



SIERRA CLUB
CALIFORNIA

March 27, 2009

The Honorable Felipe Fuentes, Chair
Assembly Utilities and Commerce Committee
California State Assembly
Sacramento, CA 95814

RE: AB 64 Krekorian and Bass – Support if Amended

Dear Chair Fuentes and Committee Members:

Sierra Club California appreciates the opportunity to provide comments on the recently amended AB 64 to the Committee. AB 64 addresses one of the top legislative priorities for Sierra Club California in requiring 25% of electricity to be obtained from renewable sources by 2015, and 33% by 2020.

Evaluation

Sierra Club California wants to see legislation that sets high standards for renewable energy and at the same time provides a sound foundation for achieving those mandates. The Renewables Portfolio Standard (RPS) plays a critical role in the creation and approval of utility procurement plans. An RPS law not only requires increases in reliance on renewable energy, it also constrains new contracts with fossil fuel power plants that contribute to air pollution and climate change. These power contracts expose consumers to open-ended risk for future fuel prices and carbon costs.

Renewable energy is the primary way that we can meet energy needs while reducing the use of fossil fuels in the electric sector. That is why Sierra Club California considers implementation of a successful renewable law to be so important.

This bill contains elements that are potentially beneficial as well as those that are of significant concern.

1. Firm Renewables Requirement. We very much appreciate the fact that AB 64 would establish a *firm requirement* in state law for meeting the 33% RPS that is a key feature of the 2005 Energy Action Plan, the Governor's executive order S-14-08, and ARB's Scoping Plan for climate protection under its AB 32 authority.



2. Lower Renewables Targets. We are very disappointed that the recent amended version reduced the requirement from 35% to 33%, and dropped the 50% goal entirely. The fact that this bill went “above and beyond”, and contained some vision for the future was one of the compelling elements that we particularly admired. However, the importance of aiming high goes beyond admiration. The Intergovernmental Panel on Climate Change (IPCC) specifically points out to policymakers the importance of aiming higher than the necessary climate protection targets. This is because of what they call ‘inertia’, which is composed of a two key elements. The first is the normal tendency of people and institutions to delay or fall short of the necessary pace of change, a problem that has been all-too-evident in efforts to achieve the current renewables targets. The second is the inherent delay in the effects of climate change itself, which once set in motion unfold over a period of years or decades after the action that caused the change. This inertia prevents timely feedback that could allow adequate response. Meeting both of these challenges will be necessary if we are to avoid the worst effects of climate change.

3. Inclusion of Municipal Utilities. We support the extension of the RPS to municipal utilities. Its main benefit is likely to be with small and mid-sized municipal utilities, some of which have been heavily dependent on coal and natural gas. The largest ones already have policies in place that would achieve the goals of this provision: LADWP has adopted a 35% RPS, while SMUD has a long-standing policy to meet or exceed the state RPS requirements. At the same time, the lack of a legal mandate has been a sticking point for Investor-owned Utilities, who object to being singled out unfairly. This is a reasonable concern which AB 64 would address, and thus remove one of the principal objections to a higher renewables mandate. We also appreciate that the requirement states that municipal utilities procure “at least” 33% of their electricity supply from renewable energy. This makes 33% the minimum standard and allows municipal utilities to set higher targets for themselves without constraint from the state.

4. The Benchmark Price. The proposed benchmark price is too similar to the current market price referent (MPR), and represents a backsliding compared to the “reasonability” criterion endorsed by the governor last summer. Existing law already contains a provision for a general benchmark in the market price referent; however, regulators have narrowly interpreted the law to mean only natural gas power. Deliverability attributes are already included in existing code, while the environmental attribute of the “carbon adder”—generally the largest environmental cost factor—is already included by regulation of the CPUC.

It is not clear what other power cost components are meant to be added to the current MPR. While the benchmark might be based on older renewable contracts, it also appears to allow cheap coal or hydro contracts to be included in the mix. Adding other power sources might reduce the exposure to price volatility inherent in the MPR’s reliance on natural gas alone. However, this stability might come at the cost of a substantially lower benchmark price that renewables would probably not be able to compete with. This would be unreasonable, since new renewables should be measured against other new sources of energy and not power generated from older, depreciated assets. In addition, the ban on long-term coal contracts that is currently in force in California should be explicitly incorporated into any proposed price benchmark so that old, cheap and dirty coal plants are not placed into the competitive mix.

It is ***strongly recommended*** that the “benchmark” criterion be entirely eliminated from contract evaluation, and replaced with the same general rate impact considerations as other sources of energy. This market structure is increasingly viewed as a major barrier for renewables. In fact, this is

discriminatory against renewables, since no other source of electric power—even, ironically, natural gas—is subject to the same restrictions. That is because future natural gas prices are simply passed through to ratepayers and are not constrained by the price framework of the MPR.

The general approach of this bill in eliminating “contract by contract” evaluation, and replacing it with RPS portfolio-wide evaluation, is a step in the right direction, and this principle should be retained—but without the benchmark price.

5. Feed-in Tariff. The feed-in tariff program limit of 5 megawatts for individual projects is an improvement over the current program, but is still too small. Limiting the size of feed-in tariff facilities will increase the cost of the program since smaller projects tend to be more expensive per unit of energy. A feed-in tariff program should use a “portfolio approach” where larger, lower energy-cost facilities offset the higher energy cost of smaller ones.

The most serious problem in the feed-in tariff is the pricing structure. It appears only to establish one price for all renewables, which is not appropriate. This would be another discriminatory constraint on renewables, and is not applied to other sources of power. In addition, the single feed-in tariff is set strictly to the benchmark price, and lacks the same “over market” margin that contracts for large power plants are granted under AB 64.

Feed-in tariffs should be technology specific and adjusted broadly for capacity size. They should be cost-based with adequate margin for a rate of return, just as is done for nearly all existing power infrastructure. The market based price for California’s existing feed-in tariff has been minimally subscribed and relatively ineffective—with 11 megawatts of participants out of a 500 megawatt program. This is a dramatic contrast to the remarkable success of the German tariffs that build gigawatts of renewables every year.

Sierra Club California strongly recommends that either the AB 64 provisions be repaired or that a feed-in tariff law be pursued in other legislation.

6. Renewable Energy Credits. The purchase of unbundled Renewable Energy Credits (RECs) has advantages and disadvantages. An advantage is that they can sometimes displace the need for new transmission facilities. CCAs that are just in the start-up phases may need to meet some RPS requirements with RECs, and RECs may be used to prevent utilities from achieving RPS targets by grabbing expiring renewable contracts from other utilities. In fact, specific protections against this problem would be a good addition to AB 64, especially in the context of CPUC approval of REC contracts. On the other hand, most of the benefits of renewables to California consumers, labor and business would be lost if RECs are purchased in lieu of supporting *new development* of renewable energy facilities. The current limitation of 10% on RECs is good and addresses most of the concerns about allowing RECs.

7. Rules for Renewables. We appreciate the way AB 64 would give to the Energy Commission the ability to recommend to the legislature innovative renewable technologies for future consideration. At the same time we consider it very important and even urgent to improve the criteria for sustainability of renewables. We recommend requiring the Energy Commission to have proceedings for the purpose of creating rules and guidelines for development of renewable energy resources.

Reducing environmental impacts of renewables is important, as experience has already shown. For example, achievable measures to protect birds and bats should become requirements for considering a wind project to be renewable. Avoiding foreseeable environmental problems through a clear set of evaluation criteria will increase the viability of developing renewable resources.

Environmental protections can also protect the renewable resources. For example, old geothermal technology at the Geysers has resulted in loss of geothermal fluid and reduction of energy output by 800 megawatts. Newer “closed loop”, binary technology re-injects all fluid into the ground. This would preserve reservoirs while protecting the environment from potentially hazardous geothermal chemicals.

Developing proper rules for wind, geothermal, biofuels and other technologies will help to assure that California gets the greatest benefit from using renewable energy.

8. Penalties. We are disappointed with the very weak provisions for penalties. Since the renewable requirement was first established in law in 2003, the utility companies have consistently fallen short of the goals. In fact, the percentage of renewables actually dropped. Despite years of failure, the CPUC has not imposed one cent of penalty. This is inexcusable. The legislature needs to strengthen enforcement, not weaken it with provisions to allow utilities to get off the hook by showing “good faith”. Good faith will do nothing for future generations that will have to bear the consequences of our failures. The point of a penalty is to increase the economic cost of non-compliance, especially for entities that are primarily driven by financial motives. Similarly, the ARB should not have the option of whether to impose a penalty on municipal utilities, especially after the Energy Commission has already deliberated and found the utility out of compliance. The word “may”, in this context, should be replaced with “shall”.

9. Renewables Infrastructure Authority. The Renewables Infrastructure Authority appears to have too many powers vested in a single unelected agency. While there is appreciation for the need to rapidly scale up renewables, this does not have to be through an agency that risks backlash toward renewable projects. The inadequately restrained powers of eminent domain, the expedited 6-month renewable facility approval process, and challenges to the authority of local, federal and existing state government do not seem well conceived. Any new process for approving and siting of renewable facilities should allow full participation of the public and full transparency. It is very important that environmental protection issues be well deliberated and not hurried on a short schedule; this puts both the environment and the projects at risk.

As currently proposed, Sierra Club California opposes the establishment of this Renewables Infrastructure Authority.

10. Transmission & Garamendi Principles. Any authority to permit transmission should be subject to the Garamendi Principles, which should be adopted as law. This expands the current narrow procedure for transmission siting that looks at a particular proposal without adequate consideration of alternatives. Under current evaluation one is most likely to face the following options: a selection of alternative alignments through new corridors, and the “no build” option.

The Garamendi Principles would—for example— also require looking at upgrading existing transmission lines and building on existing rights of way. This is better environmentally, will probably lower cost, and is likely to significantly reduce opposition to adding new transmission capacity. We cannot stress enough the importance of this point, as the failure to abide by these principles is one of the main sources of conflict around transmission in this state.

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.”

This leads to the second major issue regarding transmission. When considering environmental justification, due respect needs to be given to protected lands. Utility project planners seem to have had an uncanny desire to site transmission lines and other energy developments in or near state parks, national forests, and other protected lands. This has been true even when obvious alternatives were available. Complying with requirements to respect protected land should be common sense, and would prevent many conflicts and problems. The recent objection of US Senator Feinstein to RETI and BLM’s attempt to use Catellus land for solar development is the latest embarrassment. But we have seen the same thing with the Sunrise Powerlink, which SDG&E attempted to route directly through the center of Anza Borrego State Park. Such things are so easily avoided, if there is the requirement and basic will to do so.

Finally, we strongly recommend that Section 1 of AB 64 be removed, along with the RIA, so that Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code is retained. The problems with transmission siting should be dealt with in other ways, including the changes we have recommended here.

11. Contract Evaluation. We appreciate the effort to address the serious problem of contract failure and support the amendments on this topic. Contract failure has been identified as one of the most important reasons for lack of progress in the RPS. We recommend that the legislature continue to develop this very important section of code to make it even more effective. For example, in addition to learning lessons from studying the causes of contract failure, a requirement could be added that the CPUC, CEC and CAISO work to develop actions to correct the causes of failure. This might include proposing further legislation in the future.

12. Local Resources. The obvious need to improve transmission access to renewable resources 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—or distributed— power resources, because:

- Distributed generation is a fundamental principle in the loading order
- On-site generation improves efficiency; about 8% of the electricity in California is “lost in the wires” due to electrical resistance—this is equivalent to all the power consumption of four cities the size of San Francisco.
- Local reliability is enhanced because the resource is located at or near the load, reducing demand on grid system bottlenecks.
- Distributed generation can provide energy security, including power during an emergency.
- Developing local resources can provide economic benefits to communities that simply could not be achieved by remote projects, including jobs and local green energy supplies.
- Local transmission can reduce the amount of expensive transmission needed to provide reliable electric power
- Local green energy projects will reduce the environmental footprint of our energy infrastructure

The Sierra Club supports measures that will insure development of local renewable resources.

13. Bond Authority. The use of public bonds to finance renewable energy is an outstanding proposal by the authors of AB 64, and one of the most important in the energy policy discussion. Bonds have the ability to directly solve one of the most pressing concerns about renewable energy: the cost. The provision in AB 64 that energy produced by bond-financed renewable facilities be sold at cost and without profit is particularly impressive. By this means a well designed bond authority could accomplish multiple benefits, such as:

- Lowering the cost of renewable projects
- Creating critically needed access to financing
- Providing a public framework that can accept and direct federal funding to renewable projects

- Avoiding the need for tax incentives or ratepayer surcharges
- Facilitating manufacturing of renewable equipment in California

In addition, it is important that electric power infrastructure funded by public bonds be made available to all load serving entities under the RPS requirements of AB 64, including municipal utilities, community choice aggregators and electric service providers.

However, we see no good reason to create a new Authority, when there are already other authorities that could be used for this purpose. We recommend involving the Energy Commission to provide guidance on how to get the most benefits from bonds, and that the commission would work together with the state Treasurer and bond authority (or authorities).

NOTE: Please see attached document regarding the “Cost of renewables.”

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, AB 64 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
Senator Joe Simitian