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July 21, 2015 | Submitted Electronically

California Energy Commission
Dockets Office, MS-4
Re: RPS Enforcement Procedures for Local Publicly-Owned Electric Utilities – Docket No. 14-RPS-01
1516 Ninth Street
Sacramento, California 95814-5512

RE: SCPPA Comments on the July 6, 2015 15-Day "Express Terms" on *Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* [Docket No. 14-RPS-01].

The Southern California Public Power Authority (SCPPA) appreciates the opportunity to submit these comments as the Energy Commission works to finalize amendments to the Renewables Portfolio Standard (RPS) Enforcement Procedures and the associated RPS penalty regulation. SCPPA's comments are organized chronologically in the "underline/strikeout format" version of the Express Terms for ease of reference. Our Members particularly wish to highlight the following issues:

- **Definitions.** SCPPA appreciates efforts by Energy Commission staff to improve upon the modified definition of "Bundled" in Section 3201 and recommends further clarifying changes. Our Members also suggest further clarification on the modified definition of "Retail sales."
- **Portfolio Content Category-0.** SCPPA recommends that the definition be added to Section 3202 for consistency purposes.
- **Optional Compliance Measures.** SCPPA continues to recommend that Section 3206 recognize events beyond a utility's control whereby a utility may not be able to fulfill its RPS compliance obligations. SCPPA continues to seek revisions on reducing PCC-1 procurement requirements below 65%.
- **Compliance Reporting.** SCPPA appreciates modifications to Section 3207 that would allow alternative documentation to also be used to demonstrate PCC classification as previously recommended. Our Members also very much appreciate the Energy Commission's commitment to work with designated POU stakeholders across the State on data reporting streamlining efforts going forward.
- **Enforcement Penalties.** The Air Resources Board's statutory obligations must remain independent and unimpeded.

SCPPA respectfully requests consideration of the comments being submitted by our individual Members as well. We agree that State policymakers will need to work towards identifying solutions for achieving a much more ambitious RPS target, such as how renewable resources are categorized so that the State does not continue to *undercount* renewables procurement going forward.

SECTION 3201 – DEFINITIONS

- The proposed definition of "**Bundled**" should be further modified to recognize that, "**For example, if** the POU **claiming an electricity product** owns the **associated** eligible renewable energy resource, then **all** electricity products**, including those** associated with electricity consumed onsite ~~may~~ ***will*** be considered bundled electricity products."
  - SCPPA continues to believe that the use of "will be" in creating obligations provides more certainty.
  - SCPPA appreciates the Energy Commission staff's efforts to modify the definition by offering an example contractual arrangement, rather than definitively limiting any and all potential future contractual arrangements outright. We also greatly appreciate staff's deletion of the problematic and overly restrictive final sentence that

would have required ownership – particularly as the State Legislature considers modifications to the RPS and the Portfolio Content Category construct.

- SCPPA suggests that the proposed 15-Day modification to the definition of "**Retail sales**" definition, which would add "**that was not sold to the customer by the POU**," be stricken. SCPPA recognizes that its Member publicly-owned utilities *can be their own customer*. This includes, for example, water pumping stations, electricity used by POU administrative buildings, etc. – all of which can receive an electric bill as billed by the POU itself. SCPPA recommends that the added phrase be deleted from the definition to ensure that such electricity can be deducted from "Retail sales" as a routine course of business.
  - Alternatively, to address these concerns in lieu of striking the language, SCPPA would recommend that the addition be clarified to reflect what we believe the intent to be, by adding "end-use:" "**that was not sold to the *end-use* customer by the POU**"
- A definition of "**force majeure**" should be added to this Section, consistent with SCPPA's prior comments.
- A definition of "**regulatory delay**" should also be added, consistent with SCPPA's prior comments.

SECTION 3202 – QUALIFYING ELECTRICITY PRODUCTS

SCPPA seeks clarification of existing law to ensure that SCPPA and its Members can acquire grandfathered resources and safeguard that the electricity products continue to count-in-full toward the RPS requirements. Ambiguous language in the Energy Commission's proposed definition of resale creates ambiguity that may otherwise lead to unintended consequences. SCPPA recommends that language be inserted into the RPS Enforcement Procedures that: *"Electricity products associated with generation from an eligible renewable energy resource that met the requirements of Section 3202(a)(2)(A) shall continue to 'count in full' toward the RPS procurement requirements following the acquisition by a POU of such eligible renewable energy resource after June 1, 2010, if such acquisition is pursuant to a purchase option, security interest, or other purchase opportunity vehicle contemplated in the original contract or ownership agreement executed on or prior to June 1, 2010, provided, however, that a POU may voluntarily request that any such electricity products be classified into a Portfolio Content Category and follow the Portfolio Balance Requirements of Section 3204(c)."*

SCPPA also seeks clarifications and consistency in the **Portfolio Content Category 0 definition** contained in Section 3202(a)(2). In the 7th Edition of the RPS Eligibility Guidebook, PCC-0 was defined as follows: "Procurement claims from 'count in full' contracts are not classified in PCCs. Additionally, there is no delivery requirement for 'count in full' procurement. As such, there are no delivery or scheduling verification responsibilities associated with 'count in full' procurement claims." However, in the recently-adopted 8th Edition of the RPS Eligibility Guidebook, this language was removed with the prior understanding that the Portfolio Content Category definitions for publicly-owned utilities would be relocated to the RPS Enforcement Procedures regulations. Yet this language (or any similar language) has not been included in the Express Term modifications for these RPS Enforcement Regulations. SCPPA recommends that language defining Portfolio Content Category 0 and its requirements (similar or identical to the excerpt above) should be added to Section 3202 (a)(2) to provide necessary certainty and consistency going forward.

SECTION 3206 – OPTIONAL COMPLIANCE MEASURES

SCPPA continues to recommend a modification to subsection (a)(2)(A), under "**Delay of timely compliance**," to explicitly recognize that circumstances beyond a POU's control, or circumstances that comport with Public Utilities Code Section 399.15 (c)(9)(3)(D) safeguarding a local POU from suffering disproportionate rate impacts due to compliance with the RPS requirements (the procurement expenditure limitation), may delay the timely compliance with Section 3240 RPS procurement requirements:

> "(A) A POU may adopt rules permitting the POU to make a finding that conditions beyond the control of the POU exist to delay the timely compliance with RPS procurement requirements, as defined in section 3204. Such a finding ~~shall be~~ *might include, but is not* limited to one or more of the following causes for delay and shall demonstrate that the POU would have met its RPS procurement requirements but for the cause of delay:…"

SCPPA Members further note that the *RPS Enforcement Procedures* currently lists in subsection (a)(2)(A)(2) that it may be that, "Permitting, interconnection, ***or other circumstances*** have delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU." [emphasis added]

- Rather than listing additional reasons for a delay in timely compliance, SCPPA recommends that "**force majeure**" be included and also defined in Section 3201 to include natural (e.g., earthquakes) or manmade disasters (e.g., terrorist or cybersecurity attacks). An additional statement, as recommended above, that does not limit the reasons for a delay in timely compliance would enable POU's to cite locally-recognized and acceptable reasons.
- SCPPA continues to recommend that "**regulatory delay**" be included and defined as a qualifying factor that can delay timely compliance under this section. A delay caused by a state regulatory agency is a condition beyond the control of a POU. A local governing body of a POU must be allowed to make a finding that a regulatory delay caused a delay in timely compliance with the RPS regulation if it can be demonstrated that a POU would have otherwise met its RPS procurement obligation. Regulatory delay would be a principal factor, for example, if a local POU governing board would have adopted a procurement and enforcement compliance plan consistent with statutory requirements in place at the time, only to later be subjected to a temporary regulatory moratorium.
- SCPPA is concerned that the Energy Commission has not explicitly addressed how it intends to allow for or measure the cost impacts associated with RPS compliance on POU's retail rates, and may not apply the cost limitation policies approved by POU governing bodies in an enforcement proceeding. This is particularly important for POUs that largely serve disadvantaged communities. SCPPA urges that the Energy Commission explicitly recognize any **"disproportionate rate impact"** methodology or procedure that exceeds an approved local governing body RPS procurement policy when evaluating RPS compliance.

SCPPA recommends a modification to subsection (a)(4)(C) to correct an inconsistency with subsection (a)(4)(B), regarding the inability to **reduce PCC-1 requirements below 65% prior to 2017**. A reduction in the PCC-1 procurement requirement should be allowed if a POU can reasonably demonstrate that a reduction occurred due to reasons beyond its control, such as the modification or termination of a contract or regulatory changes (such as modifications to PCC-1 eligibility rules) that alter the ability to count a resource as PCC-1. SCPPA recommends modifying subsection (a)(4)(C) to recognize circumstances where a previously-counted resource may no longer qualify as PCC-1, and adjust the PCC-1 percentage requirements for the affected year(s) accordingly.

SCPPA appreciates staff's efforts to modify the "**excess procurement**" language in Section 3206 (a)(1)(A)(3). Doing so offers a more reasonable interpretation by allowing POUs to qualify the 10-year term based upon the original contract execution date rather than upon the data of the extension as had been noted in the "45-Day" language.

SECTION 3207 – COMPLIANCE REPORTING FOR POUS

SCPPA very much appreciates the Energy Commission staff's modification of the language in subsection(c)(2)(F), which adds "**, but is not limited to,**" that now makes it clear that other documentation *not* listed in this section may also demonstrate PCC classification.

SECTION 1240 – RPS ENFORCEMENT

SCPPA remains concerned that the Energy Commission has assumed a dramatically expanded role in this enforcement matter. Unfortunately, the 15-Day "Express Terms" fails to address the jurisdictional issues raised previously. SCPPA is concerned with any abdication of the Air Resources Board's current – and independent – statutory responsibilities to levy penalties on a POU for noncompliance. Existing statute is clear that any penalties must be comparable to those adopted by the California Public Utilities Commission for the Investor-Owned Utilities, and that a POU can cite mitigating factors for noncompliance – including optional compliance measures and cost containment considerations ***before*** a decision is made. Placing POUs in the position of having to answer a noncompliance decision before the Energy Commission has even determined that there is a noncompliance is extraordinarily unfair and inappropriate. The state regulatory agencies should

follow basic due process rules; the Energy Commission first needs to determine whether there has been a violation – considering optional compliance measures and other extenuating circumstances, before the Air Resources Board *independently* determines the penalty amount under the California Health and Safety Code (under ARB's purview).

Thank you for your time and consideration of SCPPA's comments. We greatly appreciate the opportunity to provide stakeholder input on the Energy Commission staff's efforts to revise the RPS Enforcement Procedures for POUs.

Respectfully submitted,

Tanya DeRivi
Director of Government Affairs