

**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

Amendments to Regulations Specifying
Enforcement Procedures for the
Renewables Portfolio Standard for
Local Publicly Owned Electric Utilities

Docket No. 14-RPS-01

California Energy Commission

DOCKETED

14-RPS-01

TN 73499

JUL 28 2014

**COMMENTS OF THE
MERCED IRRIGATION DISTRICT**

The Merced Irrigation District (“District”) appreciates the opportunity to provide comments on the Staff Workshop on Amending the California Energy Commission’s *Enforcement Procedures for Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (“Staff Workshop”), held on July 11, 2014.

The District provides retail electric service in eastern Merced County, including customers in the Cities of Livingston, Atwater, and Merced. While the District was formed in 1919, the District only began providing retail electric service in 1996. In addition to being a relatively new electric utility, the District also faces a number of unique challenges. Unlike most other publicly owned electric utilities (“POUs”) in California, the District has a non-exclusive service territory, where it competes for all of its customers with Pacific Gas and Electric (“PG&E”). The District’s customer base is also extremely small (approximately 8,000 customers), and just a handful of its customers account for a substantial portion of the District’s total load and revenue.

One of the greatest challenges facing the District is the extraordinarily difficult economic circumstances in the community served by the District. The poverty and

unemployment rates in Merced County are among the highest in the state and consistently far exceed the statewide averages. Even though the state has recovered substantially from the height of the recent economic crisis, Merced County still lags far behind. The most recent unemployment rates show that, while the statewide unemployment rate has dropped to 7.4 percent as of April 2014, the unemployment rate in Merced County remains at 15.7 percent.¹ The District plays a key role in addressing these economic hardships both by providing affordable electric service to residential customers and also by providing competitive rates to attract businesses to the region as well as keeping existing businesses from leaving.

The District also operates the New Exchequer Dam, which is part of the Merced River Hydroelectric Project in Mariposa County, about 23 miles northeast of the City of Merced. The dam went into service in 1967. It has a generating capacity of 94.5 MW and produces approximately 250,000 MWh of electricity each year. Although the hydroelectric facility was constructed by, and is owned and operated by the District, PG&E has had a contractual right to the generation since 1967, which expired on July 1, 2014.

The output of this carbon free resource varies significantly from year to year. In certain years, the output of the facility can exceed the District's entire load. For example, in 2006, Exchequer produced 506,000 MWh, while the District's load was only 377,000 MWh. Most recently, in 2011, Exchequer produced approximately 408,000 MWh, while the District's load was only 442,000 MWh. Under the state's renewables portfolio standard ("RPS"), the District would have been faced with the unreasonable requirement to procure

¹ See Bureau of Labor Statistics, Labor Force Data By County, Not Seasonally Adjusted, April 2013-May 2014 (available at <http://www.bls.gov/lau/laucntycur14.txt>); Bureau of Labor Statistics, Statewide

significant renewable resources despite the fact that during these certain years, the dam's output would have exceeded the District's entire load.

By adopting SB 591, the Legislature recognized the unique challenges that the District faces both due to the extreme economic hardship of the local community and because of its ownership of a hydroelectric resource that often provides a significant portion of its retail sales. The committee analyses for SB 591 repeatedly discuss both the economic and the hydroelectric issues. For example, the final Assembly Floor Analysis described the rationale for SB 591 as follows:

MID expects its RPS purchase requirement to cost upward of \$30 million. MID serves a region with an unemployment rate near 19%; with 26% of residents at or below the federal poverty level; and household median incomes that are approximately half the state average. Under MID's current RPS requirement, the average family would see a 20% rate increase with electric bills increasing from approximately \$225 per month to \$270. MID argues that "businesses would be more significantly affected by the RPS cost shifting thus causing further stagnation of the local economy. **Rates would remain more affordable for MID customers under this bill while still achieving carbon-emission-free energy.**²

As the CEC proceeds with the implementation of SB 591, it must keep the Legislature's clear purpose in mind.

I. RESPONSES TO ATTACHMENT A QUESTIONS

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| Part 1 Question (a.) | <i>How should the 50 percent of retail sales requirement be satisfied? Should a POU have to demonstrate that its qualifying hydroelectric generation1 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?</i> |
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As an initial matter, it is clear that the Legislature intended SB 591 to apply to the District. Section 399.30(k)(2) defines "hydroelectric facility" such that the only possible facility that could meet the definition is the New Exchequer Dam. Both the contract

² ASSEMBLY THIRD FLOOR READING, ANALYSIS OF SB 591, August 21, 2013.

provisions specified in section 399.30(k)(2)(C) and the penstock flow capacity specified in section 399.30(k)(2)(D) exclusively apply to this facility. Additionally, the various committee analyses expressly state that: “This bill only applies to one POU, Merced Irrigation District [], and one hydroelectric facility, the New Exchequer Dam.”³ As the CEC implements SB 591, this fundamental fact must be kept in mind. Absent some substantial action that fundamentally alters the assumptions that led to the adoption of SB 591, the relief provided by SB 591 should apply to the District.

However, one such scenario that the Legislature was not intending to protect against is drought conditions. There is no conceivable policy or legislative purpose that could support removing the applicability of SB 591 during drought years. Rather, it is during drought years that the agricultural community served by the District is likely at its most vulnerable. The difficult economic conditions caused by droughts should not be further exacerbated by increases in electric rates. It is also difficult to predict prior to or during a particular year how much rain will fall, which makes it difficult to determine if the District will need to plan for a year with SB 591 or without it.

One reasonable approach to ensuring that SB 591 applies under normal conditions is to use a multi-year averaging methodology. This would help smooth out very dry and very wet years. This is also consistent with the committee analyses discussing SB 591, which repeatedly discuss the New Exchequer Dam’s output in terms of its average annual generations of “approximately 250,000 MWh.”⁴ The District therefore supports the CEC adopting a multi-year average for determining if the qualifying condition of SB 591 has been met.

³ SENATE FLOOR READING, ANALYSIS OF SB 591, August 27, 2013.

⁴ *Id.*

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| <p>Part 1 Question (b.)</p> | <p><i>If a multi-year average is used to determine the qualifying conditions for the RPS exemption, over how many years should the qualifying hydroelectric generation be averaged?</i></p> |
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As described above, a multi-year average is one possible solution to ensure that SB 591 applies to the District under normal operating conditions. The key purpose of a multi-year averaging methodology is to be sufficiently long that dry years (and drought years in particular) are averaged against wet years, such that the methodology reflects a normal generation year. However, seven years is not an appropriate basis for calculating the applicability of SB 591, due to the following: (1) the frequency and duration of droughts in California; (2) the inapplicability of section 399.30(i) to the District; and (3) the fundamental distinctions between section 399.30(k) and section 399.30(j). The District makes an initial recommendation that the multi year averaging be based on the prior 50 years of hydroelectric data in order to accurately reflect normal operating conditions.

1. Drought Conditions in California

Drought conditions occur in California at a regular frequency and often last multiple years. Since the New Exchequer Dam was brought online, there have been severe multi year droughts in 1976-77, 1987-1992, 2000-03, and 2007-2009.⁵ During these drought conditions the annual generation from the New Exchequer Dam drops significantly. Where a drought spans multiple years, a seven-year average will often not be sufficient to cancel out the impact of those drought years. The drought spanning from 1987 to 1992 provides an extreme example of this. Over those six years, Exchequer averaged just 125,000 MWh per year, less than half normal generating conditions. Further, if a seven-year average was used, the impacts of a multi-year drought could continue to

⁵ California Department of Water Resources, *Drought in California*, Fall 2012 (available at <http://www.water.ca.gov/waterconditions/docs/Drought2012.pdf>).

exclude the District from the relief provided by SB 591 for several years after the drought has ended. This could result in the untenable situation where SB 591 would not apply in an individual year even though the District's entire load was exceeded by the generation of the New Exchequer Dam.

In light of the realities of California's drought cycles, a seven-year averaging methodology is not sufficient to reflect normal operating conditions for the New Exchequer Dam.

2. Section 399.30(i) Is Not a Useful Basis for Selecting a Multi-Year Averaging Methodology

Section 399.30(i) was added to the RPS in order to provide predictability to the retail sales calculation of Joint Powers Authorities that are formed pursuant to the Irrigation District Law, primarily the Power and Water Resources Pooling Authority ("PWRPA"). This provision was necessary because PWRPA has just a handful of customers, all of which have exclusively water-pumping load, which varies significantly from year to year. The seven-year average allows PWRPA to make longer term procurement decisions with a greater degree of confidence regarding its RPS procurement quantity obligations in each year.

However, section 399.30(i) is not a reasonable approximation for the averaging necessary for section 399.30(k). The primary difference is that seven years was not selected because it approximated typical water cycles in California, but because it was sufficient to meet PWRPA's year-to-year predictability needs. The results of this calculation do not describe a threshold for qualifying for an exemption, and thus there was not need for a high degree of precision. Additionally, at the time that SBX1-2 was enacted, PWRPA had only been in existence for just over seven years and, therefore, the choice of seven years closely aligned with the time period that time period.

The seven-year average in section 399.30(i) does not and was not intended to reflect normal rainfall cycles in California. The CEC should not borrow from this provision for the multi-year average at issue in this matter.

3. The Qualifying Conditions in Section 399.30(j) are Fundamentally Distinct from the Qualifying Condition for Section 399.30(k)

Section 399.30(j) was developed for and exclusively applies to the City and County of San Francisco (“CCSF”). The primary qualifying condition for section 399.30(j) is that CCSF must meet 67 percent of its electricity demands with its qualifying hydroelectric resources. This is a fundamentally different from the qualifying condition for section 399.30(k) because the 67 percent threshold was presumably selected because it equals full load minus the ultimate 33 percent RPS goal. The concept being that, where CCSF’s hydroelectric generation was exceeding the ultimate RPS target, CCSF should not be obligated to procure additional renewable resources. It is the District’s understanding, that CCSF will normally far exceed this 67 percent requirement.

In contrast, the 50 percent threshold in section 399.30(k) was selected because it describes the District’s typical generation to retail sales percentage, with a reasonable buffer. This can be seen in the Committee analyses, which describe the New Exchequer Dam as providing 60 percent of the District’s electricity demand.⁶ This means that the District’s normal operations are much closer to the qualifying condition than in CCSF’s case. Due to this significant difference, a seven year average is likely sufficient for CCSF to still exceed this qualifying condition even during multi-year droughts. The fact that the

⁶ ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE ANALYSIS OF SB 591, July 1, 2013 (“Upon expiration of the contract MID will begin to receive the full benefit of this electricity which could account for approximately 60% of MIDs electricity demand.”).

seven-year average was selected for section 399.30(j) should not dictate the averaging methodology used for the District.

4. 50-Year Recommendation

The number of years selected for the qualifying condition must be sufficient to accurately reflect typical rainfall cycles in California, such that the District will not be unduly punished for drought conditions. The District welcomes input from CEC staff and believes that further discussion of this topic is merited. As an initial recommendation, the District recommends a 50-year averaging methodology. A 50-year timeframe is consistent with the Pacific Decadal Oscillation (“PDO”), which is the warming and cooling phase in the North Pacific Ocean.⁷ A warm or cool phase typically lasts between 20-30 years, with cool phases associated with more droughts in California and warm phases associated with more wet years. A 50-year time frame is sufficiently long to include both a warm and cool phase.

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| <p>Part 1 Question (c.)</p> | <p><i>What should the reporting requirements be for a POU to demonstrate it satisfies the qualifying conditions for the RPS exemption? Should the POU be required to report information to the Energy Commission to demonstrate it satisfies the 50 percent requirement once at the beginning of each compliance periods for its qualifying hydroelectric generation supplies immediately prior to the start of the compliance period?</i></p> |
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As discussed further below, section 399.30(k) creates an annual compliance obligation. The District recommends that the relevant generation and retail sales documentation should be provided 90 calendar days prior to each annual compliance

⁷ See Generally Mantua, Nathan, *The Pacific Decadal Oscillation and Climate Forecasting for North America* (1999) (available at http://www.atmos.washington.edu/~mantua/REPORTS/PDO/PDO_cs.htm); See also National Geographic, *Could California's Drought Last 200 Years?: Clues from the past suggest the ocean's temperature may be a driver*, Feb. 13, 2014 (available at <http://news.nationalgeographic.com/news/2014/02/140213-california-drought-record-agriculture-pdo-climate/>).

period. This will allow both the District and CEC staff know prior to the start of each year whether SB 591 will apply or not.

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| <p>Part 2 Question (a.)</p> | <p><i>Assuming a POU satisfies the qualifying conditions for the RPS exemption, should its RPS target be based on its total retail sales or its remaining retail sales not met by its own qualifying hydroelectric generation that is not RPS-eligible? (In either case, the target is not to exceed retail sales not met by its own hydroelectric generation that is not RPS-eligible or the procurement requirements of PUC section 399.30 (c). Please explain your rationale.</i></p> |
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As discussed above, the Legislature’s clear purpose in adopting SB 591 was to address the multiple unique challenges facing the District, including the extreme economic conditions facing the community served by the District as well as the District’s ownership of the New Exchequer Dam. The committee analyses consistently noted that the typical annual generation from the Exchequer facility is 250,000 MWh. In light of the fact that the District’s retail sales numbers are approximately 450,000 MWh per year, if the District’s RPS target was simply based on the its total retail sales, then in most years, SB 591 would not have any impact at on the District’s RPS target. Such an interpretation is not consistent with the clear intent of the Legislature to provide significant relief to the community served by the District.

Further, the clear language of section 399.30(k) indicates that the District’s RPS target is based on its remaining retail sales not met by the New Exchequer Dam rather than its total retail sales. SB 591 directs that the District’s RPS target shall not exceed “The **portion** of its retail sales not supplied by its own hydroelectric generation.”⁸ This is in contrast to the generally applicable language of section 399.30(a), which directs each POU to “to procure a minimum quantity of electricity products from eligible renewable energy

⁸ Cal. Pub. Util. Code § 399.30(k)(1)(A).

resources, including renewable energy credits, as **a specified percentage of total kilowatthours** sold to the utility's retail end-use customers”

Pursuant to the rules of statutory construction: “The use of a term in a statute addressing a subject, and omitting that term and using a different term in a similar statute addressing a related subject, shows a different meaning was intended in the two statutes.”⁹ Section 399.30(k) does not discuss the District’s RPS target in terms of the “percentage of total kilowatthours” sold to end use customers as it does in section 399.30(a). Instead, section 399.30(k) uses the term “portion.” Courts have found a clear distinction between the terms “percentage” and “portion”:

If the Legislature intended “portion” to mean percentage, it could have simply used the term “percentage” instead. By using the different term “portion,” the reasonable inference is the Legislature intended a different meaning than percentage.¹⁰

Here, if the Legislature had intended the District’s RPS target to be set as a percentage of total retail sales, it would have used the same language contained in section 399.30(a). Consistent with the legislative purpose of SB 591 to provide genuine relief to the community served by the District and consistent with the clear language of section 399.30(k), the District’s RPS target applies portion of the District’s retail sales not met by the New Exchequer Dam.

⁹ Songstad v. Superior Court, 93 Cal. App. 4th 1202, 1208-09 (2001) (citing *Holmes v. Jones*, 83 Cal.App.4th 882 (2000)).

¹⁰ Valley Crest Landscape, Inc. v. City Council, 41 Cal. App. 4th 1432, 1439 (1996) (citing *People v. Jones* 46 Cal.3d 585, 596 (1988); *Campbell v. Zolin* 33 Cal.App.4th 489, 497 (1995)).

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| <p>Part 2 Question (b.)</p> | <p><i>Should the portfolio balance requirements (maximum Portfolio Content Category 3 and Minimum Portfolio Content Category 1) apply to the POU's procurement toward its RPS target?</i></p> |
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By adopting SB 591, the Legislature created an alternative compliance structure applicable only to the District. This is evident due to the annual compliance periods and the differing basis for setting the District's RPS target. As a stand-alone requirement, certain provisions of the RPS are not applicable to the District. The key example is the portfolio content category ("PCC") requirements found in section 399.16. This interpretation is consistent with the CEC's implementation of section 399.30(j). In the *Initial Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, released in March of 2013, the CEC stated the following:

Proposed subdivision (a)(7). This subdivision explains the Energy Commission's process for determining RPS procurement target compliance for a POU that meets the criteria in Public Utilities Code section 399.30 (j) and that has electricity demands unsatisfied by its hydroelectric generation in any given year of a compliance period. It also describes how the POU must demonstrate that it meets the criteria of 399.30 (j). A POU that meets the criteria in Public Utilities Code section 399.30 (j), but must procure eligible renewable energy resources due to unmet electricity demands, must meet all of its unmet demands with eligible renewable energy resources up to the "soft target" amounts used to calculate the RPS procurement targets of other POUs. Because 399.30 (j) establishes an annual compliance obligation, and most POUs must comply with RPS procurement requirements on a compliance period basis, staff determined that the "soft targets" established for other POUs would be an appropriate maximum requirement.

Staff determined that the portfolio balance requirements of Public Utilities Code section 399.16 do not apply to a POU that meets the criteria of Public Utilities Code section 399.30 (j) because section 399.30 (j) can be viewed as a stand-alone requirement, and because section 399.30 (j) does not include an express provision to meet the PCC allocation requirements of Public Utilities Code section 399.16. In addition, a POU that meets the criteria of Public Utilities Code section 399.30 (j) would be **unable to appropriately plan ahead** for adequate PCC

1 and PCC 2 procurement because the level of unmet electricity demand for a compliance calendar may not be known until the end of that year.¹¹

Each legal and policy justification that is applicable to CCSF and section 399.30(j) is applicable to the same degree or more to the District pursuant to section 399.30(k).

1. Stand Alone Provision Not Referencing section 399.16

As stated above, section 399.30(k) is a stand-alone requirement. Eligibility for the application of section 399.30(k) is determined based on “annual retail sales” and thus applies on an annual basis rather than the multi-year compliance periods that are generally applicable to POUs. Further, the RPS target is adjusted on an annual basis depending on the output of the New Exchequer Dam. Section 399.30(k) even includes its own independent reference to the District’s cost limitation, a reference that would be superfluous if section 399.30(k) was fully integrated with the rest of the RPS requirements.

Just like section 399.30(j), section 399.30(k) does not include any direct reference to section 399.16. Therefore, as a standalone provision, the portfolio content categories and the associated balance requirements are inapplicable to the District.

2. The District Would not Be Able to Plan Ahead

As discussed above, the output of the New Exchequer Dam varies significantly from year to year. In an individual year, the output of the facility can exceed the District’s total retail sales. This has happened as recently as 2011. This also occurred in 2005 and 2006. During conditions similar to these years, the District’s RPS obligation would be zero.

The requirement that PCC1 and PCC2 electricity products be procured “bundled” means that POUs cannot make simple or short-term purchase of RECs to cover their

¹¹ *Initial Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, March 2013, CEC-300-2013-004, at 22.

compliance obligations. One of the most cost effective methods for meeting the bundled PCC1 and PCC2 procurement requirements is through long-term contracts. However, if the District entered into long-term contracts and then had a significant reduction in its RPS obligations due to a high generation year, the District could be left with significant excess RECs. If the District were to sell these PCC1 and PCC2 RECs after the fact, they would convert to PCC3 RECs and thus would result in a substantial loss in value for the District and its community. Such an outcome is not consistent with the purpose of SB 591, in light of the Legislature’s clear purpose to limit the financial impacts of the RPS on the District.

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| Part 2 Question (c.) | <i>Should the POU’s RPS procurement requirements apply on an annual basis or on a compliance period basis?</i> |
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The qualifying conditions of section 399.30(k) are based on “annual retail sales,” suggesting that the applicable RPS requirements should be applied on an annual basis. An annual compliance period is also consistent with the CEC’s implementation of section 399.30(j), and is appropriate in this case.

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| Part 2 Question (d.) | <i>What should reporting requirements be to verify the RPS exemption is being applied correctly?</i> |
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The District welcomes further dialog with CEC staff to identify all relevant documents that will be necessary to ensure that section 399.30(k) is being applied correctly. Based on the requirements of section 399.30(k) it appears that that primary additional information necessary will be annual generation information for the New Exchequer Dam.

II. CONCLUSION

The District appreciates the opportunity to provide comments on the Staff Workshop and to respond to the specific questions raised in Attachment A. The District looks forward to working with staff to implement SB 591.

Dated: July 28, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin Wynne", with a stylized flourish at the end.

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