

**INITIAL STATEMENT OF REASONS****MODIFICATION OF REGULATIONS ESTABLISHING  
ENFORCEMENT PROCEDURES FOR THE  
RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY  
OWNED ELECTRIC UTILITIES**

**California Code of Regulations  
Title 20, Division 2, Chapter 13, Sections 3201 – 3204, 3206, 3207, and  
Chapter 2, Article 4, Section 1240**

**California Energy Commission**

**DOCKET NO. 14-RPS-01**

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**INTRODUCTION**

The California Energy Commission (Energy Commission) proposes to modify existing regulations specifying procedures for the enforcement of the Renewables Portfolio Standard (RPS) for local publicly owned electric utilities (POUs) under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The Energy Commission adopted these regulations in 2013 in accordance with Public Utilities Code section 399.30 (l), as enacted by Senate Bill X1-2 (Stats. 2011, 1<sup>st</sup> Ex. Sess., ch. 1) and amended by Assembly Bill 2227 (Stats. 2012, ch. 606, sec. 8). Section 399.30 (l) directs the Energy Commission to adopt regulations specifying procedures for the enforcement of the RPS for POUs and requires that the regulations include a public process under which the Energy Commission may issue a notice of violation and correction against a POU for failure to comply with the RPS, and for referral of violations to the California Air Resources Board (ARB) for penalties.

Public Utilities Code section 399.30 was subsequently amended by Senate Bill 591 (SB 591, Stats. 2013, ch. 520)<sup>1</sup> after the regulations were adopted. SB 591 modifies the RPS requirements for a qualifying POU. Specifically, SB 591 adds a new subdivision (k) to Public Utilities Code section 399.30, which establishes a limited procurement exemption for a “local publicly owned electric

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<sup>1</sup> SB 591 amended Public Utilities Code section 399.30, subdivision (k), and renumbered subsequent subdivision, so that former Public Utilities Code section 399.30, subdivisions (k) – (n) became subdivisions (l) – (o), respectively.

utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource.” If this criteria is satisfied the POU may limit its RPS procurement obligations for a given compliance period to the lesser of 1) the portion of the POU’s retail sales not met by its own hydroelectric generation, 2) the procurement obligations applicable to other POUs under PUC section 399.30 (c), or 3) the amount of procurement capped by the POU’s cost limitations adopted in accordance with Public Utilities Code section 399.30.

On March 12, 2014, the Energy Commission adopted an Order Instituting Rulemaking to initiate a rulemaking proceeding to consider modifications to its regulations to implement SB 591 and, to the extent necessary, clarify existing provisions in the regulations. In addition to the modifications needed to implement SB 591, the Energy Commission has identified several areas in the regulations that need clarification. These areas of clarification are related to the following: i) the definitions of “bundled,” “resale,” and the “Western Electricity Coordinating Council,” ii) the requirements for qualifying electricity products procured under agreement executed prior to June 1, 2010, iii) the requirements for electricity products qualifying as dynamic transfers, iv) the portfolio content category classification of electricity products from POU-owned resources, v) the excess procurement rules related to amended contracts, vi) the application of optional compliance measures, vii) select reporting requirements, and viii) procedural provisions for complaints of noncompliance.

The need for these clarifications is based in part on the inquiries received from stakeholders since the regulations were adopted in 2013 and from the comments received in response to a pre-rulemaking public workshop held on July 11, 2014.

The proposed modifications to the regulations will be codified in the California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3201, 3202, 3203, 3204, 3206, and 3207, and in Title 20, Division 2, Chapter 2, Article 4, section 1240.

## **SPECIFIC PURPOSE, RATIONALE, AND NECESSITY OF EACH MODIFIED SECTION OF THE REGULATIONS**

The overall problems the Energy Commission is attempting to address with the proposed modifications are unclear requirements under its existing regulations and the implementation of SB 591.

Since the regulations became effective October 1, 2013, the Energy Commission has received repeated questions on several topics, including the portfolio content category classification for distributed generation systems, the definition of retail sales, the definition of resale, excess procurement rules when a contract is extended, and dynamic transfer agreements. The Energy Commission held a workshop in July 2014 to discuss these topics and solicit public comments. After reviewing the comments received, the Energy Commission determined that clarification was needed on select provisions in the regulations to avoid confusion and improve the application of the regulations.

In addition, SB 591 went into effect after the regulations became effective in October 2013, so modifications to the regulations are needed to implement the new Public Utilities Code section 399.30 (k) and revise references to subsequent Public Utilities Code sections that were renumbered by SB 591.

The benefits anticipated from this regulatory action are improved direction and guidance on how the Energy Commission will interpret, apply and enforce the RPS law, so the POU's can plan accordingly in procuring renewable electricity to meet their RPS requirements. Specifically, POU's will now better understand the requirements for bundled and resale transactions, dynamic transfers, excess procurement calculations, portfolio content category classification for POU-owned resources, applying optional compliance measures, and procedures related to complaints of noncompliance. In addition, a POU that meets the criteria of Public Utilities Code section 399.30 (k) will have direction on how to demonstrate that it meets the criteria in the statute as well as how to demonstrate that it meets its RPS requirements. Clarifying the requirements in the regulations will also result in a more uniform and consistent application of the RPS law, which in turn will help promote the underlying goals of the RPS, including reducing air pollution associated with fossil fuel-based electrical generation and helping the state meet its climate change goals by reducing greenhouse gas emissions associated with electrical generation.

## **Chapter 13. Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

### **Section 3201 – Definitions**

**Section 3201 (e) – Bundled.** The definition of “bundled” was revised to clarify that electricity products associated with electricity consumed onsite will only be considered bundled if the POU claiming the electricity product to meet its RPS obligations owns the eligible renewable energy resource. As the owner of the eligible renewable energy resource, the POU is procuring both the electricity and the associated renewable energy credit (REC), regardless of where the electricity is consumed. However, if the customer or a third party owns the eligible renewable energy resource, then electricity products associated with electricity consumed onsite is considered unbundled. If the electricity and associated RECs from a customer-owned eligible renewable energy resource are sold to the POU under provisions requiring the electricity to be immediately sold back to the customer, the electricity products are unbundled, because the customer is effectively selling only the RECs to the POU. This type of transaction does not comport with section 3203 (a)(1), which precludes a POU from buying a bundled electricity product and then reselling the underlying electricity from the bundled product back to the generator from which the electricity product was purchased.

Similarly, if the electricity products from a third party-owned eligible renewable energy resource are sold to the POU under provisions requiring the electricity to be immediately sold back to the third party so it in turn can sell the electricity to the customer, the electricity

products are unbundled, because the third party is effectively selling only the RECs to the POU. Additionally, if the third party has already contracted to sell the electricity from the eligible renewable energy resource to the customer, the electricity is not available for sale to the POU.

The purpose of this change is to better define the term “bundled,” as used in the regulations. The change is necessary to provide POUs and other market participants with better direction in classifying electricity product transactions. This will benefit POUs by allowing them to better plan for the procurement of renewable electricity to meet their RPS requirements. The change will also result in a more uniform and consistent application of the RPS law, which in turn will help promote the underlying goals of the RPS.

**Section 3201 (bb)** – Resale or resold. The definition of “resale” or “resold” was added to clarify which electricity product transactions are subject to the resale rules in section 3203 of the regulations. Sections 3203 (a)(2) and (3) specify the criteria necessary for an electricity product originally qualifying in Portfolio Content Category (PCC) 1, and subsequently resold, to remain classified in PCC 1. Sections 3203 (b)(3) and (4) specify the criteria necessary for an electricity product originally qualifying in PCC 2, and subsequently resold, to remain classified in PCC 2.

The purpose of this change is to clarify the requirements of sections 3203 (a)(2) and (3) and (b)(3) and (4) by defining the term “resale.” The change is necessary to provide POUs and other market participants with better guidance in classifying electricity product transactions subject to the resale requirements. This will benefit POUs by allowing them to better plan for the procurement of renewable electricity to meet their RPS requirements. The change will also result in a more uniform and consistent application of the RPS law, which in turn will help promote the underlying goals of the RPS.

**Section 3201 (cc)** – Retail sales. The numbering of this subdivision was changed to accommodate the addition of section 3201 (bb), as discussed above.

**Section 3201 (dd)** – Retire. The numbering of this subdivision was changed to accommodate the addition of section 3201 (bb), as discussed above.

**Section 3201 (ee)** – Soft target. The numbering of this subdivision was changed to accommodate the addition of section 3201 (bb), as discussed above.

**Section 3201 (ff)** – Unbundled REC. The numbering of this subdivision was changed to accommodate the addition of section 3201 (bb), as discussed above.

**Section 3201 (gg)** – Western Electricity Coordinating Council or WECC. The numbering of this subdivision was changed to accommodate the addition of section 3201 (bb), as discussed above. In addition, the definition of “Western Electricity Coordinating Council” was revised to clarify WECC’s affiliation with the North American Electric Reliability Corporation (NERC). The current definition of WECC characterizes it as being part of the NERC. While this characterization is not inappropriate, it is better to define WECC as being one of several regional electric reliability councils with delegated authority under NERC.

**Section 3201 (hh)** – Western Renewable Energy Generation Information System or WREGIS. The numbering of this subdivision was changed to accommodate the addition of section 3201 (bb), as discussed above.

## **Section 3202 – Qualifying Electricity Products**

**Section 3202 (a)(3)(C)** - Subdivision (a)(3)(C) was added to clarify how procurement of electricity products that meet the criteria of section 3202 (a)(3) will be classified if the associated contract is amended after June 1, 2010.

Section 3202 specifies the requirements for electricity products to be counted toward a POU's RPS compliance. It explains which electricity products must be classified under a portfolio content category, which must be included in the portfolio balance requirements, and which must be counted in full without being classified under a portfolio content category. Subdivision (a)(3) specifies that electricity products associated with a contract executed before June 1, 2010, that did not meet the Energy Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU, qualify for the RPS. Subdivision (a)(3) is based on the requirements of Public Utilities Code section 399.16 (d), which allows only electricity products meeting certain requirements and from contracts or ownership agreements prior to June 1, 2010, to count in full toward the RPS procurement requirements. Subdivision (a)(3) addresses any pre-June 1, 2010, procurement of qualifying electricity products that did not meet the requirements of Public Utilities Code section 399.16 (d) and therefore would be placed in a portfolio content category because they could not count in full. However, because these electricity products would also not meet the criteria of Public Utilities Code section 399.16 (c), which applies only to procurement after June 1, 2010, they would not be included in the calculation of portfolio balance requirements required by Public Utilities Code section 399.16 (c).

The change to subdivision (a)(3) was needed, because subdivision (a)(3) does not currently specify the effect to electricity products if the associated contract is amended after June 1, 2010. Subdivision (a)(3)(C) clarifies the classification of electricity products procured under these contract amendments in a manner consistent with the requirements of section 3202 (a)(2)(B). Specifically, if contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract, or substitute a different eligible renewable energy resource, only the megawatt-hours (MWhs) or resources procured prior to June 1, 2010, shall be considered to meet the criteria of section 3202 (a)(3) for the term of the contract executed prior to June 1, 2010. The remaining procurement, or any electricity products procured after the end of the original contract term, must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).

The change is necessary to provide POUs and other market participants with better direction in classifying electricity products associated with contracts executed before June 1, 2010, that did

not meet the Energy Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU. This change will benefit POUs by allowing them to better classify and plan for the procurement of renewable electricity to meet their RPS requirements.

## **Section 3203 – Portfolio Content Categories**

**Section 3203 (a)(1)(D)** – Subdivision (a)(1)(D) was revised to clarify the requirements for electricity products procured under dynamic transfer agreements to qualify as PCC 1. Eligible renewable energy resources that have dynamic transfer agreements are generally treated as if the resource is located within a California Balancing Authority (CBA), because the scheduling of generation from the resource is controlled by a CBA in a manner similar to the way a CBA controls the scheduling of generating from a resource that is located within the CBA. However, unlike the generation from eligible renewable energy resources that are located in a CBA, the generation from resources procured under dynamic transfer agreement may not necessarily be scheduled into the CBA. Under dynamic transfer agreements, it is possible for electricity to be generated but not actually scheduled into the CBA. In these circumstances, the electricity procured under a dynamic transfer agreement differs from other electricity generation that is classified as PCC 1.

To address this shortcoming, an additional requirement was added to subdivision (a)(1)(D) to clarify that electricity products procured under dynamic transfer agreements must be scheduled into a CBA area to qualify as PCC 1. This change will bring electricity products procured under dynamic transfer agreements into alignment with the other electricity products in PCC 1 in accordance with Public Utilities Code section 399.16 (b)(1). Under section 399.16 (b)(1) the electricity products must be from an eligible renewable energy resource that is either located in a CBA or located outside a CBA, but scheduling its generation into a CBA in real time.

The change to subdivision (a)(1)(D) requires electricity generated by an eligible renewable energy resource under a dynamic transfer agreement to be scheduled into a CBA on an hourly or subhourly basis in order for the generation to qualify as PCC 1. This time period was selected because it is consistent with the requirement for other non-CBA resources to qualify as PCC 1 under Public Utilities Code section 399.16 (b)(1)(A). Under section 399.16 (b)(1)(A) electricity generated by an eligible renewable energy resource located outside a CBA may qualify for PCC 1 if the electricity is scheduled into a CBA without substituting electricity from another source. Section 399.16 (b)(1)(A) permits the use of another source to provide real-time ancillary services required "to maintain an hourly or subhourly import schedule into a California balancing authority."

The change to subdivision (a)(1)(D) is consistent with the requirements established by the California Public Utilities Commission for retail sellers to classify electricity products procured under dynamic transfer agreements as PCC 1. These requirements are discussed in Decision 11-12-052, issued by the California Public Utilities Commission on December 21, 2011.

The change will benefit POU's and other market participants by establishing consistent requirements for PCC 1 electricity products. Consistent requirements will reduce the market uncertainty that may result from applying different rules to electricity products depending on which utilities, retail sellers or POU's, purchase the electricity products. It will also result in the consistent designation of electricity that is purchased from same eligible renewable energy resource, and thereby place retail sellers and POU's on equal footing when purchasing electricity from the same eligible renewable energy resource.

This change will benefit POU's by allowing them to better classify and plan for the procurement of renewable electricity to meet their RPS requirements.

## **Section 3204 – RPS Procurement Requirements**

**Section 3204 (a)(7)(C).** Subdivision (a)(7)(C) was revised to change the averaging period for the POU's qualifying hydroelectric generation from seven years to twenty years to be consistent with the averaging period established under section 3204 (a)(10) below. The twenty-year averaging period is more consistent with established Energy Commission requirements related to hydroelectric generation, as discussed below. In addition, the deadline for reporting this twenty-year average was changed to March 31, 2017, which is 90 days after the beginning of the next compliance period, consistent with established reporting requirements for this subdivision.

The regulations currently establish an averaging period of seven years for the qualifying hydroelectric generation of a POU that satisfies the requirements of Public Utilities Code section 399.30 (j). The Energy Commission selected a seven year averaging period under the existing regulations, because it aligned with the requirements of Public Utilities Code section 399.30 (i), which establishes a seven year averaging period for calculating the retail sales of a joint powers authority POU's under Public Utilities Code section 399.30 (i).

While seven years is not an inappropriate averaging period under Public Utilities Code section 399.30 (j), the better averaging period is twenty years, because it will capture more fluctuations in production from the facility as a result of drought years. As discussed below, the twenty year averaging period is consistent with the requirements in the Energy Commission's RPS Eligibility Guidebook for purposes of calculating incremental electricity generation from a hydroelectric generation facility. Under the RPS Eligibility Guidebook, incremental electricity generation is determined relative to a facility's baseline hydroelectric production, which is calculated based on the preceding 20 years of generation.

**Section 3204 (a)(10) –** Subdivision (a)(10) was added to specify the requirements for a POU that meets the criteria of Public Utilities Code section 399.30 (k) and what the POU must do to demonstrate that it meets the criteria. Public Utilities Code section 399.30 (k) was added by SB 591 and provides a limited procurement exemption for a "local publicly owned electric utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource." If this criteria is satisfied, the POU may limit its RPS procurement obligations for a given compliance period to the lesser of 1) the

portion of the POU's retail sales not met by its own hydroelectric generation, 2) the procurement obligations applicable to other POUs under PUC section 399.30 (c), or 3) the amount of procurement capped by the POU's cost limitations adopted in accordance with PUC section 399.30.

To determine that a POU meets the criteria of Public Utilities Code section 399.30 (k), the POU must demonstrate 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. The Energy Commission determined that twenty years or the entire generating history of the hydroelectric generation facility was an appropriate averaging period to capture the fluctuations in production from the facility. This averaging period is consistent with the requirements in the Energy Commission's RPS Eligibility Guidebook for purposes of calculating incremental electricity generation from a hydroelectric generation facility. Under the RPS Eligibility Guidebook, incremental electricity generation is determined relative to a facility's baseline hydroelectric production, which is calculated based on the preceding 20 years of generation, or the entire generating history of the facility, whichever is less.

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. It will also provide the POU with certainty at the start of a compliance period as to whether the limited exemption of section 399.30 (k) applies for the entire compliance period.

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. In addition, 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. Therefore, the procurement targets for a POU qualifying for the limited exemption under Public Utilities Code section 399.30 (k) should be based on compliance periods rather than individual years.

Determining whether a POU meets the criteria in Public Utilities Code section 399.30 (k) and determining the portion of the POU's retail sales not met by its qualifying hydroelectric generation are both based on the electricity produced by the qualifying hydroelectric generation facility, not by how much qualifying hydroelectric generation the POU applies to satisfy its own retail sales load. Based on the legislative history of SB 591, Energy Commission staff understand that Public Utilities Code section 399.30 (k) is intended to apply to the Merced Irrigation District (MEID) and its hydroelectric generation from the New Exchequer Dam. The circumstances surrounding MEID and its generation from New Exchequer Dam are such that it may not be possible for MEID to actually use the hydroelectric generation from the New Exchequer Dam to



satisfy its own retail sales load. Consequently, a requirement that MEID do so in order to qualify for the exemption under Public Utilities Code section 399.30 (k) would effectively preclude MEID from availing itself of the exemption. Such an outcome is not supported by the legislative history of SB 591. Moreover, because generation from the New Exchequer Dam is generated by a hydroelectric facility that exceeds 30 MW in capacity, and therefore does not qualify as an eligible renewable energy resource, generation from the facility may be used, if at all, only to satisfy the RPS procurement requirements of a POU that meets the criteria of Public Utilities Code section 399.30 (k).

Energy Commission staff determined that the portfolio balance requirements of section 3204 (c) of the regulations apply to a POU that meets the criteria of Public Utilities Code section 399.30 (k). There are no explicit provisions in section 399.30 (k) exempting a qualifying POU from the portfolio balance requirements. Nor can such an exemption be implied by the express provisions of section 399.30 (k). 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...” 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.

The changes made by subdivision (a)(10) are necessary to provide direction on how the Energy Commission will apply the provisions of Public Utilities Code section 399.30 (k). These changes will benefit the qualifying POU under section 399.30 (k) and allow it to better plan for the procurement of renewable electricity to meet its RPS requirements.

## **Section 3206 – Optional Compliance Measures**

**Section 3206 (a)(1)(A)(3)** – Subdivision (a)(1)(A)(3) was revised to clarify how excess procurement is determined if the original contract term is amended and additional time is added to the contract.

Section 3206 specifies optional compliance measures that may be adopted by a POU, including excess procurement, delay of timely compliance, cost limitation, a change in the portfolio balance requirements, and historic carryover. Subdivision 3206 (a)(1) specifies criteria for excess procurement and describes the restrictions on excess procurement associated with PCC 3 and contracts of less than 10 years in duration. The current regulations do not specify how excess

procurement is determined if the original contract term is amended and additional time is added to the contract. The changes to subdivision (a)(1)(A)(3) address this shortcoming and clarify how procurement under various contract amendment scenarios will be treated for purposes of determining excess procurement.

For amendments to a short-term contract, the changes to subdivision (a)(1)(A)(3) specify that if remaining time is equal to or greater than 10 years at time of amendment, the contract is long-term from the time of amendment to end of amended term. This provision is consistent with the legislative intent for long-term contracts to be incentivized because they protect against price volatility and encourage long-term planning.

For amendments to a long-term contract, the changes to subdivision (a)(1)(A)(3) specify that if remaining time is equal to or greater than 10 years at time of amendment, the contract remains long-term for duration, including amended time. If remaining time is less than 10 years at the time of amendment, the contract will be long-term for the rest of the original contract term and short-term for the amended term. This approach is consistent with the calculation of term length for short term contracts, and will not encourage entities to wait to amend contracts until the very end of the original term by taking away the rest of the original contract's "long-term" status.

The changes made to subdivision (a)(1)(A)(3) are necessary to provide direction to POUs and other market participants on how the Energy Commission will apply the excess procurement criteria and restrictions when the contract term is amended.

**Section 3206 (e)** – Subdivision (e) was added to clarify that a POU may apply an optional compliance measure in accordance with sections 3206 (a)(2) or 3206 (a)(3) to satisfy or delay either a portion or all of a shortfall in meeting its RPS requirements under section 3204. The current regulations do not specify whether a POU may choose to waive a portion of its RPS requirements by applying an optional compliance measure in accordance with sections 3206 (a)(2) or 3206 (a)(3).

The change made by subdivision (e) is necessary to provide direction to POUs in applying optional compliance measures.

**Section 3206 (f)** – Subdivision (f) was added to clarify that a POU may apply a portfolio balance requirement reduction in accordance with section 3204 (a)(4) to satisfy a portion or all of a shortfall in meeting its portfolio balance requirement under section 3204 (c). The current regulations do not specify whether a POU may choose to reduce its portfolio balance requirement to address a portion of its entire shortfall under section 3204 (c) by applying a portfolio balance reduction in accordance with section 3204 (a)(4).

The change made by subdivision (f) is necessary to provide direction to POUs in applying optional compliance measures.

**Section 3206 (g)** – The numbering of this subdivision was changed to accommodate the addition of subdivisions (e) and (f), as discussed above.

## **Section 3207 – Compliance Reporting for POU's**

**Section 3207 (c)** – Subdivision (c) was revised so that the attestation currently required under subdivision (c)(2)(I) covers all of the information included in a POU's annual report, rather than just the information on the POU's annual RPS progress. Subdivision (c) requires each POU to submit an annual report to the Energy Commission that addresses specific information, including i) identifying information about the POU, ii) information on the POU's annual RPS progress for the prior calendar year, iii) action taken by the POU demonstrating reasonable progress towards meeting its RPS procurement requirements, and iv) a description of all actions planned by the POU in the current calendar year to demonstrate progress towards achieving the POU's RPS procurement requirements.

The regulations currently require a POU to include with its annual report an attestation, signed by an authorized agent of the POU, affirming the information provided in the report is true and correct. This requirement is currently included in subdivision (c)(2)(I), so it appears the attestation is only intended to cover the information provided in response to subdivision (c)(2) pertaining to the POU's annual RPS progress. However, the attestation is supposed to cover all of the information provided by the POU in its annual report. To correct this problem, the attestation provisions currently included in subdivision (c)(2)(I) have been deleted from subdivision (c)(2)(I) and added to subdivision (c), so they cover all of the information included in the POU's annual report to the Energy Commission.

This change is necessary to ensure all of the information provided by a POU or its agents in the annual reports is true and correct.

**Section 3207 (c)(2)(F)** – Subdivision (c)(2)(F) was revised to clarify the type of documentation that may be needed as part of the annual report to demonstrate the PCC classification of procured electricity products. The regulations currently state that this documentation may include "interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and electricity product contract information." The latter – electricity product contract information - was intended to cover electricity product procurement contracts and similar ownership agreements, and has now been revised to state this in subdivision (c)(2)(F).

This change is necessary to provide direction to POUs on the type of documentation that may be needed to demonstrate the PCC classification of procured electricity products claimed by a POU.

**Section 3207 (c)(2)(I)** – Subdivision (c)(2)(I) was revised to delete the attestation provision from this subdivision and move it to subdivision (c), as discussed above. In addition, subdivision (c)(2)(I) was revised to require a description of the energy consumption by the POU, including electricity used by the POU for water pumping, the purpose of this consumption, annual amount in MWh, and the annual amount in MWh being satisfied with electricity products. This information is needed to verify that energy consumption by the POU was properly

characterized and was not otherwise counted as retail sales. Since a POU's RPS procurement requirements are based on the POU's retail sales, mischaracterizing the POU's own energy consumption as a "retail sale" would result in higher RPS procurement requirements for the POU. Similarly, mischaracterizing retail sales as the POU's own energy consumption would result in lower RPS procurement requirements for the POU.

**Section 3207 (f)** – Subdivision (f) was revised to correct a minor grammatical error.

**Section 3207 (g)** – Subdivision (g) was added to address the reporting requirements for a POU that meets the criteria of Public Utilities Code section 399.30 (h). Subdivision (g) requires a POU to provide documentation demonstrating that the POU provides retail electric service to 15,000 or fewer customer accounts in California, and that it is interconnected to a balancing authority primarily located outside California but within WECC. The POU must provide this documentation by the deadline for compliance reports specified in section 3207 (d). The Energy Commission needs this information at the beginning of each compliance period to verify the POU meets the criteria of Public Utilities Code section 399.30 (h) and is therefore eligible for its provisions.

This change is necessary to provide direction on reporting requirements to the Energy Commission.

**Section 3207 (h)** – Subdivision (h) was added to address the reporting requirements for a POU that meets the criteria of Public Utilities Code section 399.30 (k). Subdivision (h) requires a POU to provide documentation demonstrating that qualifying hydroelectric generation as defined in section 3204 (a)(10) 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. The POU must additionally submit documentation to identify the amount of any generation during the compliance period that would have qualified as qualifying hydroelectric generation as defined in section 3204 (a)(10), except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. The Energy Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (k) and to determine the amount of any generation that would have qualified as qualifying hydroelectric generation, except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. The Energy Commission needs this information at the beginning of each compliance period to verify the POU meets the criteria of Public Utilities Code section 399.30 (k).

This change is necessary to provide direction on reporting requirements to the Energy Commission.

**Section 3207 (i)** – The numbering of this subdivision was changed to accommodate the addition of subdivisions (g) and (h), as discussed above.

## Chapter 2. Rules of Practice and Procedures

### Section 1240 – Renewables Portfolio Standard Enforcement

**Section 1240 (d)(1)** – Subdivision (d)(1) was revised to identify mitigating or otherwise pertinent factors that a POU may choose to address in responding to a complaint of noncompliance by the Energy Commission. The factors identified in subdivision (d)(1) are not exhaustive and are based on factors in Health and Safety Code section 42403 (b), which the Air Resources Board (ARB) may consider in assessing penalties against a POU pursuant to Public Utilities Code section 399.30 (l) and (m).

The Energy Commission's final decision regarding any complaint issued pursuant to section 1240 will include all findings of fact, including any findings regarding any mitigating and aggravating factors, upon which the ARB will rely in assessing a penalty. The Energy Commission's final decision and supporting record will serve as the basis for any subsequent ARB penalties assessed against a POU. The ARB does not intend to re-adjudicate the Energy Commission's final decisions, any POU violations set forth in the decisions, or any findings of fact regarding the decisions. Consequently, it is in a POU's interest, when providing an answer to an Energy Commission complaint, to identify any and all mitigating or otherwise pertinent factors related to any alleged violation or a possible monetary penalty that may be imposed by the ARB for noncompliance with the RPS. The changes to subdivision (d)(1) will encourage POUs to consider and address all mitigating and pertinent factors when answering an Energy Commission complaint.

The change is necessary to describe and provide direction to POUs on the type of information that may be included in an answer to an Energy Commission complaint.

**Section 1240 (g)** – Subdivision (g) was revised to correct references to Public Utilities Code section 399.30 (m) and (n), which were amended by AB 2227. In addition, subdivision (g) was revised to specify that the Energy Commission may include suggested penalties in its final decision for the ARB to consider, as appropriate. The Energy Commission is not required to include suggested penalties in its final decision, but if it chooses to suggest penalties, the penalties must be comparable to the penalties adopted by the California Public Utilities Commission for retail seller for noncompliance with an RPS requirement. This is consistent with Public Utilities Code section 399.30 (n)(1), which provides that any penalties imposed by the ARB "shall be comparable to those adopted by the commission [California Public Utilities Commission] for noncompliance by retail sellers."

The change is necessary to describe the type of penalties that may be suggested by the Energy Commission in its final decisions.

**Other Possible Changes to Section 1240.** In addition to the above noted changes, minor changes may be made to section 1240 to correct citations to sections 1230 through 1236, and to align the language of section 1240 with any changes that may be made to sections 1230 through 1236. The Energy Commission is considering possible changes to sections 1230 through 1236 as

part of an effort to update its existing process and procedure regulations in accordance with the Energy Commission's Order Instituting Informational Proceeding No. 10-1201-20<sup>2</sup>. If, as part of that effort, the Energy Commission decides to propose changes to sections 1230 through 1236, and those proposed changes require a change to the citations in section 1240 or a change to the language of section 1240, the Energy Commission may propose the needed changes to section 1240 as part of this rulemaking proceeding. For example, sections 1240 (d)(1), (f)(2) and (f)(4) include references to sections 1233 (b), 1234 (b), and 1235, respectively. If the Energy Commission decides to propose changes to sections 1230 through 1236 that result in a renumbering of these sections, the citations in sections 1240 (d)(1), (f)(2) and (f)(4) would need to be revised accordingly.

## **STUDIES, REPORTS, AND DOCUMENTS RELIED UPON**

*Supporting Material for the Economic and Fiscal Impact Statement and Assessment for Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, dated March 27, 2015.

*Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition*. California Energy Commission, CEC-300-2013-005-ED7-CMF, April 2013. <http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-CMF-REV.pdf>.

*Notice of Staff Workshop*, regarding pre-rulemaking draft amendments to Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. California Energy Commission. June 27, 2014. [http://www.energy.ca.gov/portfolio/pou\\_rulemaking/2014-RPS-01/2014-07-11\\_workshop/2014-07-11\\_workshop\\_notice.pdf](http://www.energy.ca.gov/portfolio/pou_rulemaking/2014-RPS-01/2014-07-11_workshop/2014-07-11_workshop_notice.pdf).

*Notice of Staff Workshop*, Attachment A, regarding pre-rulemaking draft amendments to Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. California Energy Commission. July 11, 2014. [http://www.energy.ca.gov/portfolio/pou\\_rulemaking/2014-RPS-01/2014-07-11\\_workshop/2014-07-11\\_Att-A\\_workshop.pdf](http://www.energy.ca.gov/portfolio/pou_rulemaking/2014-RPS-01/2014-07-11_workshop/2014-07-11_Att-A_workshop.pdf).

*Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard*, Decision 11-12-052 issued by the California Public Utilities Commission on December 21, 2011. [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/156060.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/156060.PDF).

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<sup>2</sup> The Energy Commission established two dockets to address this proceeding. The initial docket number was 10-SIT-OII-1 and was followed by docket number 14-OII-01. Information on this proceeding is available on the Energy Commission's website at <http://www.energy.ca.gov/title20/2014prerulemaking/>

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The amended regulations do not mandate the use of specific technologies or equipment or prescribe specific actions or procedures, except for the reporting requirements, therefore, a performance standard was not considered.

## **REASONABLE ALTERNATIVES, IF ANY, TO THE PROPOSED REGULATIONS THAT WERE CONSIDERED**

No reasonable alternatives to the proposed modification of the regulations were considered. No reasonable alternatives were identified that were less burdensome and equally effective in achieving the purposes of the proposed modifications to the regulations that were also practical and in accordance with the law.

## **ALTERNATIVES TO IMPACTS ON SMALL BUSINESSES**

No alternatives were considered regarding impacts to small business, because the proposed modifications to the regulations will not directly impact any businesses. No business, including a small business, is legally required to comply with or enforce the modified regulations. Nor will any business derive a direct benefit or detriment from the implementation of the modified regulations. The modified regulations will apply to a POU, which is a local agency and not an independently owned and operated business. For a discussion of the economic impacts of the modified regulation, refer to the Energy Commission's *Supporting Material for the Economic and Fiscal Impact Statement and Assessment for Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, dated March 27, 2015.

## **ECONOMIC IMPACT ASSESSMENT**

The Energy Commission proposes to amend California Code of Regulations, Title 20, sections 1240, 3201, 3202, 3203, 3204, 3206, and 3207 to implement changes in law under SB 591 and to clarify several existing provisions in the regulations. The purpose of the proposed changes is to clarify requirements in the existing regulations and to implement, interpret, and make specific the provisions of SB 591 as codified in Public Utilities Code section 399.30 (k).

The proposed modifications to the regulations are minor and will require only a minimal amount of additional information and reporting-related work above what is already required under the existing regulations. As a result, the proposed modifications to the regulations are not expected to affect: the creation or elimination of jobs with California; the creation of new or

elimination of existing businesses in California; or the expansion of existing businesses currently doing business in California. Nor are the proposed modifications to the regulations expected to directly impact the health and welfare of California residents, worker safety, or the state's environment.

However, the proposed modifications to the regulations may have an indirect effect on the state's environment if the proposed modifications result in a more consistent application of the state's RPS with respect to POU's. A more consistent application and enforcement of the state's RPS will help promote the underlying goals of the RPS, which include reducing air pollution associated with fossil fuel-based electrical generation and helping meet the state's climate change goals by reducing greenhouse gas emissions associated with electrical generation.

### **Cost Impact to Representative Person or Business**

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed modifications to the regulations. The proposed modifications to the regulations would not directly apply to private individuals or businesses. The proposed modifications to the regulations would apply only to POU's, which are local agencies and not independently owned and operated businesses. The proposed modifications to the regulations would impose minor additional reporting requirements on all POU's to report consumptive load information. In addition, POU's that meet the criteria of Public Utilities Code section 399.30 (h) or (k) would need to report minor additional information to verify they satisfy the criteria of these sections. Lastly, POU's that procure electricity products from eligible renewable energy resources under a dynamic transfer agreement would need to demonstrate the associated electricity was scheduled into a California balancing authority. This new requirement could result in additional WREGIS costs. However, at this time no POU's have reported to the Energy Commission that they are procuring electricity products under a dynamic transfer agreement, so Energy Commission staff does not anticipate additional costs to POU's from this new requirement.

### **Creation or Elimination of Jobs Within California:**

The proposed modifications to the regulations are not expected to directly create a significant number of new jobs in the state. The proposed modifications may result in some of the POU's having to hire new full- or part-time employees to satisfy the information and reporting requirements included in the proposed modifications to the regulations. However, because the proposed modifications impose only minimal new reporting requirements, the Energy Commission does not anticipate that any POU will need to hire new full- or part-time employees.

The Energy Commission does not expect existing jobs to be eliminated as a result of the proposed modifications to the regulation.



### **Creation of New or Elimination of Existing Businesses with California:**

The proposed modifications to the regulations are not expected to directly create a significant number of new businesses. The proposed modifications may result in the creation of new consulting businesses that are developed to help POU's comply with the reporting requirements included in the proposed modifications to the regulations. However, because the proposed modifications impose only minimal new reporting requirements, the Energy Commission does not anticipate the creation of any new consulting businesses. The Energy Commission does not expect existing businesses to be eliminated as a result of the proposed modifications to the regulations.

If new consulting businesses are developed to help POU's comply with the reporting requirements included in the proposed modifications to the regulations, new jobs may be created within the state.

### **Expansion of Businesses Currently Doing Business in California:**

The proposed modifications to the regulations are not expected to directly result in the expansion of existing businesses. However, if existing consulting businesses provide services to POU's for compliance reporting, such businesses may need to hire new staff to help with any increased POU reporting requirements as a result of the proposed modifications to the regulations. Because the proposed modifications to the regulations impose only minimal new reporting requirements, the Energy Commission does not anticipate existing consulting businesses will need to hire new staff.

If existing consulting businesses are expanded to provide services to POU's, the expansion of such businesses may result in the creation of new jobs within the state.

### **Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, or the Environment:**

The proposed modifications to the regulations are not expected to directly impact the health and welfare of California residents, worker safety, or the state's environment. However, the modified regulations may have an indirect effect on the state's environment if the modified regulations result in a more consistent application of the state's RPS with respect to POU's. A more consistent application and enforcement of the state's RPS will help promote the underlying goals of the RPS, which include reducing air pollution associated with fossil fuel-based electrical generation and helping meet the state's climate change goals by reducing greenhouse gas emissions associated with electrical generation.

The proposed modifications to the regulations will also help the POU's by providing direction and guidance on how the Energy Commission will interpret, apply, and enforce the law, so the POU's can plan accordingly in procuring electricity products to meet their RPS requirements.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS**

The Energy Commission finds that the proposed modifications to the regulations will have no significant statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination also applies to small businesses, which, as defined in Government Code section 11342.610, are limited to business activities that are “independently owned and operated” and “not dominant in its field of operation.”(Govt. Code, § 11342.610, subd. (a)(1) and (2).)

The Energy Commission is unaware of any legitimate cause and effect relationship between the proposed modifications to the regulations and a significant adverse economic impact directly affecting businesses. As noted above, no business, including a small business, is legally required to comply with or enforce the proposed modifications to the regulations. Nor will any business derive a direct benefit or detriment from the implementation of the proposed modifications to the regulations. The proposed modifications to the regulations will apply to a POU, which is a local agency and not an independently owned and operated business.

The proposed modifications to the regulations will not require businesses, including small businesses, to submit any new information or reports.

For a discussion of the economic impacts of the proposed modifications to the regulations, refer to the Energy Commission’s *Supporting Material for the Economic and Fiscal Impact Statement and Assessment for Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, dated March 27, 2015.

## **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The proposed modifications to the regulations neither duplicate nor conflict with any federal regulation or statute. The proposed modifications to the regulations do not implement a federally mandated regulation or statute. The Energy Commission is unaware of any comparable federal regulation or statute establishing procedures for the enforcement of California’s RPS on POUs.

## **FISCAL IMPACT ON STATE GOVERNMENT**

Energy Commission staff estimate that the proposed modifications to the regulations will result in approximately 60 hours of a single staff person’s time to evaluate and process all of the information reported by POUs under the proposed modifications. This includes the additional staff time to evaluate and process POU consumptive load information under section 3207 (c)(2)(I), POU eligibility information under section 3207 (g) and (h), and WREGIS e-Tag information to verify electricity products are scheduled into a California balancing authority

under section 3203 (a)(1)(D). The cost associated with evaluating and processing this new information is  $[(60 \text{ hours}) \times (\$26.66/\text{hour})]$  or \$1600, and is based on the responsibilities, duties and pay of an Energy Analyst in the Energy Commission's Renewable Energy Division.

These additional costs are negligible in comparison to the Energy Commission's ongoing costs of \$376,000 annually to implement the existing regulations, and can be absorbed by existing Energy Commission staff and resources.