

AR 518
ICNU Informal Comments on
Staff Proposed Rules
March 13, 2009

Staff has proposed five interrelated rules to implement the RPS:

- Incremental Costs – Defines incremental cost of compliance for qualifying electricity and how it is adjusted over time.
- Alternative Compliance Costs – Defines how OPUC will establish the cost of an ACP – year by year, utility by utility – and the use of ACP funds.
- Implementation Plans – Defines the contents of utility plans to comply with the RPS.
- Compliance Standards – Implements the “cost limitation” of the RPS.
- Compliance Reports – Defines the contents of utility reports to verify compliance with the RPS.

ICNU submits these informal comments on Staff’s last two rule proposals, dated February 25, 2009.

Compliance Standard Rule

Consistent with the “cost limitation” provision of SB 838, the rule needs to explicitly provide that an electric company or ESS is not required to comply with the RPS load target in a compliance year if the incremental cost of compliance, the cost of unbundled RECs, and the cost of ACPs exceeds 4% of its annual revenue requirement.

The proposed rule fails to do so and, in fact, the proposal would establish a different standard: “The extent to which the total cost of compliance” for an electric utility to meet the RPS “exceeds the cost limit in the statute” is determined by applying all banked RECs before applying any RECs issued or acquired in the compliance year or any ACPs. Only if the “cumulative cost” exceeds the cost limit is the electric utility not required to acquire additional RECs or ACPs to comply with the RPS percentage of load standard.

What constitutes “cumulative costs” under the rule is not clear. Further, the “total cost of compliance” is defined as the cost of ACPs and RECs “used to meet the applicable renewable portfolio standard for the compliance year”. The cost of bundled RECs is defined as (1) the incremental cost of qualifying electricity associated with the REC “used in the same compliance year the qualifying electricity was generated”; and (2) the “cost of using a bundled renewable energy certificate banked in a previous year is zero.”

Taken together, the “total cost of compliance” includes the incremental cost of only that portion of qualifying electricity used to comply in that year, the cost of ACPs used to comply in that year, and (presumably) the cost of any unbundled, non-banked RECs acquired and used to comply in that year. This cost is calculated subject to the condition that all RECs associated with qualifying electricity generated by an electric company, but banked and carried forward, must be used first to comply in a later years and are counted at zero cost in the “total cost of compliance.”

The “total cost of compliance” cannot be used as the basis for implementing the statutory cost limitation. (The rule as applied to ESS has similar problems.) The statutory “cost limitation” includes the cost of banked RECs and is a cumulative test, not limited to costs associated only with the compliance year. The proposed rule would allow the cost limit to be circumvented by over-building renewables and using banked RECs to meet the RPS standards in later years.

Compliance Report

This rule incorporates many of the same faulty definitions from the Compliance Standards rule and should be modified in the same manner.