

**CA Renewable Portfolio Standard
SB 14 (Simitian) and AB 64 (Krekorian)
Questions and Answers**

1. What is the CA Renewable Portfolio Standard (RPS)?
 - a. The CA RPS is a law on the books today that requires utilities to obtain 1/5 (20%) of their power from renewable energy resources by the year 2010.
 - b. The current law expressly prohibits requiring utilities to go beyond the 20% (Public Utilities Code Section 399.15(b)(1)). Executive orders and other administrative actions cannot supersede the law. Trying to implement the RPS without a change in statute will lead to litigation, confusion, and regulatory uncertainty.
2. What are SB 14 (Simitian) and AB 64 (Krekorian)?
 - a. SB 14 and AB 64 are two bills that increase the CA RPS from the current 20% by 2010 to 33% by 2020. The 33% was recommended by state energy agencies in their “Energy Action Plan” and adopted by the ARB as part of its Scoping Plan to implement AB 32, the Global Warming Solutions Act of 2006.
 - b. Issuing reports and administrative orders recommending a 33% RPS, and actually implementing it, are two entirely different things. State energy agencies have made little progress in actually implementing the RPS and have approved major new contracts for power out of state, thereby exporting jobs and environmental benefits while leaving CA ratepayers holding the bag.
3. The Governor and his press office say SB 14 and AB 64 are poorly drafted. True?
 - a. If the bills are poorly drafted, its news to the dozens of utilities, environmental lawyers, and renewable companies that support the bill.
 - b. Given that there are three major private utilities and several dozen municipal utilities in the state, drafting a law that encompasses all of them is a complex undertaking. But large corporations like PGE and SDGE along with the largest municipal utility in the country—LA DWP, all say the bill is well-drafted and will work. That’s why they strongly support the bill and are urging the Governor to sign it into law.

- c. Ironically, a good portion of the language in the bills were drafted or suggested by the Administration. For example, the cost containment mechanisms in the law were suggested by the staff of the state Public Utilities Commission. The provisions to reorganize and streamline renewable energy transmission permitting were taken from the Governor's own executive order on the topic.
4. The Governor and his press office say they can implement the 33% RPS by executive order and no bill is needed. True?
- a. Implementation of the 33% RPS by administrative order is legally questionable, administratively complex, and fraught with political and policy problems. That's one reason why the Governor himself, in a May 22, 2009 letter to the legislative leadership, said the 33% had to be a "statutory mandate."

At minimum, implementing the 33% will lead to litigation, confusion, and delay--not quite the sort of thing that sends a message to renewable energy developers that CA has its act together and is open for business.

- b. Current law (Public Utilities Code Section 399.15(b) (1) expressly prohibits utilities from being required to go beyond a 20% RPS. It's difficult to see how an administrative order can supersede an explicit provision of law.

Moreover, Health and safety Code Section 38574 (under the Global Warming Solutions Act of 2006) expressly prohibits the state Air Resources Board from altering "any programs administered by other state agencies for the reduction of greenhouse gas emissions." The state Public Utilities Commission and Energy Commission have adopted rules for renewable energy based in part on their global warming reduction potential. The ARB has no authority under law to override the statutory schemes for RPS for energy agencies.

- c. The issuance of an executive order is temporal in nature and not the sort of thing on which the investment community or large utilities make decisions. Unlike a law, which requires an act of the legislature to change, an administrative order is worth little more than the paper it is written on.

Candidly, this governor is a short-timer. He is out of office next year and won't be around to implement an 11 year program. Likewise his appointments to the Air Board are pleasure appointments and will almost certainly be replaced by new appointments.

The 33% by 2020 RPS is a requirement that needs to be in law to ensure there are specific mechanisms in place to ensure progress towards that

goal. Otherwise, subsequent governors and their appointments can revise and undermine based on their political views.

- d. Finally, as the Governor himself has noted when he signed AB 32 and measures like SB 375 into law, administrative actions are no substitute for an enforceable law to ensure environmental protection is achieved.
5. The governor and his press office said that these RPS bills will kill the solar industry in CA. True?

If these statements are true, they are news to the many solar, wind, and geothermal companies who support the RPS legislation passed by the legislature last week. For example, the following quote was issued in support of Sb 14 and AB 64 last week from the Vote Solar Initiative Organization:

Vote Solar Initiative (Support letter 9/9/09):

“A strong RPS is crucial to the state achieving its greenhouse gas reduction goals under AB 32, in addition to displacing new fossil plants in areas with the most impaired air quality, diversifying our energy supplies to insulate ratepayers from natural gas price swings, and providing a much-needed stimulus to our green tech economy by providing valuable new green jobs.”

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