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Attorneys at Law

July 28, 2014

California Energy Commission
Docket Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Docket No. 14-RPS-01: Comments of the Small POU Coalition on Amendments to Regulations Specifying Enforcement Procedures for the RPS for POUs

To the CEC Docket Office:

Please find attached the comments of the Small POU Coalition regarding CEC Docket No. 14-RPS-01. If you should have any questions or concerns, please do not hesitate to contact me.

Respectfully,

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1516 Ninth Street
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Comments of the Small POU Coalition on Amendments to Regulations Specifying Enforcement Procedures for the RPS for POUs (CEC Docket No. 14-RPS-01)

The Small Publicly Owned Utilities Coalition ("Small POU Coalition") is submitting this response to certain questions described in Attachment A to the "Staff Workshop on Amending the California Energy Commission's *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities"* ("Attachment A").[1] Certain participants in the Small POU Coalition have previously submitted comments in the California Energy Commission's ("CEC") renewables portfolio standard ("RPS") proceedings advocating, in general, for accommodations and flexible compliance measures due to various factors unique to participants in the Small POU Coalition, such as their very small size and the relatively short period of time they have been providing utility services.[2] In this response to Attachment A, we are providing comments in support of classifying certain distributed generation as Portfolio Content Category ("PCC") 1.

General Response

The Small POU Coalition urges the CEC to adopt flexible rules for categorization of power from distributed generation as PCC1 to reflect the value of distributed generation to the state's utility grid and to further encourage utilities to make it a priority in their resource mix. Expanded use of distributed generation systems is an approach to meeting RPS requirements that fits well with the economic development business model of the utilities in the Small POU Coalition. Further, expanded use of distributed generation systems is consistent with the role of utilities in the future.

[1] The Small POU Coalition is an *ad hoc* coalition of certain small publicly owned utilities ("POUs"), principally those small POUs that formed in the last two decades, following deregulation and the California Energy Crisis.

[2] *Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations,* CEC Docket No. 11-RPS-01, March 30, 2012.

Members of the Small POU Coalition are currently exploring and working to implement renewable distributed generation systems. Many of these arrangements involve partnerships with customers to develop renewable resources which meet the requirements for a PCC1 resource, while also fulfilling community economic development goals. Under these partnerships, the customer or third party developer of the generation will transfer all of the bundled renewable energy from the generating facility to the distribution utility and the utility will deliver retail electric service from its system to meet the full electrical load of the customer. The terms of the retail service agreement will provide benefits to the customer competitive with the customer's self-generation alternatives.

The Small POU Coalition urges the CEC to affirm flexible policies which will support development of a future model consisting of partnerships like the one proposed between the utility and the customer to develop customer-owned distributed generation with the cooperation and support of the utility. The questions in Attachment A seem to suggest that the proposed use of distributed generation to meet RPS requirements is simply another name for net metering. Instead, the Small POU Coalition's proposed use of customer-owned distributed generation by the utility should be seen as a whole different approach, combining economic development incentives for new business with reliable energy service and technology solutions from the utility. In a future of micro grids, integrated storage, internet-operated equipment and built-in energy solutions, concepts like net metering are likely to go away because such mandates will no longer be required or useful. In such an environment, utility/customer partnerships, like the ones the Small POU Coalition is asking the CEC to affirm, will be essential.

Responses to the specific questions in Attachment A are below. Essentially, the differences between net metering and the customer partnerships proposed by the Small POU Coalition are:

1) Title to the <u>bundled</u> renewable energy resource passes to the utility under a contract with the customer or third party owner of the system;

2) The utility will serve all energy requirements of the customer under a retail service agreement. In other words, the retail load of the customer will continue to be included in the utility's total "retail sales" figure for calculation of RPS requirements since the retail load is independent of the generation the customer is selling to the utility;

3) This is a new approach to meeting State policies encouraging distributed generation and renewable resource development, and is a voluntary partnership between the utility and the customer, not a mandate.

<u>Response to Specific Questions</u>

Issue: It may be appropriate under the statute and regulations to characterize electricity generation from POU-owned [distributed generation ("DG")] systems as PCC1 because: i) the DG facility is owned by the POU, ii) ownership is synonymous with procurement under PPUC section 399.11(f), iii) the DG system is interconnected to a California Balancing Authority (CBA) or distribution facilities used to serve end use within a CBA, and iv) the POU (as the

owner of the DG system) is acquiring both the electricity generation and the associated renewable energy credits (RECs/WREGIS Certificates) from the DG system as a bundled product.

a. Are there circumstances when it would not be appropriate to classify electricity generation from a POU-owned DG system as PCC1? Would it matter if the electricity generation was immediately sold to a POU customer, rather than transmitted to the POU's distribution system? This could occur where the POU-owned DG systems was located on the customer's site.

As long as the POU has procured, either through ownership or contract, bundled renewable energy from the DG system to meet its RPS requirements, it qualifies as PCC1. The location of the facility is irrelevant since the energy delivered by the utility to meet the customer's load at that site, in the transaction proposed by the Small POU Coalition, would be a retail product and title to the bundled renewable energy from the DG facility is not transferred to the customer by the utility.

Issue: POU-owned DG systems can be distinguished from DG systems owned by a customer or third party to offset the customer's on-site load. When a DG system is owned by the customer or a third party to offset the customer's on-site load, some or all of the electricity generated by the DG system is consumed on-site. Typically, under this scenario only the REC's associated with the net surplus electricity generation from the system would be characterized as PCC1. This is consistent with the net-energy metering provisions of PUC section 2827(h), which provides that an electric utility shall own any REC's for net surplus electricity purchased pursuant to the utility's net surplus electricity compensation rate, and that any REC's associated with electricity generated by the customer-generator and utilized by the customer-generator shall remain the property of the customer-generator.

b. Under what circumstances, if at all, would it be appropriate to classify electricity generation from a customer-owned or third party-owned DG system as PCC1, when that electricity generation is used to meet the customer's on-site load?

There should be no distinction between POU-owned DG systems and customer or third party owned DG systems for purposes of qualifying for PCC1 categorization. Under PUC 399.12, "Procure' means to acquire through ownership or contract." A POU can procure PCC1 qualifying bundled renewable energy generation from a customer-owned or third party-owned DG system and meet its RPS requirements.

Likewise, it is not possible or useful to differentiate DG generation by where it is consumed and categorization as a PCC1 resource under SB 2 (1X) does not support any such distinction. If the full amount of bundled renewable generation from a DG system at a retail customer site – whether owned by a retail customer or a third party – were to be delivered into the wholesale electric grid, there would be no question as to whether it qualified as PCC1 for the buyer. Coincident with the generation of energy from the generating facility, the retail customer would be consuming whatever

quantity of energy it needed to meet its load, delivered by the distribution utility connected to it. The focus should be on who has title to the energy, not where the energy is consumed. The CEC should not, through this process, place additional burdens on DG renewable resources which are located inside the distribution utility's system and used by the utility to serve its retail load relative to those resources that are sold into the wholesale electric grid.

As described in the current CPUC proceeding on net metering, "net metering is an important element of the policy framework supporting customer and third-party investment in grid-tied distributed renewable energy generation, including customer-sited solar photovoltaic (PV) systems."[3] Net metering has been a useful transitional mechanism for achieving the benefits of both distributed and renewable generation, but it is not the only way or even the best way to achieve those benefits. For example, the program is limited to a particular size of facility (1MW) and the economic benefits change with rate modifications.

Members of the Small POU Coalition have flexibility to design economic development rates that can compete with self-generation options that their customers may have. Not all utilities - either POUs or IOUs - may have that flexibility or goal, so the type of transaction proposed by the Small POU Coalition may have limited appeal and application. It is, however, an example of the kind of transaction that fits well with the original economic development goals which served as the basis for the formation of most of the members of the Small POU Coalition. And since it contemplates a partnership between the utility and the customer in developing renewable resources, it fits what should be a new future model for utilities.

c. *Would it be appropriate for a POU to procure all of the bundled electricity generated by a customer-owned DG system and then immediately sell back to the customer all of the commodity electricity to serve the customer's on-site electrical load and claim the procurement as PCC1? Could such a transaction comport with section 3203(a)(1)of the Energy Commission's regulations that precludes a POU from buying a bundled electricity product and then reselling the underlying electricity from the bundled product back to generator from which the electricity product was purchased?*

The Small POU Coalition is proposing that title to all of the generation from a customer-owned DG system pass from the customer or third party developer to the utility upon delivery to the utility. The generation that is sold back to the customer by the utility, to serve the customer's on-site electrical load, is a retail energy product assembled from all of the utility's combined system resources. This is particularly so because often the generation from the customer-owned DG system is inadequate to

[3] *See* Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utility Code Section 2827.1, and to Address Other Issues Related to Net Energy metering (R.14-07-002) at 2.

meet the customer's load (for example, off-peak or at times when the facility has a planned or unplanned outage) and the utility, as the retail service provider, is obligated to meet all of its retail customers' energy requirements regardless of the availability of the generating facility. The customer's total load – which under net metering, might have been reduced by self-generation, is included in the utility's retail sales calculation of the utility's RPS requirements.

The prohibition on selling electricity back to the generator was developed in the CPUC's PCC Decision in the context of a PCC2 contract. This was to deal with the unique issue presented by the PCC2 situation where a retail seller is buying a bundled renewable energy product but then reselling the same bundled renewable energy product into the wholesale market. The transaction that the CPUC PCC Decision (D.11-12-052) was protecting against was the retail seller claiming PCC2 credit after it made a wholesale sale of the unbundled energy back to the generator for the generator to then deliver into the wholesale market. Under that transaction, the retail seller would be claiming RPS credit for a bundled product when in reality it has only acquired unbundled renewable energy credits ("RECs"). A retail sale by a POU from its system to an ultimate retail customer for consumption at the customer's facility is not the kind of sale contemplated by this protection, because the bundled renewable energy product is included in the utility's system resources and then used to serve the utility's retail load. Neither the title to the unbundled energy product nor the title to the RECs is transferred back to the customer-generator and so the customer-generator cannot resell it.

d. *If the customer installed the DG system to offset the customer's on-site load, and the system is being operated for this purpose, is the system's electricity generation available to be procured by a POU? How would the generation under such a transaction compare with generation from a central station facility that uses a portion of the facility's generation to satisfy on-site load, and sells the facility's net surplus generation to a utility via a power purchase agreement? An example of a central station facility could be a biomass facility that uses a portion of the facility's electricity generation to meet the on-site electrical load of related timber milling operations. How would your response differ, if at all, if a third party owned and installed the system?*

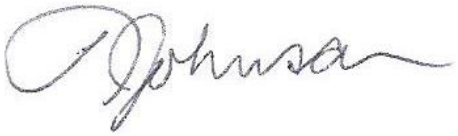
The original intent for installation of a DG system by a customer is irrelevant if the customer sells the output of the DG system to a utility. In this context, operation of the facility is for the purpose of meeting the utility's retail load. Under the example described in the question, where the biomass facility uses a portion of the facility's generation to meet on-site electrical load and then sells the surplus, only title to the surplus energy passes to the utility; the owner of the facility retains title to the energy used to meet on-site load.

e. How, if at all, would the net-energy metering provisions of PUC section 2827 be implicated if a POU were to procure all of the bundled electricity generated by a customer-owned DG system and then immediately sell back to the customer all of the commodity electricity to serve the customer's on-site electrical load?

Net energy metering is an alternative that the customer-generator can pursue and which the utility must facilitate if it is requested. However, it is not mandatory for the customer and there are many reasons, economic and otherwise, that the parties might want to negotiate a transaction that would be more beneficial than net metering.

Thank you for your consideration of these comments by the Small POU Coalition. We look forward to continuing to work with the CEC on RPS implementation matters.

Respectfully,



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