



California Energy Commission

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California Energy Commission  
Docket Office, MS-4  
Docket No. 14-RPS-01  
1516 Ninth Street  
Sacramento, CA 95814

Submitted via email to: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

Re: Amendments to Regulations Specifying Enforcement Procedures for the RPS for POUs

Docket Office:

Enclosed please find comments from the Large-scale Solar Association regarding the Amendments to Regulations Specifying Enforcement Procedures for the RPS for POUs.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rachel Gold".

Rachel Gold  
Policy Director  
(510) 629-1024  
[Rachel@largescalesolar.org](mailto:Rachel@largescalesolar.org)

## **COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE PRE-RULEMAKING DRAFT AMENDMENTS TO REGULATIONS FOR ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

The Large-scale Solar Association (“LSA”) appreciates the opportunity to provide the California Energy Commission (“Energy Commission”) with comments on the Pre-Rulemaking Draft Amendments to the Regulations for Enforcement Procedures for the Renewables Portfolio Standard (“RPS”) for Local Publicly Owned Electric Utilities (“POU”) (the “Regulations”), which were released in July 2014.

The comments below address three issues raised in Attachment A to the July 11<sup>th</sup> Workshop Notice on the Draft Amendments:

- The implementation of SB 591 (Canella)
- PCC categorization for POU-owned or procured distributed generation systems
- Contract amendments and definition of long-term contracts.

### **1. Implementation of Senate Bill 591**

*Issue: An annual demonstration could result in the POU failing to meet the qualifying conditions in dry hydro years, whereas a multi-year average would even out year-to-year fluctuations and make it easier for a POU to satisfy the qualifying conditions for the RPS exemption to apply.*

*a. How should the 50 percent of retail sales requirement be satisfied? Should a POU have to demonstrate that its qualifying hydroelectric generations supplies enough power each year to meet at least 50 percent of the POU’s annual retail sales needs? Or should the 50 percent requirement be determined over an average of multiple years, given that hydroelectric generation varies from year to year?*

#### LSA’s Response:

The 50 percent retail sales requirement should be satisfied on an annual basis. PUC section 399.30 (k) clearly states “A local publicly owned electric utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation.”(emphasis added). If the intent of the legislature was for the POU to qualify based on an average of hydro generation over multiple years, the statute would state this explicitly as it does for eligible retail sales under PUC section 399.30(i). The plain language of the statute makes it clear that this is an annual requirement and should therefore be administered as such.

LSA recommends the CEC implement this requirement by verifying the annual average at the beginning of the compliance period and by requiring verification of eligibility for each year in the compliance period at the end of the compliance period. This approach would establish the general eligibility of the POU to meet the exemption at the beginning of the compliance period and would ensure that eligibility is established for each year thereafter.

## 2. PCC Content Category for POU-Owned or Procured DG Systems

Attachment A poses a number of questions regarding the proper Portfolio Content Category (PCC) classification of various types of transactions. Below we provide three examples of possible transactions and LSA's rationale for the PCC content category for each case.<sup>1</sup> LSA's approach to making these determinations is straightforward. Broadly speaking, ownership alone is not an appropriate metric to determine whether a transaction fits into any of the PCCs. For purposes of RPS compliance, the attributes of the delivered energy and/or RECs at a given place and time are the relevant characteristics. Each transaction should be evaluated based on whether it meets the requirements of each PCC and the intent of the RPS Program -- to alter the generation mix of the utilities.<sup>2</sup> Given this, the key test in determining the PCC classification is whether the generation in question has an incremental impact on the POU's generation mix.

Example 1. A commercial facility owns PV system and utilizes most of the generation to meet its on-site load under a net-metering agreement with the POU.

In this example, the generation is consumed on-site and as such, does not alter the generation mix of the POU nor would the on-site usage count towards the POU's retail sales for purposes of establishing its RPS obligations. Therefore, any purchase from the project of the generation used on-site would be unbundled RECs only or PCC 3. The California Public Utilities Commission litigated this issue in 2011 and in November 2011, D. 11-12-052 determined that:

“...AB 920 specifically recognizes that the sale of RECs associated with the on-site use of electricity from an RPS-certified DG facility is different from the sale by the system owner of both energy and RECs to a retail seller. In considering the role of such unbundled RECs, it is also important to recognize that the on-site consumption of the electricity from the DG system has already produced an RPS benefit: it reduces the total retail sales of the interconnected utility, and thus reduces the amount of RPS-eligible procurement the utility requires. (See D.05-05-011 at 9.) Conferring an additional value on the unbundled RECs by considering them to meet the "first point of interconnection to distribution system" criterion is not warranted by any statutory language or Commission decision.”

This is and has been the understanding of the market since 2011 and should the Energy Commission make a different determination on the PCC classification for on-site consumption of renewable generation projects, not only would it not be in accordance with PUC Section 2786, it would be highly disruptive to the RPS market and create an uneven playing field for the retail sellers and POUs. In addition, as noted in Attachment A, the different treatment of on-site usage and surplus electricity is analogous to the treatment of station service where the generation used by the plant for its own needs does not count as PCC 1. LSA urges the Energy Commission not

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<sup>1</sup> In each of these examples, the project would need to meet Energy Commission and WREGIS

<sup>2</sup> PUC section 399.11: “The Legislature finds and declares all of the following: (a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2013, and 33 percent by December 31, 2020, it is the intent of the Legislature that the commission and the Energy Commission implement the California Renewables Portfolio Standard Program.”

to open-up this well-settled issue and affirm that on-site usage of electricity only qualifies as PCC 3.

Finally we note that in Example 1, ownership of the PV system by a third-party would not change the classification of this transaction, as it would continue to be a behind-the-meter transaction.

Example 2. POU buys a PV system and places it on a commercial facility and provides electric service to the facility under two separate meters. The system is connected to the distribution grid in California.

In Example 2, instead of being consumed on-site, the generation is fed into the distribution grid for end users in the balancing authority area (“BAA”) and the electricity needs of the commercial facility are separately metered by the POU.<sup>3</sup> The structure of the transaction and metering of the generation places this project in front of the meter like other wholesale generation and incrementally alters the generation mix of the POU. In addition, in this example, the retail sales associated with the electric use of the facility are counted toward the RPS obligations of the POU, ensuring that the POU does not get a double RPS benefit from the project. Example 2 therefore meets the requirements for PCC 1.

Example 3: Third-party owns a PV system on a commercial facility. POU procures bundled RECs from the third-party and provides electric service to the commercial facility. The system is connected to the distribution grid in California.

The rationale here is similar to that in Example 2. The project qualifies as PCC 1 because it serves end users in the BAA and alters the generation mix of the POU. Here the transaction is like other wholesale transactions where the third-party would enter into a power purchase agreement with the POU for both the electricity and the renewable energy credits and the POU provides electric service to the commercial facility under a separate meter.

### **3. Contract Amendments and Excess Procurement**

The Energy Commission asks how it should address amendments to contracts when determining whether a contract should be classified as long-term. The relevant PUC section is, 399.13(a)(4)(B) “In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration.”

The intent of the long-term contracting requirement in PUC section 399.13(a)(4)(B) was to support the development of renewable resources, particularly new resources that need long-term contracts in order to finance and build those resources. In order to ensure transactions are aligned with this requirement, LSA recommends the Commission evaluate contract amendments by determining whether the amendment provides for at least a 10-year contract at the time of amendment. For example, if a seven-year contract is amended in year two for another five years

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<sup>3</sup> See PUC section 399.16(b) (1) and Section 3203 of Energy Commission regulations for POUs.

the contract would be classified as long-term as there would be ten years left on the contract at the time of amendment. However, if a 15-year contract is amended in year 14 for an additional 5 years, the amendment should be considered a short-term contract, as the benefit of a long-term contract is not created by the amendment. This approach meets both the intent and plain reading of this section.

LSA appreciates the opportunity to provide these comments and looks forward to working with the Energy Commission on these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rachel Gold", with a stylized flourish at the end.

Rachel Gold  
Policy Director  
Large-scale Solar Association