BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of:	)	
Developing Regulations and	)	Docket No. 13-RPS-01
Guidelines for the 33 Percent	)	
Renewables Portfolio Standard	)	

COMMENTS OF THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ON THE CALIFORNIA ENERGY COMMISSION'S PROPOSED 15-DAY LANGUAGE REGARDING REGULATIONS ESTABLISHING ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

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Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC) in the Notice of Changes to Proposed Regulations and Notice of 15-Day Comment Period (Notice), dated April 19, 2013, the Southern California Public Power Authority (SCPPA) respectfully submits the following comments on the CEC's proposed revisions on the Regulations Establishing Enforcement Procedures (Regulations) for the Renewables Portfolio Standard (RPS) for Local Publicly Owned Electric Utilities (POUs).

I. INTRODUCTION

SCPPA is a joint powers authority consisting of eleven municipal utilities and one irrigation district. SCPPA members deliver electricity to approximately 2 million customers over an area of 7,000 square miles, with a total population of 4.8 million. SCPPAs members include the municipal utilities of the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside and Vernon, and the Imperial Irrigation District.

SCPPA was formed in 1980 to finance the acquisition of generation and transmission resources for its members. Over the past several years, SCPPA has increasingly become a primary means by which its members procure renewable energy resources. As such, it is important for SCPPA to ensure that its members' historical procurement decisions are preserved and that new renewable energy resources are both eligible for the RPS and fall into clear and well-defined Portfolio Content Categories (PCCs).

SCPPA would like to take this opportunity to thank CEC Commissioners and staff for their work on the proposed Regulations and for providing stakeholders with this opportunity to comment.[1]

II. COMMENTS

As the CEC finalizes these proposed Regulations, it is important to keep in mind that Senate Bill (SB) X1-2 has separate provisions for investor-owned utilities (IOUs) and the POUs because IOUs and POUs are governed, financed, and operate differently. As SCPPA and other stakeholders have pointed in the past, the contract approval processes for the POUs and the IOUs are significantly different. The California Public Utilities Commission (CPUC) has jurisdiction over ratesetting, contract approval, and RPS compliance for the IOUs, while jurisdiction over ratesetting and contract approval for POUs lies with the local legislative bodies (Commissions, Boards and City Councils). The proper authority to establish and enforce an RPS standard for a POU is the POU's local governing body, which is in the best position to know what types of resources and cost limitations are appropriate for its own customers. Thus, differences

[1] SCPPA supports the comments submitted concurrently by the California Municipal Utilities Association, the Los Angeles Department of Water and Power, the City of Azusa Light and Water, and the City of Riverside.

in interpretation of certain sections of SB X1-2 between CPUC Decisions and the proposed Regulations may be necessary and appropriate.

a. Historic Carry-over Provision

SCPPA supports the CEC's removal of the 36-month Renewable Energy Credit (REC) retirement requirement for Historic Carry-Over in Section 3206(a)(5)(E). SCPPA urges the Commission to adopt the changes made to the Historic Carry-Over section as proposed in this draft of the Regulations.

b. 10-Year Contract Limitation for Excess Procurement

SCPPA supports the CEC's removal of the banking restriction in Section 3206(a)(1)(A)(2). Given the intermittency of both renewable energy resources and POU loads, it is nearly impossible to meet a compliance target perfectly. In instances where a POU's load is lower than expected and renewable energy generation is higher than expected, it is imperative for the POU to have the ability to bank excess RECs to make up shortfalls when conditions are reversed; that is, when loads are high but renewable energy generation is low. Allowing contracts with of a term of less than ten years to count in the excess procurement calculation gives POUs a tool to minimize costs to ratepayers.

Certain stakeholders inappropriately portray short-term contract acquisitions as an inherent evil, claiming that

> "…short-term contracts do not stimulate new capacity and a primary RPS program goal is for POUs and IOUs to execute long-term contracts with new facilities."[2]

[2] Freedman, Matthew. April 20, 2013. POU RPS rules -- banking treatment for short term contracts. Available at: http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/comments/15-day/TURN_Comments_on_POU_RPS_Rules-banking_treatment_for_short_contracts_2013-04-30.pdf

This argument is specious at best. The CEC is well aware that RECs associated with short-term contracts can only count towards the RPS goals if the generation facility is certified by the CEC as RPS-eligible; in other words, any and all short-term RECs are created by investment in renewable resources. The fact that short-term contracts are available indicates that sufficient capacity exists in the markets to satisfy RPS requirements for the state as a whole, which is the purpose of SB X1-2. The significant investment in renewable resources already borne by ratepayers is preserved by allowing the energy and the associated RECs to count as excess procurement.

Further troubling is The Utility Reform Network's (TURN) claim that:

> "…POUs may execute long-term contracts in 2014, 2015 or 2016 to run up their banks in anticipation of the third compliance period and thereby delay meaningful commitments to new renewable resource development by several years."[3]

This statement is incorrect on its face. It is clear that in order to sustainably maintain the 33% RPS post-2020, utilities will require some long-term contracts. In order to take advantage of existing and dwindling federal tax credits and to properly plan for Compliance Period 3, POUs are taking action now to procure long-term resources.

The procurement of long-term sustainable assets is a multi-year process, which can be further delayed due to permitting and other miscellaneous issues: Contracts that are executed today will not begin production overnight. Short-term contracts are required in order to fill the gaps between the procurement and construction of long-term facilities. For example, if SCPPA (on behalf of its members) executes a contract in 2014 with a construction phase of 3 years, its members will not receive full benefit from that

[3] Freedman, Matthew. April 20, 2013. POU RPS rules -- banking treatment for short term contracts. The Utility Reform Network. Available at: http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/comments/15-day/TURN_Comments_on_POU_RPS_Rules-banking_treatment_for_short_contracts_2013-04-30.pdf

facility until 2016. In order to meet the goals of the second compliance period, POUs require a means to “fill the gaps” in a cost-effective manner, which in reality can only be met with short-term contracts.

It is clear that in order to sustainably maintain the 33% RPS post-2020, utilities will require some long-term contracts. However, the fact that short-term contracts are available indicates that sufficient capacity exists in the markets to satisfy RPS requirements for the state as a whole, which is the purpose of SB X1-2. The CEC should keep its current removal of this section, as it is necessary for POUs to maintain the flexibility to count short-term contracts as part of its excess procurement calculations and makes full use of eligible resources already in production.

c. Threats of Litigation

The CEC should not succumb to threats of litigation. No party in this proceeding has waived its legal right to request judicial review of any decision made by the CEC: this is not a new concept. Threats of litigation to sway the Energy Commission’s decisions in this proceeding are inappropriate and belittle the hard work made by both the CEC and POUs in developing these regulations into what they are today.

d. **Incremental Electricity Definition**

SCPPA appreciates the CEC’s willingness to define key terms necessary for the structure of a PCC 2 Electricity Product. However, the definition provided for Incremental Electricity raises concerns expressed by SCPPA in the past. The definition in question reads as follows:

For the purposes of this section 3203, “incremental electricity” means the electricity that is generated by a resource located outside the metered boundaries of a California balancing authority area that is not in the portfolio of the POU claiming the electricity products for the RPS compliance prior to the date the contract or ownership agreement

> for the electricity products from the eligible renewable resource, with which the incremental electricity is being matched, is executed by the POU or other authority, as delegated by the POU governing board. [4]

An active and liquid market requires the ability to make economic decisions. In order to reduce costs for PCC 2 products, the substitute electricity provider will typically procure the least-cost substitute electricity available. The economic decision to procure substitute electricity should be solely a matter between the POU and the substitute electricity provider. If this definition is approved, the CEC will limit sources of substitute electricity providers to those offering out-of-state electricity as the PCC 2-compliant product. Public Utilities Code Section 399.16(b)(2) contains no such limitation:

> Firmed and Shaped eligible renewable energy resource eligibility products providing incremental electricity and scheduled into a California balancing authority.

This language in no way suggests that ***all*** substitute electricity products must be located outside of California. As a matter of fact, substitute resource physically located within California still must be "scheduled into" a California balancing authority.

SCPPA therefore requests that the CEC reconsider its position on the location of substitute and incremental electricity, as this restriction is not supported by statute, inadvertently influences market decisions that are not under its purview, and further adds an unnecessary hurdle to compliance with the state's RPS program.

e. REC Retirement Restriction

SCPPA is extremely concerned with the CEC's proposed language in Section 3202 (d):

> A POU may not use a REC to meet its RPS procurement requirements for a compliance

[4] Gonzalez, Lorraine and Angela Gould. 2013. ***Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.*** California Energy Commission, Energy Efficiency and Renewable Energy Division. CEC-300-2013-002-15 Day. Available at: http://www.energy.ca.gov/2013publications/CEC-300-2013-002/CEC-300-2013-002-15Day.pdf

period that precedes the date of generation of the electricity associated with that REC. For example, a POU may not retire a REC associated with electricity generated in April 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.

A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date the POU procured that REC. For example, a POU may not retire a REC associated with electricity generated in November 2013 that the POU procured in February 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.

It is important to note that any shortfalls won't be known until after the close of the compliance period. As currently drafted, if a POU is short in the previous compliance period, the POU will not be allowed to makeup the shortfall in the current compliance period. This interpretation will automatically put a utility into non-compliance and subject it to further enforcement consequences with no reasonable opportunity to cure the shortfall. This will, by default, force POUs to over-procure resources at the expense if its ratepayers.

The CEC needs to provide POUs with the ability to fully close the compliance periods without the risk of enforcement. Therefore, SCPPA recommends that the CEC remove Section 3202 (d) in its entirety.

f. Fixed Intervening Targets in Compliance Period 3.

SCPPA opposes the CEC's last-minute change to the procurement requirements for Compliance Period 3, which would make the CPUC's linear intervening targets applicable to POUs:

For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 27 percent of its 2017 retail sales, 29 percent of its 2018 retail sales, 31 percent of its 2019 retail sales, and 33 percent of its 2020 retail sales. The numerical expression of this requirement is:

$$(EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020}) \geq 0.27(RS_{2017}) + 0.29(RS_{2018}) + 0.31(RS_{2019}) + 0.33(RS_{2020})$$[5]

Several parties have commented that the CEC should adopt the CPUC formula in order to align the IOUs and POUs requirements, but such perfect alignment is not required by either statute or common sense. Stakeholders in this proceeding had accepted the Compliance Period proposals made by the CEC and have relied upon this interpretation in executing procurement plans to meet Compliance Period 3 obligations. Given that the proposed Regulations are not approved and POUs are operating in the bookend of the first compliance period, this last minute change again introduces a new change-in-law which wreaks havoc on POU planning strategies.

SCPPA first questions whether the linear intervening target rule as adopted by the CPUC is consistent with SBX-1 2. Public Utilities Code Sections 399.15(b)(2)(B) and (C) state that:

> (B) In establishing quantities for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, ***the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.***
>
> (C) Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. ***Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual year.***

There have been several interpretations of this language proposed throughout the course of both the CPUC and CEC proceedings, ranging from interim linear and

[5] Gonzalez, Lorraine and Angela Gould. 2013. ***Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.*** California Energy Commission, Energy Efficiency and Renewable Energy Division. CEC-300-2013-002-15 Day. Available at: http://www.energy.ca.gov/2013publications/CEC-300-2013-002/CEC-300-2013-002-15Day.pdf

"concave" targets to qualitative analyses of reasonable progress. The interpretations provided by the CEC and stakeholders may be acceptable to some utilities, but not others. However, given the POUs authority provided in PUC Section 399.30(c), there is still no doubt that the CEC cannot unilaterally impose this interpretation on the POUs:

> **(c) The governing board of a local publicly owned electric utility shall ensure all of the following:**…
>
> (2)The quantities of eligible renewable energy resources to be procured for all other compliance periods **reflect reasonable progress** in each of the intervening years …

Working directly with the express language in SB X1-2, POU governing boards, and not the CEC, have the authority to interpret the exact meaning of reasonable progress for the second and third compliance periods. The only firm requirement is that a POU meet the 25% and 33% targets by the end of each compliance period.

Therefore, SCPPA urges the CEC to return to its previous interpretation of the procurement rules for Compliance Period 3, which was a compromise the POUs found acceptable and workable.

g. PCC 2 Calendar Year Delivery Requirement

As expressed in previous comments, SCPPA is still concerned about the CEC's current imposition of a "calendar year" scheduling requirement for incremental electricity used to for firming and shaping. Section 3202 (b)(2)(D) states:

> The incremental electricity must be scheduled into the California balancing authority within the same calendar year as the electricity from the eligible renewable energy resource is generated.

This requirement is completely unrealistic and does not recognize the realities of the power industry. It would by definition disqualify generation of PCC 2 electricity products in the last few months of each compliance period, because that generation is typically

delivered (shaped) and trued-up during the first few months of the following calendar year. Several contracts for firmed-and-shaped energy already use this approach, which simply recognizes the fact that only *actual* generation from a renewable resource can be firmed and shaped for later delivery, and *actual* generation is not verified until sometime after the moment of generation. This proposed interpretation is simply not supported by statute and creates another unnecessary hurdle in this already-complex regulatory scheme.

SB X1-2 Section 399.16 (b)(2) imposes no time limitation on scheduling and delivery of the substitute/incremental electricity associated with a firmed and shaped product: it simply provides the following definition:

> Firmed and Shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.

Moreover, it is important to note that POU compliance is analyzed through an entire compliance period, not just an individual year. If electricity is generated in December 2011 and scheduled and delivered in March 2012 with substitute/incremental electricity, the entire firming and shaping process still occurs within the same compliance period.

SCPPA requests that the CEC remove the calendar year restriction for PCC 2 electricity products and allow POUs to schedule the substitute electricity on a rolling 12-month basis.

III. Other Outstanding Issues

a. Metering Requirement

The currently-drafted metering requirement for facilities participating in the RPS requires that such installments be metered with revenue-quality meters with an accuracy of ± 2 percent:

> All electrical generation facilities participating in the RPS must use a meter with an independently verified rating of 2 percent of[6] higher accuracy to report the generation output of the facility in WREGIS.[7]

However, several small scale solar distributed generating systems currently do not meet this requirement. These smaller installations contain performance meters with an accuracy of ±5%. The WREGIS system does not exclusively require revenue-quality metering in order to report and generate RECs:

> Recognition of generation for creation of WREGIS Certificates from renewable electricity generation resources that do not have metering that meets the ANSI C-12 or equivalent standard will only be at the direction of state or provincial regulators or voluntary program administrators. Program administrators must notify the WREGIS Administrator in writing of approved exceptions to the ANSI C-12 standard; upon receipt, WREGIS will make that information publicly available on its website.[8]

A metering requirement should not be the roadblock for eligibility of these resources. Solar distributed generation (DG) is clearly renewable. Solar DG is normally physically located in California; there should be no question regarding the eligibility and the PCC treatment for these resources.

As SCPPA has previously recommended, the CEC should allow utilities (1) to utilize performance meters with an accuracy of ± 5%, (2) to report such data on a monthly or bi-monthly basis, and (3) to request an exception from WREGIS for such meters.

b. Grandfathering

SCPPA remains concerned with the CEC's current interpretation of the 'rules in place' provision of SB X1-2, which states that:

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[6] This typo should be fixed.

[7] Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 57

[8] WECC WREGIS Operating Rules, dated December 2010. Section 9.3.3, Classes H-J. Available at: http://www.wecc.biz/WREGIS/Documents/WREGIS%20Operating%20Rules.pdf

> (d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:
>
> (1) The renewable energy resource was eligible under the rules in place as of the date the contract was executed.

The current CEC interpretation of the 'rules in place' prior to June 1, 2010 for IOUs refers to the guidebook in place at the time a contract was executed. However, SCPPA believes that this interpretation is flawed as it retroactively applies previous Guidebooks to utilities that were not subject to such guidebooks before the effective date of SB X1-2. Also, PUC Section 399.16 (d) solely deals with the PCCs, not the eligibility criteria. Applying the "rules in place' language to justify the need to retroactively apply Guidebooks to POUs is a clear misapplication of the statute.

PUC Section 399.30(c)(3), as enacted by SB X1-2, states that:

> A local publicly owned electric utility *shall adopt* procurement requirements consistent with Section 399.16.

This section clearly provides the POUs with the authority to adopt procurement requirements consistent with PUC Section 399.16 as that Code exists, or existed, at the time of POU decision-making. This provision of the statute does not delegate this authority to the CEC to adopt requirements for Section 399.16 on behalf of the POUs. The Legislature's intent was not to abrogate or override historical procurement decisions made by POUs. Further, the CEC has acknowledged the POU governing boards' authority under the Fourth Edition of the RPS Eligibility Guidebook:

> "Each governing board of a local publicly owned electric utility (POU) shall be responsible for implementing and enforcing a renewables portfolio standard…"

SCPPA continues to strongly believe that the proper interpretation of the "count in full" provision of SB X1-2 is to allow pre-June 1, 2010 resources to "*count with all*

applicable attributes," including placement into an appropriate PCC, if the POU chooses to. Therefore, SCPPA again urges the CEC to not trump the POU governing authorities' right to allow their POUs placing RECs associated with pre-June 1, 2010 contracts into the appropriate PCC.

c. Portfolio Content Categories

SCPPA has previously commented that its members remain concerned with the lack of certainty regarding the PCC designation of an electricity product. There is an enormous need to develop a process to provide PCC certainty due to the large price differences between PCC 1 energy and a PCC 3 RECs, and the potential cost impact to POU ratepayers inherent in after-the-fact PCC determinations.

On September 21, 2012, CEC staff held a workshop on 2008-2010 RPS Procurement Verification and SB X1-2 RPS procurement verification. During the workshop, Iberdrola proposed that the CEC develop a checklist to help utilities determine if their energy resources fall within PCC1, PCC2 or PCC3, and several POUs submitted comments supporting the idea of a checklist.

At the March 14, 2013 workshop, it was further discussed whether the CEC could provide a PCC verification process that would assign each project to the appropriate PCC. This verification process would also provide the standard caveats to PCC REC classification, such as the limitations on resale, if any, and PCC re-classification if such RECs are unbundled.

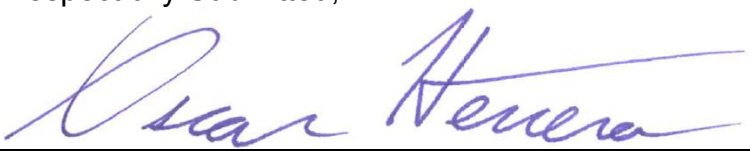
SCPPA again recommends that the CEC develop both a PCC checklist as part of the Guidebook and provide for a PCC verification process that provide greater certainty as to the PCC designation of RPS eligible generating facilities.

IV. CONCLUSION

SCPPA would like to thank CEC staff for their time and effort spent in developing the proposed Regulations and all the accompanying documentation. Despite having many concerns about the proposed enforcement rules as expressed in this Comment, SCPPA remains willing to work with CEC staff on these important matters.

Dated: May 6, 2013

Respectfully Submitted,



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