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

COMMENTS OF THE MERCED IRRIGATION DISTRICT

I. INTRODUCTION

The Merced Irrigation District ("District") appreciates the opportunity to provide comments to the California Energy Commission ("CEC") on the on the proposed *Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* ("Proposed Modifications"), issued on March 27, 2015. The Proposed Modifications would implement Senate Bill ("SB") 591 in a manner that would make it unlikely to provide any benefit to the District or its customers during either the Second or Third Compliance Periods. This is inconsistent with the clear intent of SB 591, and accordingly, the District recommends that the CEC make the following changes to the Proposed Modifications:

(1) Apply the SB 591 alternative compliance obligation on an annual basis; and

(2) Implement the SB 591 alternative compliance obligation as a stand-alone requirement, which does not include an obligation to comply with the portfolio balance requirements.

II. CHALLENGES FACED BY THE DISTRICT

The District faces a number of unique challenges that distinguish it from the retail sellers and other publicly owned utilities ("POUs"). These challenges include both severe economic hardships in the community served by the District as well as structural challenges relating to the utility model, customer make-up, and financial conditions of the District.

A. Economic Hardship

Merced County is one of the most economically disadvantaged counties in the state. As measured over 2009 to 2013, the poverty rate for all people in Merced County was 25.4%.[1] In comparison, the statewide rate over the same period was 15.9%.[2] For families with children under 18, the poverty rate in Merced was 29.8%, compared with 17.8% for the entire state.[3] While this region has historically struggled with poverty levels, the housing crisis exacerbated these problems. During the height of the crisis (2008-2010), Merced County had the highest foreclosure rate in the state, at 12.4%.[4] This meant that 1 in every 8 households was in foreclosure.

While the county has started to recover, it still lags far behind the rest of the state. A key driver for the region's high poverty levels is the high and persistent unemployment rate. Merced County has one of the highest unemployment rates in the state. In 2012, the county's unemployment rate was 17%, compared to a statewide average of 10.5%. Over the past ten years, the county's unemployment rate has exceeded the state average by a substantial amount in every single year.

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[1] American Community Survey (2009-2013).
[2] *Id.*
[3] *Id.*
[4] http://oag.ca.gov/system/files/attachments/press_releases/n2641_ca_foreclosure_rates.pdf.

B. Structural Disadvantages

1. Customer Make-Up

Unlike most other POUs in the state, the District's customer base is disproportionately made up of a few large commercial and industrial customers, with a relatively small percentage made up of small commercial and residential customers. This means that a large percentage of the District's total revenue comes from a relatively small number of customers, while a large number of residential customers contribute a relatively small percentage to the total revenue. The large IOUs and most other POUs may target RPS-related costs at the higher tiers of their residential customers in order to limit the impacts on the low-income customers. They can also avoid harming the local economy by limiting the impacts on the large industrial and commercial customers. Due to the both the high levels of poverty and to the small percentage of revenue that comes from residential customers, any RPS-related rate increases would need to be borne primarily by a few large customers.

2. Utility Model

The District is unique among POUs because it competes for all of its customers with Pacific Gas and Electric ("PG&E"). Unlike most other POUs, the District does not have an exclusive service territory. This means that any of the District's customers can leave at anytime. As described above, the bulk of the District's retail sales come from a handful of large commercial and industrial customers. This makes it extremely difficult to enter into long-term contracts and to develop utility-owned resources because, at any time, the District's forecasted load could drop by a substantial percentage.

On October 3, 2013, the California Public Utilities Commission ("CPUC") adopted Decision 13-10-019, which authorizes PG&E to create both a Standard and Enhanced Economic

Development Rate ("EDR"). These rates are targeted at large customers located in areas with high unemployment. In light of Merced County's unemployment rates, the District's large customers may potentially qualify for PG&E's Enhanced EDR, which provides a 30 percent discount off of the otherwise applicable rate.

C. Financial Stability of the District

The District only began providing electric service to retail customers in 1996, and is therefore a relatively new electric utility. The District's initial capital investments were financed with bonds. Meeting the associated financial obligations requires that the District maintain or grow its existing customer base. As the District has developed as a utility, it has continued to take on debt as part of utility operations, such as building new infrastructure and the costs of its ongoing hydro relicensing process. As a young electric utility, the District is continuing to improve its financial position to ensure continued access to capital at reasonable costs. This includes complying with its reserve policy, debt management policy, and maintaining bond coverage ratios.

The ongoing historic drought currently impacting the state has greatly complicated these efforts. For example, in order to comply with its bond covenants, the District must maintain certain debt ratios. However, the great uncertainty regarding how much water the District will have available for various programs has made this type of planning nearly impossible. This places the District in the difficult position of needing to increase these water program rates high enough that it can meet its debt ratios, but not so high as reduce sales and exacerbate the problem further.

D. The Current Regulations Prevent The District From Investing RPS Funds Into Its Own Community.

As described above, a very large percentage of the District's total retail sales are attributed to a few large customers, who may switch to PG&E at any time. This uncertainty regarding the long-term energy needs of the District make it challenging to enter into long-term contracts or ownership agreements. To address this issue, the District currently operates under a full requirements agreement with another entity. This structure effectively prevents the District from installing utility scale generation within its community.

Even with these limitations, the District could focus its RPS procurement on behind-the-meter, customer-sited generation as a means of redirecting its RPS expenditures back into its community. However, both the CPUC and CEC have interpreted California Public Utilities Code section 399.16(b) as treating behind-the-meter generation as falling within portfolio content category 3 ("PCC3"). The portfolio balance requirements of section 399.16(c) limit PCC3 resources to 15 percent of renewable procurement in 2014-2016, and 10 percent of renewable procurement from 2017 onward. Further, PCC3 RECs are worth substantially less than PCC1 RECs (approximately 1/20th the value).

These restrictions on behind-the-meter generation mean that the District is effectively prevented from using its RPS funds to stimulate the economy within its own community.

III. LEGISLATIVE HISTORY OF SB 591

SB 591, signed into law in 2013, created an alterative RPS compliance obligation applicable only the District. 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 has an output that is typically greater than 50 percent of the District's retail sales.

The legislative history is clear that SB 591 was intended to provide consistent and significant relief from the otherwise applicable RPS obligations. Throughout the legislative process, the various committee and floor analyses, consistently discuss the economic hardship of the community served by the District as a key purpose for the Bill.

For example, the Final Senate Floor Analysis summarizes both the arguments in support and the arguments in opposition to SB 591. The arguments in support states the following:

> This bill allows the [District] to **save ratepayers significant money by granting the same accommodations that were given to the San Francisco Municipal Utilities District** and the Trinity Public Utilities District who found themselves in very similar situations.[5]

Similarly, the arguments in opposition are described as follows:

> **this bill significantly reduces the RPS program obligations** for any POU that receives at least 50% of its "consumption load demand" from "hydroelectric generation and other renewable energy resources." Other provisions in this bill suggest that the sole beneficiary of this treatment would be the [District].[6]

Additionally, the Final Assembly Floor Analysis expressly discusses the cost impact issues:

> [The District] expects its RPS purchase requirement to cost upward of $30 million. [The District] 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 [The District]'s current RPS requirement, the average family would see a 20% rate increase with electric bills increasing from approximately $225 per month to $270. [The District] 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 [District] customers under this bill while still achieving carbon-emission-free energy**.[7]

This legislative history demonstrates that the Legislature intended SB 591 to provide significant relief to address the economic conditions in the community served by the District. This relief is to be consistent and not a rare occurrence tied unusually high hydro generation

[5] Senate Floor Analysis of SB 591, August 27, 2013 (emphasis added).
[6] *Id* (emphasis added).
[7] Assembly Committee on Utilities and Commerce Analysis of SB 591, July 1, 2013 (emphasis added).

years. Additionally, the alternative compliance obligation applicable to the City and County of San Francisco ("CCSF") was clearly a key model for the structure of SB 591. It is relevant to the discussion below, that during the final stages of the legislative process, the CEC had already adopted the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* ("Enforcement Procedures").[8] This means that the CEC had already implemented the alternative compliance obligation applicable to CCSF when the Legislature was considering and ultimately passed SB 591.

IV. COMMENTS ON THE PROPOSED MODIFICATIONS

A. The District Supports the Interpretation of the Attribution and Averaging Methodology.

As demonstrated by the legislative history described above, SB 591 was drafted with the clear intent that it applies exclusively to the District. Any interpretation of SB 591 that would make it unlikely or impossible for the benefits of SB 591 to apply to the District would clearly be contrary to the intent of SB 591. Two of the key eligibility issues dealing with SB 591 are the issue of attributing the output of the New Exchequer Dam to the District and the averaging of hydro years to address the inherent variability in hydro generation.

The Proposed Modifications implement these two issues as follows:

> (B) A POU shall demonstrate that it meets the criteria listed in Public Utilities Code section 399.30 (k) by providing the Commission documentation showing that **qualifying hydroelectric generation produced an average of greater than 50 percent of the POU's annual retail sales in the twenty years preceding** each compliance period, or the entire generating history of the qualifying hydroelectric generation facility, whichever is less.

[8] The CEC adopted the Enforcement Procedures on June 12, 2013, and the Enforcement Procedures became effective on October 1, 2013.

The District supports the Proposed Modification's implementation of these two issues. The output of the New Exchequer Dam is the correct measurement for calculating the eligibility and benefit of SB 591. Further, twenty years is sufficiently long to average out any extreme drought years. The twenty-year averaging period also serves to give the District sufficient notice prior to the start of a compliance year to know whether SB 591's alternative compliance obligation will apply.

The District notes that the primary purpose of the twenty-year averaging methodology is to control for the variability of hydro generation. However, the District's retail sales are relatively stable, and so it is not necessary to utilize twenty years (or as much as is available) of retail sales data. Instead, measuring eligibility based on current or prior year retail sales would likely be a more faithful implementation of the statutory language.

B. The Proposed Modifications Incorrectly Apply SB 591 on a Compliance Period Basis.

The Proposed Modifications, Section 3204(a)(10) provides:

> Notwithstanding section 3204 (a)(1) – (4), beginning on January 1, 2014, a POU that meets the criteria listed in Public Utilities Code section 399.30 (k) shall not be required to procure additional electricity products **for a given compliance period** in excess of either the portion of its retail sales not supplied by qualifying hydroelectric generation or the POU's cost limitation adopted pursuant to section 3206 (a)(3).

It is important to clarify that there are two distinct issues regarding the application of the compliance periods to SB 591: (1) how often is eligibility measured; and (2) over what time period is the SB 591 alternative compliance obligation applied? The issue of the correct timeframe for measuring eligibility is, as a practical matter, of lesser importance to the District because it is unlikely to be an issue in the near future. Because of the proposed twenty year averaging methodology for the output of the New Exchequer Dam, it is virtually impossible that

the District would fail to meet the 50 percent requirement during the second or third Compliance Periods.

However, applying the SB 591 alternative compliance obligation on a compliance period basis, as is currently proposed, is inconsistent with the structure of SB 591 and could lead to results contrary to the clear intent of the Legislature and the express language of SB 591.

1. The District Does Not Object to a Determination of Eligibility Prior to the Start of Each Compliance Period.

In the *Initial Statement of Reasons* ("ISOR"), dated March 27, 2015, the CEC justifies determining the eligibility for SB 591 prior to each Compliance Period by stating:

> Energy Commission staff determined that the criteria of Public Utilities Code section 399.30 (k) should be assessed at the beginning of each compliance period and be in effect for the duration of the compliance period. This will avoid a situation in which eligibility for the limited exemption changes from year to year within a single compliance period.[9]

As described above, the practical impact of determining eligibility prior to the beginning of each Compliance Period will almost certainly not have any impact on the Second or Third Compliance Periods because of the proposed twenty-year averaging methodology. The twenty-year averaging methodology included in the Proposed Modifications makes it extremely unlikely that even a severe drought would cause the District to lose eligibility for SB 591. Even if the New Exchequer Dam produced no generation for the next five years in a row, the District would still meet the 50 percent retail sales eligibility requirement. After the Third Compliance Period, all future compliance periods are annual. This means that unless the statutory language changes, there will not be a difference between determining eligibility for SB 591 on an annual or compliance period basis in the post 2020 period.

[9] ISOR at 8.

As an initial matter, the District would not object to this interpretation, if it were implemented consistent with the CCSF alternative compliance obligation. The CCSF alternative compliance obligation was implemented to determine eligibility prior to the start of each compliance period, but the actual procurement requirement is determined on an annual basis.

If, however, future legislation converts post-2020 annual compliance periods to multi-year compliance periods, then the CEC should revisit this determination to ensure that it does not result in any unintended consequences or lead to results clearly at odds with the purpose of the statute. For example, if the eligibility determination (using 20 years of prior data) found that the District was not eligible for SB 591 during an upcoming three-year Compliance Period, the District would be ineligible without any regard for the actual hydro output during those three years. It would be fully possible that during each year of that three-year period, the output of the New Exchequer Dam could exceed the retail sales of the District, and yet SB 591 would not provide any benefit to the District because the eligibility calculation was based on historical data. There is no possible way to read the language of SB 591 to be consistent with such an outcome.

2. <u>The Differing Language Between the CCSF Provision and SB 591 Does Not Justify the Differing Implementation.</u>

The ISOR goes on to state:

> Determining eligibility under the criteria of Public Utilities Code section 399.30 (k) on an annual basis is not supported by the statute. Unlike Public Utilities Code section 399.30 (j), which establishes procurement requirements based on the POU's hydroelectric generation "in any given year," section 399.30 (k) does not impose yearly procurement requirements.[10]

While the CCSF alternative compliance obligation is structurally similar and should serve as a model for the implementation of SB 591, there are fundamental differences that justify

[10] ISOR at 8.

different statutory language. CCSF primarily serves load that does not qualify as a retail sale, while the District's load is almost exclusively retail sales. As implemented by the Legislature, the CCSF provision was therefore described as "electricity demands unsatisfied by its hydroelectric generation in any given year."[11] This phrasing would not have made sense for the District because "electricity demand" is not a reasonable measurement for a POU that primarily serves retail load. Instead, the Legislature used the phrase "annual retail sales," which is a phrase commonly used to describe the prior annual RPS obligations that were mandatory for the retail sellers prior to the implementation of a multi-year Compliance Periods structure under SB1X-2.[12]

The CEC seeks to place too great a significance on the difference between the "annual retail sales" language and the "in any given year" language. The phrase "annual retail sales" is clearly reflective of an overall annual obligation. As described in more detail below, the purpose of SB 591 would be thwarted if the CEC's Proposed Modifications are left unchanged.

3. <u>The Reference to Section 399.30(c) in SB 591 is Not Relevant to This Discussion.</u>

> The ISOR makes the additional argument that:
>
> Public Utilities Code section 399.30 (k)(4) states that the POU is not required to procure eligible renewable energy resources in excess of the requirements of Public Utilities Code section 399.30 (c), which establishes procurement targets on the basis of compliance periods, not individual years.[13]

The reference to section 399.30(c) in SB 591 is purely to protect against a circumstance where the District's RPS obligation could be interpreted to actually be higher than other POUs. For example, if the output of the New Exchequer Dam only covered 25 percent of the District's retail

[11] Cal. Pub. Util. Code § 399.30(j).
[12] *See e.g.,* D.12-06-038 at Table 1.
[13] ISOR at 8.

sales, then one could argue that the District's RPS obligation would be 75 percent. As described above, it is noteworthy that when the Legislature was considering SB 591, it did so with the benefit of the CEC having already adopted the Enforcement Procedures. The CEC had implemented section 399.30(j) to address this very issue. Section 3204(a)(7)(D) of the Enforcement Procedures includes the following:

> If a POU meeting the criteria listed in Public Utilities Code section 399.30 (j) has electricity demand unsatisfied by its qualifying hydroelectric generation in any given year, the POU shall procure electricity products equal to the lesser of the following:
>
> > 1. The portion of the POU's electricity demand unsatisfied by the POU's qualifying hydroelectric generation.
> >
> > **2. The soft target listed in section 3204 (a)(1) – (4) corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual electricity demand.**[14]

The purpose of the soft target limitation is to protect against a circumstance where CCSF's RPS obligation would be higher than the obligation applicable to other POUs. The Legislature simply adopted this same express protection into SB 591 that the CEC had adopted for CCSF in the Enforcement Procedures. The reference to section 399.30(c) creates no express obligation to comply with the entirety of the otherwise applicable procurement requirements. Therefore, there should be no relevance given to this reference.

4. Apply SB 591 Over An Entire Compliance Period is Inconsistent with the Intent of the Statute.

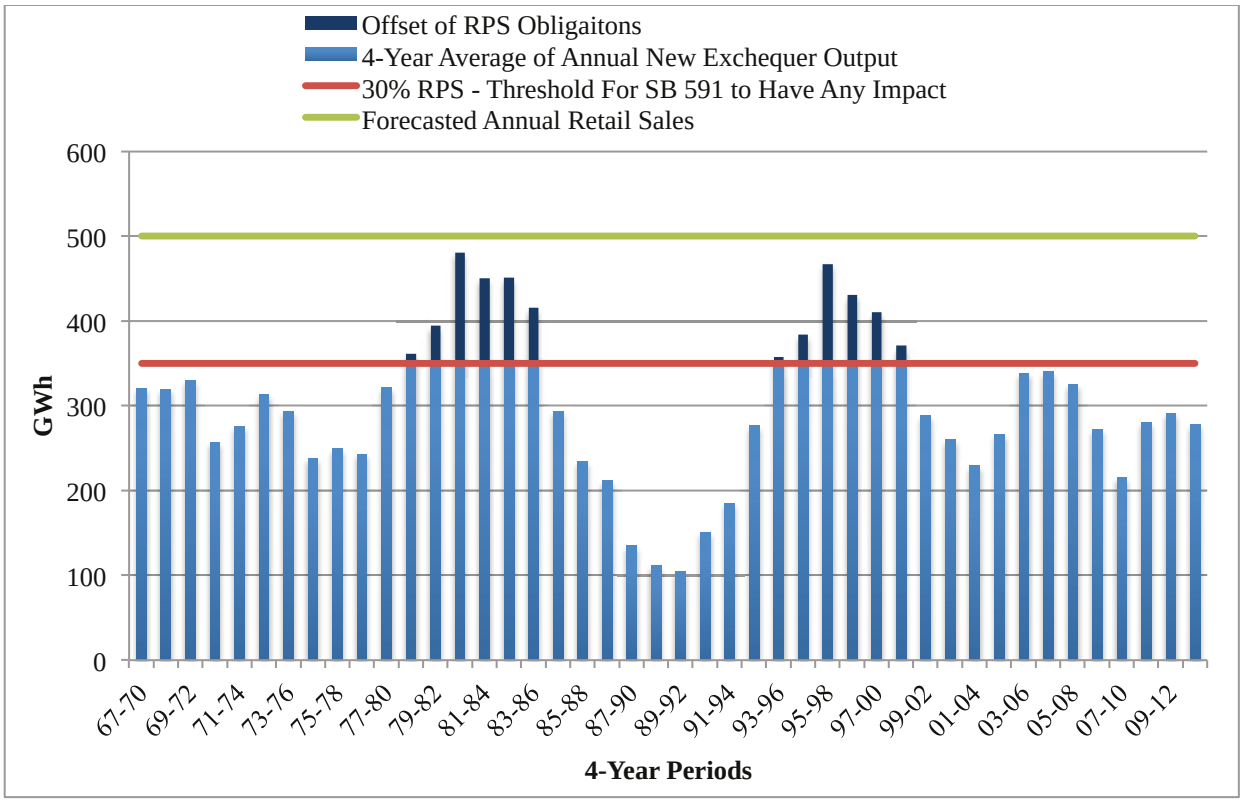
Applying SB 591 over the multi-year compliance periods will likely lead to results that are clearly inconsistent with the express language of SB 591. This can be demonstrated by a simple example. For purposes of this example, assume that the District's annual retail sales were

[14] (emphasis added).

500 GWh (1500 GWh over the relevant three years) and that the output of the New Exchequer Dam was 100 GWh in 2014, 100 GWh in 2015, and 550 GWh in 2016. As interpreted by the Proposed Modifications, the three-year total output of the New Exchequer Dam would be 750 GWh, which, as a percentage of the three years of retail sales (1500 GWh) would only be 50 percent. Because the applicable RPS obligation during the second compliance period is approximately 21.7 percent, SB 591 would have no benefit to the District. That is true even though in 2016, the output of the New Exchequer Dam fully exceeded the District's annual retail sales.

Interpreting SB 591 to apply over entire compliance periods is clearly incompatible with the express terms of the statute. It is simply not possible that the Legislature intended SB 591 to have no impact during years where the hydro output of the New Exchequer Dam fully exceeds the retail sales of the District. As explained further below, this example does not represent a remote possibility. Indeed, 2014 was an extremely low hydro year, and it appears that 2015 may be worse. It is virtually impossible that, regardless of the hydro output during 2016, SB 591 will have any impact on the District if implemented as proposed by the CEC.

It is also very unlikely that SB 591 will have any benefit during the Third Compliance Period. This is demonstrated by the following table, which looks at every four-year period for which there is generation data available for the New Exchequer Dam, going back to 1967. The table looks to see if the average of those four years would have been sufficient to have any resulting offset to the District's RPS obligation, assuming an RPS obligation of 30 percent.



Of the 44 four-year periods for which the average annual generation of New Exchequer Dam has been calculated, only 12 would provide any benefit at all to the District. However, in only 9 instances is the impact more than negligible. This means that there is only a 20 percent chance that there will be any real impact to the District under the CEC's interpretation of SB 591 for the entire Third Compliance Period. In light of the current drought, and the trends that point to greater frequencies of droughts in California, this probability is likely even lower.

Therefore, applying SB 591 on a compliance period basis means that there is no chance that SB 591 will provide any benefit during the Second Compliance Period, and only a one in five chance that there will be any real benefit during the Third Compliance Period. This is clearly not consistent with the intent of the Legislature.

C. The Proposed Modifications Incorrectly Applies the Portfolio Balance Requirements to the District.

The Proposed Modifications, Section 3204(a)(10)(D) provides:

> A POU that meets the criteria of Public Utilities Code section 399.30 (k) shall be subject to the requirements in section 3204 (c)(1)-(9).

This is inconsistent with the clear structure of SB 591, which creates a stand alone, alternative compliance obligation. It is also inconsistent with the implementation of the CCSF alternative compliance obligation.

1. SB 591 Did Not Simply Create a Minor Modification to the Otherwise Applicable RPS Obligations.

SB 591 specifies an alternative method for calculating the RPS procurement requirements applicable to a POU, including a reference to a relevant optional compliance mechanism. This is not a minor modification to the otherwise applicable procurement requirements. Instead it is a self-contained, separate obligation that does not reference the portfolio balance requirements.

In contrast, section 399.30(i) does create a minor modification that does not otherwise alter the applicable POU procurement requirements. Section 399.30(i) provides:

> Notwithstanding subdivision (a), for a local publicly owned electric utility that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnish electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 (commencing with Section 20500) of the Water Code), **the percentage of total kilowatthours sold to the district's retail end-use customers, upon which the renewables portfolio standard procurement requirements in subdivision (b) are calculated, shall be based on the authority's average retail sales over the previous seven years.** If the authority has not furnished electric service for seven years, then the calculation shall be based on average retail sales over the number of completed years during which the authority has provided electric service.[15]

[15] Cal. Pub. Util. Code § 399.30(i).

Section 399.30(i) expressly describes how this minor modification applies by directly referencing the relevant statutory section. It does not create an entirely new procurement obligation, but instead merely modifies one part of the relevant calculation. This example demonstrates how the Legislature designates that a modification still includes the relevant procurement requirements.

SB 591 goes much further, providing the entire necessary calculation for the District's RPS procurement requirement. Further, SB 591 includes a specific reference to the District's cost limitation. If all of the other relevant procurement requirements of the RPS applied in spite of SB 591, then there would be no need to reference the District's cost limitation. Its inclusion demonstrates the standalone nature of SB 591.

2. The ISOR Incorrectly Attributes Significance to the Reference to Renewable Energy Credits in Section 399.30(j).

The ISOR Argues that:

> Section 399.30 (k) does not make reference to the portfolio balance requirements or otherwise state that the qualifying POU may satisfy its procurement obligations by procuring only renewable energy credits (RECs). By contrast, Public Utilities Code section 399.30 (j) includes explicit provisions which support an implied exemption from the portfolio balance requirement. Specifically, section 399.30 (j) states that the qualifying POU is required to procure eligible renewable energy resources, "including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year . . . ."[16]

This section of the ISOR asserts that the inclusion of the phrase "including renewable energy credits" is a key distinction justifying the differing implementation between SB 591 and section 399.30(j). However, the ISOR includes only part of the relevant phrase. The full relevant statutory language is the following:

[16] ISOR at 9.

> shall be required to **procure eligible renewable energy resources, including renewable energy credits,** to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year . . . .[17]

The phrase "eligible renewable energy resources, including renewable energy credits" has no relevance to the applicability or non-applicability of the portfolio balance requirements. Rather, this phrase is simply a standard phrasing used in the RPS to describe renewable procurement. Section 399.30(a), which broadly applies to all POUs, which are not otherwise exempted, provides the following:

> To fulfill unmet long-term generation resource needs, each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from **eligible renewable energy resources, including renewable energy credits**, as a specified percentage of total kilowatthours sold to the utility's retail end-use customers, each compliance period, to achieve the targets of subdivision (c).[18]

Therefore, the CEC should not seek to draw a distinction between SB 591 and section 399.30(j) based on the use or lack of use of the phrase "including renewable energy credits."

3. The Same Policy and Legal Rationale Applicable to CCSF Applies Equally to the District.

The ISOR further argues that:

> Additionally, section 399.30 (j) requires that the qualifying POU's exemption be applied annually, stating that the POU shall meet "only the electricity demands unsatisfied by its hydroelectric generation in any given year …" This annual requirement makes it more difficult for the qualifying POU under section 399.30 (j) to plan for any needed renewable energy procurement, since it may not know until the end of a given year whether its hydroelectric generation will be sufficient to meet its electricity demands for that year.[19]

These arguments are the same justifications that the CEC cited in the original ISOR when the CEC was first adopting the Enforcement Procedures. In the original ISOR, the CEC argued:

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[17] Cal. Pub. Util. Code § 399.30(j) (emphasis added).
[18] Cal. Pub. Util. Code § 399.30(a).
[19] ISOR at 9.

> 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.[20]

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).

i. *Stand Alone Provision Not Referencing section 399.16*

As described above, SB 591 must be applied on an annual basis to meet the intent of the Legislature. SB 591 even includes its own independent reference to the District's cost limitation, a reference that would be superfluous if SB 591 was fully integrated with the rest of the RPS requirements.

Just like section 399.30(j), SB 591 does not include any direct reference to section 399.16. Therefore, as a stand-alone provision, the portfolio balance requirements are inapplicable to the District.

ii. *The District Would not Be Able to Plan Ahead*

The output of New Exchequer 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. If applied annually, during conditions similar to these years, the District's RPS obligation should be zero.

The requirement that PCC1 and PCC2 electricity products be procured "bundled" limits the ability of POUs to make simple or short-term purchase of RECs to cover their compliance

[20] *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.

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 hydro 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, resulting 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 intent to limit the financial impacts of the RPS on the District.

4. Implementing SB 591 Without the Portfolio Balance Requirements Will Allow Merced To Invest In Its Community

If the District were free to meet the RPS without regard for the portfolio balance requirements, then it would commit to spending the great majority of its RPS funds on projects located within its geographic region. The District would accomplish this through a combination of efforts, including increased incentives for customer programs. The District is also exploring a few large projects with its bigger customers, where the District would play a key role in providing funding and incentives for the project in exchange for the associated RECs. Finally, the District is considering programs that would be targeted at low-income customers that are otherwise unable to afford or independently finance rooftop solar.

Providing this flexibility meets the goals of the Legislature by allowing the District to comply with the RPS in a cost effective manner, while at the same time taking its RPS funds and reinvesting them into its community. This limits the burden on the District's customers while at the same time creating jobs in the local economy.

V. CONCLUSION

The District appreciates the opportunity to provide comments on the Proposed Modifications.

Dated: May 11, 2015

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