



SIERRA CLUB  
CALIFORNIA

January 29, 2009

The Honorable Alex Padilla  
Chair, Senate Energy, Utilities and Communications Committee  
State Capitol  
Sacramento, CA 95814

**Re: SB 14 (Senators Simitian, Kehoe, Padilla, and Steinberg) – Support if Amended**

Dear Chair Padilla and Committee Members:

Sierra Club California appreciates the opportunity to provide the committee with our comments and suggested changes on SB 14 (Simitian, Kehoe, Padilla and Steinberg) and the state's renewable energy program.

Moving to adopt a 33% or higher Renewable Portfolio Standard (RPS) goal this year should be an urgent priority. There is broad consensus within the California Legislature and the Administration that expanding RPS is necessary for meeting AB 32 climate protection goals, for improving air quality, and for reducing reliance on depleting fossil fuel resources.

California once led the world in renewable energy and we need to regain our leadership. The electricity sector's only current target is to achieve a 20% RPS by the end of 2010. This date will soon be upon us, and as yet there is no required course of action for 2011 and beyond. Utility companies are regulated and work on a 10-year planning horizon, meaning that commitments to long-term power supply agreements— lasting as long as 20 years — are already in the works.

At this point, it is obvious that California's renewable energy portfolio standard law needs to upgrade both the targets and the rules under which it operates. Other states have adopted RPS laws and made significant strides in building renewable energy. Doing so will require significant reforms in the RPS law to remove current regulations that have a built-in bias against renewable energy, and replace these burdensome rules with a regulatory structure that supports the state's goals for clean energy.

With those thoughts in mind, we turn our attention to SB 14. Sierra Club California supports many of the proposed reforms to the RPS program under SB 14, including: the adoption of an enforceable minimum 33% RPS for publicly owned utilities; improvements to the market price structure and program goals for renewables; and implementation of more democratic accountability at the Public Utilities Commission (CPUC). Our concerns and suggestions with the version as introduced on December 1, 2008, and with the amendments proposed to be adopted in committee, are explained in our comments below.



## **THE 33% STANDARD**

We believe that Sec. 399.15(b)(1) should be amended to strengthen the 33% RPS standard. In its current form, Sec. 399.15(b)(1) requires retail sellers to reach 20% by 2010 and 33% by 2020 “*if the commission determines that achieving these targets will result in just and reasonable rates.*” This language would require the CPUC to make an affirmative declaration that the RPS targets will result in just and reasonable rates without stipulating the timeframe or method by which the CPUC should make this determination. We are concerned that this adds too much uncertainty to the 33% mandate, indeed, by opening the door to future challenges, it fails to give the CPUC a solid ground on which to impose the RPS. The CPUC already supported the 33% RPS in their adopted 2005 Energy Action Plan, Gov. Arnold Schwarzenegger issued an executive order supporting a 33% RPS, and California Air Resources Board (CARB) included the 33% RPS in required actions under its AB 32 authority. In this context, everyone expects that adoption of SB 14 would finally establish the 33% requirement into law, not push the issue into yet another round of deliberation and challenge. Further, the CPUC already is tasked with insuring just and reasonable rates. Therefore, we recommend that the conditional clause “*if the commission determines that achieving these targets will result in just and reasonable rates*” be removed from Sec. 399.15(b)(1).

Also, in establishing the 33% standard beginning with the findings and declarations in Section 399.11(a), the Dec. 1 version’s language would appear to undermine or thwart any investor owned utility, municipal utility, community choice aggregator or other retail seller that has already established, or might want to establish, a higher standard. In all cases, the law should be amended to refer to a “standard of at least 33%”, rather than a “*33% standard*” in SB 14.

## **CHANGE “LEAST COST/BEST FIT” TO “PLANNING FOR RENEWABLES”**

Under current law, the “least cost” criterion places renewable contracts directly in competition with natural gas contracts. Thus, even if the Market Price Referent (MPR) system is eliminated, if the “least cost” criterion is not changed, may result in a built-in price bias against renewables. “Best fit” requires that individual renewable power supply contracts fit into the dominant energy supply pattern established by existing nuclear, coal, and natural gas generators.

Sierra Club California believes that a transition to a renewable supply system needs to look at how all the power supply and demand elements will fit into the future state of the “clean” electric system. Shifting to major reliance on renewable power — ideally, 33% or more — will require a holistic, “whole system” planning vision and rational design that clears a path for renewables and traditional power sources to work together, rather than shoe-horning clean energy into the existing fossil fuel-based system.

SB 14 deletes the terms “least-cost and best fit-eligible” as the goal for renewable energy procurement plans in Section 399.14(a) (3) and replaces it with “*increasing California reliance on eligible renewable energy resources.*” Sierra Club California finds this change to be a significant improvement over current law.

We recommend that other occurrences of the term “least-cost and best fit-eligible” be removed from current RPS law, i.e., in Sec 13: 399.14. (a)(2)(B), and in Sec. 14: 399.14. (a)(2)(A). It should be replaced with a requirement to maximize the growth and optimize the integration of eligible renewable energy resources. This should be supported by a planning process -- involving the CPUC, the California Energy Commission (CEC), the Independent System Operator (ISO), merchant generators, retail sellers, and public stakeholders -- that will fully explore ways to design a reliable electric power system that relies on increasing amounts of renewable energy.

## **RECS**

Renewable Energy Credits (RECs) should not ever be allowed to replace the construction of real renewable resources in California. We do recognize, however, that there may be some cases where purchasing of RECs may be desirable. These should have strong limitations under law, including caps on the allowable percentage of RECs. Initially, this percentage should be based on new renewables procurement requirements only, not total (existing plus new) renewables procurement, and it should not exceed 50% of the new procurement requirement. Additionally, utilities should be required to reduce dependency on out-of-state RECs over time.

We recommend a REC program that encourages load-serving entities to purchase RECs from customer-owned renewable generators. Such a design could support in-state and local renewable generation, and would overcome one of the main objections to RECs.

In addition, there are two important requirements that should be added to the proposed amendment on RECs. The first is to ensure that RECs are only counted toward the RPS requirement in the same year that generation of the electricity they represent takes place. The second is to place contract term limits on *out-of-state* REC purchases (in-state REC purchases should not have this requirement).

## **ABOVE MARKET COSTS**

We urge that all references to “*above market costs*” be deleted, as this is a leftover of Market-Price Referent methodology. Further, there appear to be relics of the current Supplemental Energy Payment (SEP) structure left in the law, despite the repeal of the SEP payments. Text that appears to rely on this defunct system should be modified or eliminated, as when the measure appears to make compliance with RPS contingent upon availability of funds in certain accounts.

## **REDUNDANCY OF SECTIONS**

We recommend deletion of redundant sections of SB 14, including Section 14 and Section 16. Section 13 and Section 15 should be amended so that they do not expire.

## **TRANSMISSION PLANNING**

Section 12 of SB 14 amends the authority of the CEC with the addition of Section 399.13(h) to the Public Utilities Code. In (h)(1), it requires the CEC to work with the ISO to facilitate

integration of transmission plans between Investor Owned Utilities and Publicly Owned utilities to reduce the amount and cost of transmission needed. We find no fault with (h)(1). However the second requirement, Section 399.13(h)(2) seems to contradict this, perhaps inadvertently, because here it requires the CEC to *facilitate siting and approval of new transmission lines*. This language is problematic, and would appear to create a contrary pressure on the CEC to assist with the approval of new transmission lines. We recommend that options for siting and delivery of renewable power sources be required before approval of new transmission, and that any determination be guided by certain principles specified below.

Section 22 of SB 14 also adds a new section to the Public Utilities Code, Section 1005.1. This section deals with transmission approval rules, and requires PUC to approve transmission under certain circumstances.

Sierra Club California recommends that the criteria for transmission planning in SB 14 be amended to follow the “Garamendi Principles.” The Garamendi Principles are findings to Senate Bill (SB) 2431 (Stats. 1988, ch. 1457), legislation regarding the role of transmission in California’s future development.

In the main part, the Garamendi Principles read:

(b) The Legislature further finds and declares that the construction of new high-voltage transmission lines within new rights-of-way may impose financial hardships and adverse environmental impacts on the state and its residents, so that it is in the interests of the state, through existing licensing processes, to accomplish all of the following:

1. Encourage the use of existing rights-of-way by upgrading existing transmission facilities where technically and economically justifiable.
2. When construction of new transmission lines is required, encourage expansion of existing rights-of-way, when technically and economically feasible.
3. Provide for the creation of new rights-of-way when justified by environmental, technical, or economic reasons, as determined by the appropriate licensing agency.
4. Where there is a need to construct additional transmission, seek agreement among all interested utilities on the efficient use of that capacity.

Sierra Club California recommends that the Committee adopt Garamendi Principles 1-4 in law as the criteria for deciding whether or not state agencies should approve new transmission projects, with one change. We believe that the state should “provide for the creation of new transmission when justified by environmental, technical, AND economic reasons, as determined by the appropriate licensing agency.”

Furthermore, while transmission costs need to be recovered; this should not become an excuse to have “transmission-only” solutions to increasing renewables generation. There needs to be a way

to “level the playing field” or even give preference to local power resources, particularly since this is a principle in the loading order that improves efficiency and reliability.

## **PUBLIC UTILITIES COMMISSION**

Sierra Club California **strongly supports** the changes to Section 305 of the Public Utilities Code that would require the Governor’s appointment of the PUC president to be confirmed by the Senate. We also support eliminating the current sole authority of the PUC president to order the executive director to dismiss complaints, as well as limiting the power of the president to direct the PUC staff, executive director, and commission attorney. Distributing these powers across the Commission and reducing the concentration of power in one official also represents a sound step.

The committee should consider further reforms at the PUC. First, we recommend that SB 14 be amended to strengthen current conflict-of-interest requirements placed on Commissioners regarding previous positions in the regulated energy industry and on any future dealings a former Commissioner may have with the Commission.

Another important and necessary reform would be to define clearly, and restrict when the commission may override the ruling of the administrative law judges (ALJs). In a PUC administrative law proceeding, the ALJs hold extensive hearings; provide public and stakeholder input, and other elements of due process. These decisions should not be easily overturned by the Commission without some additional requirements and protection of the ALJ process.

Sierra Club California recommends that SB 14 be amended to require the Commission to use the same standard of review appellate courts use to review trial court decisions: pure questions of law are reviewed “de novo,” but questions of fact are reviewed for clear error, and the trial judge must be given substantial deference in deciding these issues. Because the ALJ, acting as a trial judge, is the one who actually hears the witnesses and sees their demeanor, facial expressions, he or she is best positioned to directly evaluate their credibility. The ALJ is far more qualified to decide these issues than a reviewing body, the Commission, looking at a “cold” record.

## **EXPAND RPS TO ALLOW INNOVATION AND ENERGY RECOVERY SYSTEMS**

Sierra Club California believes that the legislation represents an important chance to expand the existing RPS definition of renewable energy. The current definition is biased toward concepts that are already well known and this discourages potential breakthroughs. First, we need to include all secondary recovery of thermal, kinetic, pressure, osmotic, or other energy when no – or minimal – additional fossil fuel input is required to generate electricity. Second, we should include innovative technologies, such as using natural ambient energy sources, including solar energy collection systems that are neither thermal nor photovoltaic.

SB 14 should be amended to require the CEC, in consultation with other appropriate agencies in a public process, to evaluate and recommend to the Legislature new technologies that should be included as a renewable energy resource under the RPS law.

## SUSTAINABILITY STANDARDS FOR RENEWABLES

Not all energy sources labeled under current law as “renewable” are equally sustainable in terms of environmental impacts or energy supply. For example, the Geysers geothermal resource was developed by essentially poking holes in the ground and allowing the underground steam to escape into the atmosphere. This process releases greenhouse gases and toxic materials. It also has reduced the steam resource to where today the Geysers only produce half the power they did at their peak. Modern technology, on the other hand, employs a “binary” process that re-injects the steam into the ground and prevents the release of toxics and greenhouse gases while protecting the steam resource.

We also have seen poor environmental practices at the Altamont wind site, which resulted in excessive bird kills. The impact and sources of biofuels, large-scale development of solar power in the desert, toxic materials in certain types of solar panels, and other issues should be addressed and standards developed for proper use of resources. Unfortunately, the environmental review process does not always adequately address these issues. That’s why SB 14 should be amended to require the CEC to develop sustainability standards for different kinds of renewable energy resources.

Sierra Club California appreciates the chance to comment on such an important and vitally needed piece of legislation, and anticipates future chances to further improve its reach and scope. That said, SB 14 represents an important step toward the clean, renewable, low-carbon energy future. We urge your “aye” vote at this time, in order that we may work with you to address the concerns we have raised above. Thank you for your leadership on this complex, crucial process.

Sincerely,



Jim Metropulos  
Senior Advocate

cc: Governor Arnold Schwarzenegger  
Senate President pro Tempore Darrell Steinberg  
Assemblymember Paul Kerkorian  
Assemblymember Felipe Fuentes  
Assemblymember Sam Blakeslee