOV decision would be referred to CARB for penalty determination
- CARB will treat CEC's violation determination as fact
- Referral to CARB will include all findings, record of proceedings, notice of violation, and any transcripts of the hearings
- CARB will not perform an independent investigation but will allow the parties in violation to submit additional information regarding the nature of the violation
- CARB may also request additional information necessary to determine penalties

# 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.

# Health and Safety Code Section 38580

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- Pertains to the enforcement of the California Global Warming Solutions Act of 2006
- States that CARB may use HSC § 42400 et seq. to determine and collect penalties
- Allows use of CARB Enforcement Policy including eight statutory factors and considerations

# CARB Enforcement Policy

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- Applies to all CARB programs and is consistent with HSC § 42403
- Designed to remove any economic benefit obtained through noncompliance and deter future violations
- Eight statutory factors:
  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

# Next Steps

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- A draft of the RPS section of the amendment based on comments from today's meeting will be developed
- A finalized version of the RPS section will be included in the complete Enforcement Policy Amendment

CARB Enforcement Policy:

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

# Questions/Discussion

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