

Newly Issued California Executive Order Requires Energy Retailers to Deliver 33% of Electrical Energy from Renewable Resources by 2020 and Establishes Facilitating Procedural Framework

Directives of S-14-08

On November 17, 2008, Governor Schwarzenegger signed Executive Order S-14-08, revising California's existing Renewable Portfolio Standard (RPS) upward to require all retail sellers of electricity to serve 33% of their load from renewable energy sources by 2020. The existing RPS requires retail sellers to supply 20% of their total electrical load from renewable energy sources by 2010. In order to meet this new goal, a substantial increase in the development of wind, solar, geothermal, and other "RPS eligible" energy projects will be needed. Executive Order S-14-08 seeks to accelerate such development by streamlining the siting, permitting, and procurement processes for renewable energy generation facilities. To this end, S-14-08 issues two directives: (1) the existing Renewable Energy Transmission Initiative will identify renewable energy zones that can be developed as such with little environmental impact, and (2) the California Energy Commission (CEC) and the California Department of Fish and Game (DFG) will collaborate to expedite the review, permitting, and licensing process for proposed RPS-eligible renewable energy projects.

CEC and DFG Memorandum of Understanding (MOU)

S-14-08 presumes the coordination of the various state and federal agencies responsible for reviewing and approving proposed energy generation projects. To effect this coordination and cooperation, two MOUs between the responsible agencies were executed on November 17, 2008. CEC and DFG executed an MOU, establishing the Renewable Energy Action Team (REAT), a body formed specifically to carry out the directives of S-14-08. REAT officials will be appointed by the Chair of CEC and the Director of DFG and will do the following:

1. Create a "one stop" process for permitting renewable energy generation power plants so that review of the proposed power plant project is filed directly at the state level and concurrently reviewed by CEC and DFG. (In this process, REAT will consult both the U.S. Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS).) Currently, the CEC's preemptive authority is limited to thermal power plants with capacity of 50 MW or greater. For renewable energy projects, this affects only large solar, biomass, and geothermal projects. Legislation will be necessary to bypass local siting authority over any other types of projects.
2. Create a joint CEC and DFG "streamlining unit" that must reduce permit processing times by 50% for projects within REAT-determined "renewable energy designated areas." The REAT will define such areas beginning February 1, 2009.
3. Publish a list of places identified as "top priority areas" for conservation using the state's Natural Community Conservation Plan by March 1, 2009.
4. Develop and publish a Best Management Practices Manual to be used by RPS project applicants in designing their projects by December 31, 2009. (In developing this publication, REAT will be required to consult with BLM and FWS, as discussed below.)
5. Collaborate with other appropriate federal entities and interested stakeholders to create a comprehensive map identifying areas designated for long-term RPS-eligible project development and areas designated for conservation by December 31, 2009.
6. Create a draft Desert Renewable Energy Conservation Plan (DRECP) for the Mojave and Colorado desert regions by December 1, 2008; complete the DRECP by December 31, 2010 and subsequently begin the environmental review process for the Plan; and complete the final DRECP, which must contain endangered species permit assurances, facilitate approval of RPS desert projects, and provide for state and federal funding to implement the final DRECP.

The MOU Executed Between CEC, DFG, BLM, and FWS

In addition to the MOU executed between DFG and CEC, a second MOU was entered into by DFG, CEC, BLM, and FWS on November 17, 2008. This MOU memorializes these four agencies' agreement to work cooperatively with one another in formulating and implementing all applicable laws and regulations relating to the permitting of RPS-eligible energy projects. To achieve this interagency cooperation, the MOU establishes the California Renewable Energy Permit Team (REPT). Through the REPT, the signing agencies must work together to produce guidelines and a comprehensive conservation strategy that will reduce the timelines for siting, development, permitting, and construction of RPS-eligible projects.

To achieve this timeline reduction, the MOU outlines three objectives: (1) development of a Solar Energy Programmatic Environmental Impact Statement, (2) development of a multispecies conservation strategy specifically tailored to the Colorado and Mojave desert regions (to be known as the Desert Renewable Energy Conservation Plan), and (3) development of Best Management Practices Manual (BMP) guidelines and other appropriate interim provisions to assist solar and other RPS energy developers with siting projects in environmentally suitable locations.

The first objective, development of a DECP, is particularly significant because it demonstrates the willingness of both state and federal authorities to provide effective protection for the natural resources in the Mojave and Colorado deserts, while still allowing development of solar and other qualified RPS-eligible projects in these regions. To this end, the MOU sets a 2.5-year timetable for development of a final DECP and instructs the cooperating agencies to hold stakeholder meetings and reviews during this period because the input of such interested parties is considered "necessary" to develop a sound conservation strategy.

Impact on Prospective Renewable Energy Developers

The final DECP will likely be an important tool for guiding and regulating the construction of future renewable energy generation projects. Therefore, prospective renewable energy developers should participate in its formulation over the next 2.5 years. The four-agency MOUs and S-14-08 provide developers with a unique opportunity to shape the standard that they will be required to comply with in the near future.

The 33% RPS is very ambitious and will require the development of RPS-eligible projects in a short time frame. The "one stop" permit streamlining process and the overarching goals of S-14-08 demonstrate a willingness on the part of the relevant state and federal agencies to create a regulatory environment favorable to the development of RPS-eligible energy projects. Collectively, S-14-08 and the two executed MOUs demonstrate state and federal regulatory agencies' desire to encourage renewable energy projects by reducing the time and uncertainty associated with permitting such projects. The considerable role of local government agencies in the land use approval process remains to be addressed.