

*Proposition 7: Solar and Clean Energy Act of 2008***Board Action:****OPPOSE****Rationale:**

The encouragement of innovation and ecological responsibility are noble ambitions. There is no doubt that California should continue to lead the nation in the development of renewable energy, but it should not be at a pace that is reckless or driven by legislation written by only a few. While Proposition 7's intent to spur the state's energy providers to develop more renewable sources of energy is commendable, its means for doing so are unacceptably flawed. Its notably high Renewable Portfolio Standard (RPS) targets are proposed at a time when the state's deadline for meeting the first RPS target is still two years removed. Consequently, it is imprudent to set new goals without first examining and correcting the difficulties and shortfalls of the first attempt. Furthermore, such sweeping policy should come through the legislative process, not the ballot box. To create a practical and effective plan it will be necessary for there to be collaboration with parties like the state's utilities, environmental groups, local governments, and developers of energy technology.

Many of the problems faced by utilities in meeting the current target are not corrected by the measure. Additionally, by not addressing these problems, Proposition 7's passage will almost assuredly mean massive fines for California's energy providers and increased rates for consumers. Proposition 7 could also derail the renewable energy movement in the state by putting into law a premature and faulty measure that will prove to be extremely difficult to amend or correct.

Californians should not feel that they are voting against their environmental conscience by opposing Proposition 7. The state is currently working to develop new legislation that would create impressive RPS targets (33% by 2020) based on compromise and information gathered by examining efforts to meet the current target. Ultimately, while Proposition 7's intentions resonate with many voters, those that take the time to examine its details will find copious reasons to oppose it.

Background:

Spurred by its growing economy and attractive climate, California's burgeoning population has a need for ever-greater amounts of electricity from increasingly reliable sources. As a result, the state has made great efforts to increase the amount of energy it provides from renewable sources and in doing so, California has repeatedly demonstrated to the nation and the world that renewable energy sources can be both economical and productive substitutes for traditional sources of electricity. Today though, California's energy companies are significantly behind in meeting State mandated targets for producing energy from renewable sources. A recent report from the California Public Utilities Commission stated that the biggest identifiable obstacles in the path of renewable energy in California are the possible

loss of the federal Production and Investment Credits, the lack of transmission lines, and the difficulty in obtaining permits to build new facilities and transmission infrastructure.

Production of Electricity and Expansion of Infrastructure

Californians receive their energy from three primary types of providers. The vast majority of electricity, nearly 68%, is generated by investor owned utilities (IOU), a group that includes companies like San Diego Gas and Electric (SDG&E), Pacific Gas and Electric (PG&E), and Southern California Edison (SCE). The California Public Utilities Commission (PUC) regulates these providers and most notably oversees electricity rates and how services are provided to customers. The remaining 32% of California's electricity comes from municipal providers, like the Los Angeles Department of Water and Power, and from Electric Service Providers (ESPs), which generate 24% and 8% of the State's energy respectively.

The authority to grant permits for the creation of new power-generating facilities and transmission lines in California is held by three bodies. The Federal Energy Regulatory Commission (FERC) is responsible for most hydroelectric facilities; the State Energy Resource Conservation and Development Commission (CEC) permits the construction of thermal facilities that generate greater than fifty megawatts of power; and local governments are granted discretion concerning projects that do not fall under those categories, which include facilities that generate electricity using renewable sources like wind, solar, and biomass.

Similarly, organizations tasked with permitting the construction of new power transmission lines vary with the purpose of the proposed project and the type of energy provider who will be using the lines. Power lines that comprise part of the electricity grid require permits granted by FERC, lines connecting a power plant to the grid are under the permitting authority of the organization that oversees the plant that intends to construct new lines, and simple transmission lines connecting customers to the grid are overseen by local governments.

The Current Law and Its Renewable Energy Targets

California's current Renewable Portfolio Standard (RPS) was created with Senate Bill 1078 in 2002. The bill required retail sellers of electricity (IOUs, ESPs, and community choice aggregators (CCAs)) to increase their share of electricity generated through renewable sources by at least 1% per year so that 20% of the energy they sold would come from renewable sources by 2017. In 2006, though, concerns about the quick and underestimated pace of climate change inspired lawmakers to pass Senate Bill 107, which pushed the deadline for meeting the 20% target forward to 2010.¹ Those that do not meet this target will face a fine of \$.05 per kWh below the RPS target, with a cap at \$25 million per year.²

¹ Information about Senate Bill 1078 and 107 was taken from the California Public Utilities Commission's report "RPS Procurement Status Report, July 2008."

² "Compliance & Flexibility"- California Public Utilities Commission's Website.
<http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/faqs/02ComplianceAndFlexibility.htm>

As of August 2008, none of California's three largest IOUs have reached the 20% goal. Southern California Edison (SCE) and Pacific Gas and Electric (PG&E) report producing 15.7% and 11.4% of their energy from renewable sources respectively, with San Diego Gas and Electric (SDG&E) in a distant third place with only 5.2%.³ According to a report released by the Public Utilities Commission (PUC), none of California's IOUs are expected to meet the 2010 target. Surprisingly, this even includes SCE, which has been working to expand its renewable portfolio since the 1980s and recently began the largest solar energy installation program in the country that is expected to generate 250 megawatts of electricity, enough to power 162,000 homes.⁴ Pushing this goal even further out of reach is the fact that a proportion of 20% is something of a moving target. As demand for electricity increases, each provider needs to produce more power, thus increasing the amount of renewable power they need to generate to meet the target. Additionally, the PUC has shown that as companies expand their use of renewable energy sources, the costs they face inevitably increase as the "low-hanging fruit", like wind and geothermal power, are developed and more elaborate and expensive energy sources are needed to keep expanding their portfolios.⁵

SDG&E's Expected Shortfall

San Diego Gas and Electric currently serves 3.4 million customers in and around San Diego County. Over the last few years the company has been slow in its expansion of renewable assets. In 2000 SDG&E generated less than 1% of its energy from renewable sources, and today renewable energy output is 5.2% of SDG&E's total. However, this meager proportion is not representative of what many believe is San Diego's potential. A 2005 report noted that San Diego could practically generate 4,000 megawatts of solar electricity by 2010 and 7,500 megawatts by 2020.⁶ However, regardless of this capacity, today SDG&E has entered into contracts for only 80 megawatts of renewable energy.

To meet the 2010 RPS target, SDG&E has gone against the advice of the PUC, and has invested the vast majority of its expected renewable power generation into a single project, known to most as the Sunrise Powerlink. The Powerlink itself is merely a transmission line, but would allow SDG&E to begin building renewable power facilities in the Imperial Valley, an area with rich geothermal, solar, and wind resources. SDG&E predicts that with the Sunrise Powerlink it will, in the best-case scenario, be generating 16% of its power from renewable sources by 2010⁷, well below the 20% goal. This means that should the Sunrise Powerlink be delayed or canceled or the solar technology that SDG&E is planning to use not function as expected, the company would fall even further behind in achieving the RPS target and be subject to significant penalties.

³ Figures taken from the website of the California Public Utilities Commission.
<http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy>

⁴ "These Days"- KPBS Radio, August 11, 2008. Amita Sharma.

⁵ RPS Procurement Status Report, July 2008- California Public Utilities Commission.

⁶ "Potential for Renewable Energy in the San Diego Region,"- www.renewables.org.

⁷ Interim Report No.32- California's Renewable Energy Mandate in Peril: San Diego Gas & Electric Must do More to Reach 20 Percent Renewable Energy by 2010."- Office of the City Attorney of San Diego. July 8, 2008.

Proposal:

Proposition 7: The Solar and Clean Energy Act is an ambitious and far-reaching proposal. Its most notable provision requires that all utilities in California generate 20% of the energy they sell from renewable sources by 2010, 40% by 2020, and 50% by 2025 (growing by approximately 2% per year). Significantly, these targets also apply to municipal utilities, a group exempt from RPS targets under the current law (AB32).

Similar to AB32, Proposition 7 imposes fines on those utilities that do not meet the targets on time. The measure, however, lowers the fine from \$.05 to \$.01 per kWh that the utility is short of the target. To offset this 80% reduction though, Proposition 7 removes the cap in the current law that sets a maximum fine of \$25 million, meaning that there is virtually no limit to how large a utility's fine can be.

To avoid these costs being passed on to consumers, Proposition 7 stipulates that electricity providers cannot increase their rates in order to recover the costs of the penalties. In addition, the measure states that “in the short term” its changes will lead to no more than a 3% rise in electricity rates per year. However, as the Legislative Analyst's Office remarked “the measure includes no specific provisions to implement this declaration.”⁸

Fines are not a certainty though; in the event that a utility does not meet an RPS target on time, the PUC or CEC can waive the penalty if it feels that the company has made a “good faith” effort. Fines collected are no longer put into California's general fund, but instead directed to the “Clean Energy Transmission Account.” The funds are then only used to finance the purchase of property or finance the construction of transmission infrastructure that help achieve RPS targets.

Proposition 7 also changes the way that RPS goals are enforced. The measure expands the role of the PUC, giving it power over investor owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs) to review and approve procurement plans for renewable resources, set rates, and enforce penalties.

These same responsibilities, though, as they pertain to municipal utilities are given instead to the State Energy Resource Conservation and Development Commission (CEC). The CEC is also granted a wide range of new powers and responsibilities under the Solar and Clean Energy Act, including:

1. The permitting authority for new electrical infrastructure projects is transferred from the PUC and local governments to the CEC.
2. The CEC is expected to find “solar and clean energy zones” where large-scale renewable energy facilities can be started.⁹
3. The market price of electricity is determined by the CEC, rather than the PUC. Furthermore, the CEC must consider new factors when setting the price such as the “value and benefits of renewable resources.”

⁸ Legislative Analyst's Office- Report on Proposition 7: The Solar and Clean Energy Act. November 29, 2007.

⁹ The measure's language suggests that these areas are most likely to be sited in the deserts of California.

4. The permitting authority over non-thermal renewable energy plants that produce 30 megawatts or more and supporting infrastructure is transferred from local governments to the CEC. Furthermore, the power to permit new transmission lines within electrical grids is moved from the PUC to CEC.

To meet the prescribed RPS targets, Proposition 7 makes some significant changes to the rules concerning how utilities purchase or build facilities to generate renewable power. Firstly, the measure requires that utilities that enter into contracts to buy renewable energy offer procurement contracts of at least 20 years. Secondly, the Solar and Clean Energy Act stipulates that electricity providers who are behind on meeting the RPS targets must accept all offers for the purchase of renewable energy that are at or below the market price. However, energy providers are not required to purchase any renewable energy when the price exceeds the market rate by 10%. Also, under Proposition 7, IOUs are able to recover through rate increases the costs of renewable energy contracts that are no more than 10% above the market price.

In order to help streamline the permitting process and remove barriers to the construction of new facilities and transmission infrastructure, Proposition 7 creates an accelerated permitting period for specific circumstances. This provision limits the time it takes to receive a permit to six months when the project is determined not to cause significant environmental harm, damage the electrical systems, or violate any other legal standard. This also limits the time that residents near a project have to comment or make suggestions to 100 days.

Lastly, Proposition 7 limits the State Legislature's ability to change any part of it without a 2/3 supermajority.

Analysis:

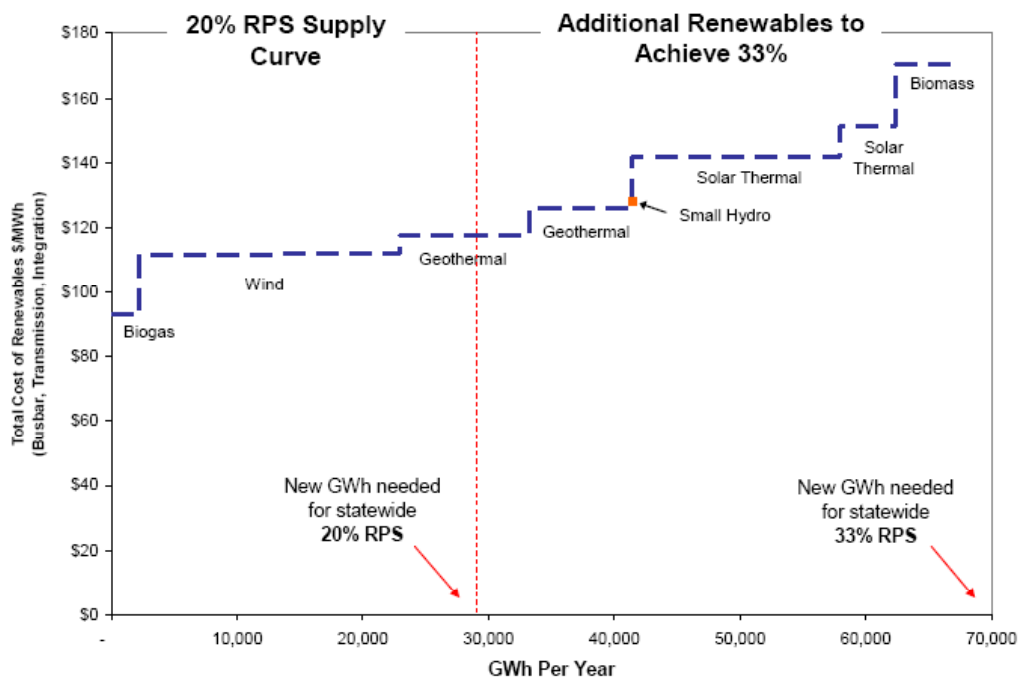
According to the Legislative Analyst's Office Proposition 7 would cost California approximately \$3.4 million per year. Broken down, the costs would be \$2.4 million in additional administrative costs for the CEC and \$1 million for the PUC that would result from the added responsibilities transferred to those offices from local governments by the measure. While it is true that these costs could be offset through lowered administrative costs for local governments, the savings are unknown and would likely be only trivial. Furthermore, the Legislative Analyst's Office predicts that there would be an unknown loss to State and local governments from the decrease in tax revenue that could result from increased electricity rates diminishing the profits of businesses statewide.

Aside from the costs of the measure, its means for achieving its end are impractical. The RPS targets set by Proposition 7, though ambitious, are unrealistic, especially when one considers the difficulties that have been faced by utilities in achieving the State's current goal. The Solar and Clean Energy Act does not build on the experiences gathered from the successes and failures of the current law or correct the problems that cannot truly be known until at least 2010 when the current deadline runs out. As the PUC stated in their recent report on the status of IOUs trying to reach the 2010 RPS target, "If California is to adopt a 33% target, the state must examine its experience with the 20% RPS and apply lessons

learned to any higher targets.”¹⁰ Dauntingly, though the PUC was discussing only a 33% goal (versus Proposition 7’s 40% by 2020 target) the commission went on to say, “The magnitude of the 33% RPS implies costs, GHG emissions and new operating and planning challenges that are not yet full understood.”¹¹ [Emphasis Added] As such, it can be inferred that if a smaller target of only 33% requires further planning, Proposition 7’s passage is premature.

Such goals are also impractical at this time because the costs of increasing a utility’s renewable assets are not linear. This simply means that because of the need to tap new and expensive resources once the cheaper more accessible sites and technologies have been exhausted, the cost of going from 1% to 2% of renewable production is far cheaper than the cost of going from 10% to 11% (See Figure 1¹²). Furthermore, because energy demand is always increasing in California and utilities are producing more energy to meet these needs, a target proportion of renewable energy production is extremely difficult to achieve, even when the goals are modest.

Figure 1:



Proposition 7’s high RPS targets could prove to be extremely expensive for utilities in California. With no IOU expected to meet the 2010 target of 20% under AB32, it is likely, if not certain, that they would also fail to meet the same 20% target under Proposition 7. This is particularly concerning because even though Proposition 7 lowers penalties by 80%, its removal of the cap on penalties could prove disastrous for utility companies, especially those like SDG&E that are far behind in reaching their targets. As Tam Hunt explains in his

¹⁰ RPS Procurement Status Report, July 2008- California Public Utilities Commission.

¹¹ Ibid.

¹² RPS Procurement Status Report, July 2008- California Public Utilities Commission- Page 10.

article “The Solar and Clean Energy Act Engenders Much Debate” the penalties will likely increase for utilities that do not meet the RPS targets:

“...if PG&E is, in 2010, 5 percent behind in its annual obligations, its penalty under current law would be a maximum of \$25 million, even though the uncapped amount would be about \$275 million. Under [Proposition 7], the penalty in this scenario would be about \$55 million, more than twice what the current law would allow.”¹³

Arguments:

For:

Proponents of Proposition 7 point primarily to the need for California to encourage the development of clean and renewable energy technologies in order to reduce emissions of greenhouse gases and the United States’ reliance on imported energy. As Jim Gonzalez, former San Francisco supervisor and chairman of the initiative’s campaign, explained, “The issue here is global warming...We aren’t changing (how electricity is made) rapidly enough.”¹⁴

Supporters also cite the economic benefits that the proposition could have as well. The official arguments in support of Proposition 7 state that passage would:

- “Make California the world leader in clean power technology.”¹⁵
- “Help create over 370,000 new high wage jobs.”¹⁶

Finally, supporters aver that Proposition 7 would limit increases in electricity rates to a maximum of 3% per year and would expressly forbid energy producers from raising their rates in order to make up for the costs of penalties they incur for not meeting RPS targets.

Supporters of Proposition 7 Include, but are not limited to:

1. Peter Sperling- Founder, University of Phoenix
2. Senator Martha Escutia- Former Chair of the State Senate Energy Committee
3. Senator Art Torres- Chair of the California Democratic Party
4. John L. Burton - Former President Pro Tem, California State Senate, and Former Chair, California Democratic Party
5. Alicia Wang - Vice Chair, California Democratic Party

Against:

Opponents of Proposition 7 argue against some of the measure’s most basic characteristics. Ralph Cavanaugh of the National Resources Defense Council remarked in a *San Francisco Chronicle* article that he believed the proposition was too complicated, saying, "If you're going

¹³ “The Solar and Clean Energy Act Engenders Much Debate”- Tam Hunt.

<http://www.renewableenergyworld.com/rea/news/recolumnists/story?id=51785>

¹⁴ “California Voters May Toughen Renewable Targets.” Bernie Woodall. Reuters April 8, 2008.

¹⁵Argument in Favor of Proposition 7:

http://www.sos.ca.gov/elections/bp_11042008_pres_general/prop_7_arg_in_favor.pdf

¹⁶ Ibid.

to legislate at the ballot box, keep it simple, don't write 70 pages.”¹⁷ Cavanaugh also noted in that same article that he was concerned by the lack of consultation between the measure’s authors and Californian environmental groups, arguing that the “initiative was put together by people who didn't know what they were doing” and this possible lack of expertise potentially “opens the way for many unintended consequences.”¹⁸

The Sierra Club of California is also critical of the proposition, arguing that the complex and important task of revolutionizing how California generates its power should not be achieved through the ballot box. Rather, they believe that while climate change is a problem that requires immediate attention, the correct way of creating change “is to work through the state legislature, regulatory bodies, and stakeholders to implement major, effective changes already proposed while adequately protecting the environment.”¹⁹

Critics of Proposition 7 also warn that the measure does not correct the shortfalls and problems of the current laws in California. The League of California Cities announced their opposition to Solar and Clean Energy Act, citing as one of their reasons that Proposition 7 did not amend the major problems confronting renewable energy production today, such as transmission development.²⁰ For many this shortcoming is only exacerbated by the fact that, if passed, any part of Proposition 7 would be difficult to change. Director of the Center for Energy Efficiency and Renewable Technologies, V. John White, remarked “the initiative locks all the dysfunctional complexity into place and would require a two-thirds vote of the Legislature to change it.”

Finally, many opponents of Proposition 7 point out that if renewable energy prices go above 10% of the market price for electricity it would provide an excuse for utilities to stop buying renewable energy. Additionally, because the measure’s language only allows utilities not to buy renewable energy when it is 10% above the market price, many believe that there is a danger that renewable energy companies will have little to no incentive to lower their prices to the market level.

Those Opposed to Proposition 7 Include, but are not limited to:

1. California Chamber of Commerce
2. League of California Cities
3. San Diego Tax Fighters
4. Endangered Habitats League
5. California League of Conservation Voters

¹⁷ “Surprise Opponents to Renewable Energy Measure.” John Wildermuth. July 5, 2008.

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/07/04/BACJ111Q3Q.DTL&type=politics>

¹⁸ Ibid.

¹⁹ Sierra Club California on The Solar and Clean Energy Act of 2008

²⁰ “League Opposes Energy Initiative on November Ballot”- League of California Cities, June 13, 2008.

http://www.cacities.org/index.jsp?displaytype=11&story=27302&zzone=locc§ion=front&sub_sec=front_page