



CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

915 L STREET, SUITE 1460 • SACRAMENTO, CALIFORNIA 95814
(916) 326-5800 • (916) 326-5810 FAX • www.cmua.org

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June 6, 2013

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 13-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512



Re: CMUA Comments on Second 15-Day Language Changes for the Proposed Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Second 15-Day Language Changes for the Proposed Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, issued on May 22, 2013.

As stated in previous comments, CMUA generally believes that the proposed regulations represent a reasonable implementation of the statutory sections directing the CEC to develop enforcement procedures. However, CMUA continues to have serious concerns with specific provisions of the proposed regulations. In these comments, CMUA discusses the Second 15-Day Language Changes that the CEC should reconsider as well as those changes that CMUA supports. CMUA also identifies several provisions that should be reconsidered if the CEC initiates a process to amend the regulations, based on real world experiences gained through the initial compliance, reporting, and verification of these requirements. CMUA looks forward to working with the CEC to implement these new regulations.

I. COMMENTS ON SECOND 15-DAY LANGUAGE CHANGES

A. CMUA Supports the Procurement Quantity Requirements for Compliance Period 2.

While many parties called for the CEC to adopt the California Public Utilities Commission's (CPUC) methodology for calculating the Compliance Period 2 procurement quantity requirements, the Second 15-day Language made no changes to this requirement. As described in CMUA's prior comments, the CEC's proposal for Compliance Period 2 represents a reasonable interpretation of the statutory direction for the CEC to adopt enforcement procedures. Additionally, the electric utility industry requires significant lead-time to assess the need for, as well as, actually develop or contract for new generation. In light of the fact that these regulations will become effective very near the beginning of Compliance Period 2, most publicly owned electric utilities (POUs) will have already fully planned for and begun implementing procurement activities well beyond the end of Compliance Period 2. It would be extremely costly and burdensome for POUs to adjust to new procurement quantity requirements in such a short amount of time. Accordingly, CMUA continues to support the existing Compliance Period 2 procurement quantity requirements.

B. CMUA Continues to Oppose the Procurement Quantity Requirements for Compliance Period 3.

In comments filed on May 6, 2013, CMUA and many of its members provided extensive and persuasive arguments clearly establishing that the plain language of California Public Utilities Code section 399.30(b)(2)¹ does not support the Compliance Period 3 procurement quantity requirements established by the 15-Day Language Changes issued on April 19, 2013. As CMUA stated previously, the statutory language clearly and deliberately does not set a precise numerical value for the procurement quantity requirement for the entirety of Compliance Period 3, and instead, provides each POU local regulatory authority with discretion to adopt its own procurement target. The CEC's role under the statute is to determine when the procurement target adopted by a POU's local regulatory authority does not meet the minimum statutory requirements. The CEC's role is not to adopt a single "optimal" compliance path for POUs.

CMUA urges the CEC to reconsider its decision to adopt the procurement quantity requirements that follow the methodology set by the CPUC for retail sellers, and instead, to reinstate its previously long-standing interpretation of the statute, as reflected in the March 1, 2013, version of the Proposed Regulations. Should the CEC adopt the currently proposed procurement quantity requirements for Compliance Period 3, CMUA asks that the CEC work with the POUs to evaluate the additional financial impacts associated with this increased procurement obligation.

C. CMUA Supports Changes the to the Historic Carryover Provisions.

The Second 15-day Language Changes extend the deadline for retiring RECs that will be used for historic carryover from within 30 days to within 90 days after the effective date of the regulations. While CMUA's members will work to complete this task in as timely a manner as

¹ Unless otherwise specified, all statutory references are to the California Public Utilities Code.
CEC Docket Number 13-RPS-01

possible, this additional time will protect against any unforeseen complications. The one-time nature of the historic carryover rules places great importance on ensuring the compliance, reporting, and verification requirements are sufficiently flexible to allow POUs to count all eligible procurement. The proposed change adds to this flexibility, and therefore, CMUA supports it.

The Second 15-day Language also allows pre-January 1, 2011, procurement from contracts that were executed after June 1, 2010, to count towards the historic carryover calculation.² While this is likely only applicable to a few contracts, counting this procurement fits the purpose and intent of the historic carryover provisions, which is to provide POUs with the full benefit of procurement occurring prior to January 1, 2011. Therefore, CMUA supports this proposed change.

D. CMUA Opposes the Second 15-Day Language Changes to the Excess Procurement Rules.

CMUA supports eliminating the long-term contracting requirements relating to the excess procurement rules as proposed in the April 19, 2013, 15-day Language Changes. While the CEC initially agreed with CMUA, the Second 15-Day Language Changes revert to a prior version and reinstate the long-term contracting requirements. One of CMUA's key goals in recommending the change was to prevent the excess procurement rules from being made meaningless under current industry practices. As currently proposed, all contracts of less than 10-years in duration are subtracted from the excess procurement calculation. However, Portfolio Content Category 3 (PCC3) renewable energy credits (RECs) often will not have any time period associated with them. These RECs are fungible products that can be freely traded well after the associated energy has already been generated. Thus, the concept of a minimum contract term does not have any clear applicability to PCC3 procurement. In many, if not most, situations, a POU that procures the statutorily permissible level of PCC3 electricity products would be unable to count any excess procurement. Such a severe penalty was clearly not intended by SB1X-2.

The CEC should reconsider its proposed changes to the excess procurement rules, and at a minimum amend the Regulations to avoid the severe penalty on PCC3 procurement.

² See Second 15-Day Language Changes, Section 3206(a)(5)(B):

The historic carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010. Both the historic carryover and the procurement applied to the POU's annual procurement targets ~~must be procured pursuant to a contract or ownership agreement executed before June 1, 2010, and~~ must be from eligible renewable energy resources that were RPS-eligible under the rules in place for retail sellers at the time of execution of the contract or ownership agreement, except that the generation from such resources need not be tracked in the Western Renewable Energy Generation Information System.

II. COMMENTS ON IMPLEMENTATION ISSUES

A. CEC Staff Should Coordinate with the POUs.

Once the Regulations are filed with the Secretary of State, the CEC and the POUs will need to undertake a significant effort to ensure that the reporting and verification process operates efficiently and effectively. The CEC staff should work closely with the individual POUs, as well as with CMUA, the Northern California Power Agency, and the Southern California Public Power Authority to identify any problems that may arise or any potential areas of confusion. Based on conversations that CMUA has had with its members, it is clear that many of the proposed regulations continue to generate significant confusion regarding the precise requirements. CMUA believes that resolving this confusion should be one of the CEC's primary concerns. There are many methods that the CEC should consider for addressing this problem, including the development of an informal guidance document that provides plain language answers and examples to questions that the CEC has received or is likely to receive. CMUA welcomes a coordinated effort with CEC staff on this issue.

B. Need for Further Consideration

CMUA recognizes that the CEC feels it must adopt regulations in order to provide regulatory certainty prior to the end of the First Compliance Period. However, once the regulations are finalized, the CEC should identify those provisions of the regulations that need further consideration, either through changes made during the implementation process, or where appropriate, through amendment to the regulations. This will be driven in part by the ability to spend greater time reviewing the legal and practical issues surrounding specific requirements. It will also be driven by experience with the actual real-world issues as they arise. CMUA recommends that the following requirements should be carefully monitored, and where appropriate, corrective action should be taken.

1. Section 3206(a)(4) – Portfolio Balance Reduction

CMUA has filed comments both at the CEC and at the CPUC demonstrating that California Public Utilities Code section 399.16(e) permits the regulatory authority for a utility to increase the permissible procurement of PCC3 resources in a particular compliance period. However, the currently proposed regulations limit the applicability of section 399.16(e) to a reduction of the required PCC1 procurement. This restriction is not required under statute and should be removed.

2. Section 3203(a)(1)(C) – Hourly Scheduling Requirements

CMUA and many other parties have filed extensive comments on the requirements for electricity products to qualify as PCC1 pursuant to the “scheduled into a California balancing authority” language of section 399.16(b)(1)(A). Beyond the legal and policy arguments as to why this restriction is unwarranted, there is record evidence that the administrative burden associated with the verification requirements will likely be costly and burdensome. As parties begin to comply with these requirements, CMUA requests that the CEC take special note of the complications that arise relating to this requirement and consider appropriate actions to address these problems.

3. Section 3202(e) – Designating RECs for Compliance

The 15-Day Language released on April 19, 2013, included a new restriction on designating RECs for compliance. New Section 3202(e) prohibits a POU from procuring RECs in one compliance period and designating those RECs for compliance in a previous compliance period, even if those RECs were actually generated during that prior compliance period. This incorrectly interprets the statutory language and will unnecessarily limit needed flexibility. This is particularly true in light of the extremely restrictive long-term contracting requirements for excess procurement that are reinstated by the Second 15-Day Language. This restriction comes without any clear benefit, and therefore, CMUA recommends that the CEC reconsider this limitation.

4. Unbundled RECs

The CEC has followed the CPUC's interpretation of section 399.16, requiring that PCC1 and PCC2 electricity products be procured as bundled and that the associated RECs cannot be resold and maintain their PCC status. This restriction is not allowed by the statute and will simply lead to unnecessary and costly burdens. CMUA requests that the CEC reconsider this issue in light of the information that it obtains through the reporting process. Based on real-world data, the CEC should reconsider whether the costs of this requirement outweigh the benefits, if any benefit exists.

5. Section 3206(d) – Executive Director Review

CMUA raised concerns with the current language relating to ability of POUs to seek a voluntary review of their optional compliance measures under Section 3206(d). While CMUA believes that this proposal is a step in the right direction, the process envisioned in Section 3206(d) raises significant concerns in that it provides no certainty to the POU regarding either the scope or timing of the purported review. After the CEC has had the opportunity to actually perform some of these executive director reviews, or if none occur, after the CEC has discussed the proposed process with POUs, the CEC should consider amending this section in order to provide a simpler and more straightforward approach.

6. Section 3207(g) – Cure Period for Incorrect and Incomplete Reports

CMUA supports the concept of a cure period for annual and compliance period reports that are incorrect or incomplete. However, much of this reporting will be new for both the POUs and the CEC and there is little experience to know if the proposed time frame is adequate. There may be particular situations where the process identified in Section 3207(g) is inadequate. CMUA recommends that the CEC reconsider these regulatory provisions after there is more experience with these reporting requirements.

7. Section 3202(a) and (b) – Section 399.16(d) Grandfathering

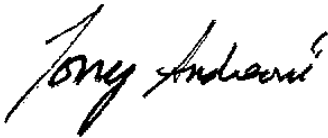
On several prior occasions CMUA has argued that the CEC has misinterpreted the phrase "count in full" as used in section 399.16(d) to result in a significant penalty for POUs that took early actions. CMUA believes that the proper interpretation of "count in full" includes the option to count the procurement towards the otherwise applicable PCC. The CEC's current

interpretation creates unintended and potentially harmful consequences by providing an incentive for POUs to resell electricity products that qualify under section 399.16(d). This is because, in the case of a resource that would otherwise meet the definition of PCC1, the purchasing utility will be able to receive the much more valuable PCC1 treatment. There is no clear benefit associated with encouraging mass resale of existing renewable procurement. Instead, this will only lead to unnecessary administrative costs. Many of CMUA's members have significant percentages of their RPS procurement met by electricity products falling under section 399.16(d), and therefore, are disproportionately impacted by this requirement. As the CEC proceeds with the implementation phase and receives data through the reporting requirements, CMUA asks that the CEC evaluate the costs of this interpretation and reconsider whether this was truly the legislature's intent.

III. CONCLUSION

CMUA appreciates the opportunity to provide comments on the Second 15-Day Language Changes, and looks forward to working with the CEC on implementing the adopted RPS regulations.

Sincerely;

A handwritten signature in black ink that reads "Tony Andreoni". The signature is written in a cursive, flowing style.

Tony Andreoni, P.E.
Director of Regulatory Affairs