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 these comments to the California Energy Commission ("CEC") pursuant to the direction in the "*Notice Of Hearing For Consideration And Possible Adoption, Modifications Of Regulations Establishing Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities*," issued on September 29, 2015.

On October 7, 2015, Governor Brown signed into law Senate Bill ("SB") 350, making substantial changes to California's renewables portfolio standard ("RPS") program. In light of these significant changes, the District requests that the CEC delay adoption of the proposed modifications to the RPS Enforcement Procedures to allow full consideration of the impact of SB 350 on the proposed modifications at issue in this proceeding. Specifically, the amended subdivision (l) of Public Utilities Code section 399.30 provides strong support that subdivision (k) should be implemented as a stand-alone, alternative compliance obligation that does not include an obligation to comply with the procurement requirements of section 399.16. The CEC's current interpretation of subdivision (k) would mean that the District would be singled out

for worse treatment under the RPS than other similarly situated publicly owned electric utilities ("POUs"). Such a result was clearly not the Legislature's intent.

II. COMMENTS ON THE PROPOSED MODIFICATIONS

SB 350 added several new flexible compliance options for electric utilities. These new provisions will be the subject of future CEC and California Public Utilities Commission proceedings, and the District does not seek to comment on the specific implementation of those provisions. However, express terms and the basic structure of the newly amended subdivision (l) are in conflict with the CEC's implementation of SB 591, and specifically subdivision (k).

A. Subdivision (l) Provides a Large Hydro Adjustment That is More Beneficial Than the CEC's Implementation of Subdivision (k).

Newly amended subdivision (l) provides the following:

> (2) If, during a year within a compliance period set forth in subdivision (b), a local publicly owned electric utility receives greater than 50 percent of its retail sales from large hydroelectric generation, it is not required to procure eligible renewable energy resources that exceed the lesser of the following for that year:
>
> > (A) The portion of the local publicly owned electric utility retail sales unsatisfied by the local publicly owned electric utility's large hydroelectric generation.
> >
> > (B) The soft target adopted by the Energy Commission for the intervening year of the relevant compliance period.
>
> . . .
>
> (4) The Energy Commission shall adjust the total quantities of eligible renewable energy resources to be procured by a local publicly owned electric utility for a compliance period to reflect any reductions required pursuant to paragraph (2).[1]

[1] Cal. Pub. Util. Code § 399.30(l)(2).

Subdivision (l) provides an adjustment to a POU's RPS obligation if the POU has significant hydroelectric generation within a single year of a compliance period. The actual adjustment is structurally similar to both subdivision (k), which applies to the District, and subdivision (j), which applies to the City and County of San Francisco. Under all of these provisions, a POU's RPS obligation is limited to the percentage of retail sales that is not met with specified large hydroelectric generation, unless this would be more than the otherwise applicable RPS requirements.

However, by the express terms of the statute, the subdivision (l) adjustment is made based on a single year calculation that is not impacted by the other years within the same compliance period. This means that if there was an extreme wet year followed by a severe drought year within the same compliance period, a POU qualifying for subdivision (l) would gain the benefit of the high hydroelectric year without averaging it against the very low hydroelectric year. Due to the highly variable nature of hydroelectric generation, such year-to-year variation is certain to occur.

In contrast, the CEC has implemented subdivision (k) on a compliance period basis, such that the total hydroelectric output for the three or four year compliance period is compared to the total retail sales for the same period. The potential benefit of any individual high hydroelectric years will be reduced by any low hydroelectric years within the same compliance period. As the District pointed out in prior comments, this structure makes it very unlikely that the subdivision (k) adjustment would provide any benefit to the District. The result of the CEC's implementation is that a POU qualifying for Subdivision (l) will get a greater benefit from the same hydro conditions as compared to the District.

B. Subdivision (l) Expressly States that It Does Not Apply to the District.

Subdivision (l) provides its own definition for large hydroelectric generation that is subject to the adjustment provided by subdivision (l):

> (A) For purposes of this subdivision, "large hydroelectric generation" means electricity generated from a hydroelectric facility that is not an eligible renewable energy resource and provides electricity to a local publicly owned electric utility from facilities owned by the federal government as a part of the federal Central Valley Project or a joint powers agency formed and created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.
>
> **(B) Large hydroelectric generation does not include any resource that meets the definition of hydroelectric generation set forth in subdivision (k).**[2]

Paragraph (B) states that subdivision (l)'s definition of large hydroelectric generation does not apply to the New Exchequer Dam, and therefore, subdivision (l) expressly does not apply to the District. Under the CEC's implementation of subdivision (k), the impact of this clause would be to single the District out for worse treatment than all other similarly situated POUs.

By implementing subdivision (k) as proposed, the CEC would necessarily be asserting that the Legislature's intent in both subdivision (k) and subdivision (l) is to subject the District to worse treatment than POUs that qualify for subdivision (l). As discussed extensively in prior comments, the District serves one of the most economically disadvantaged regions in California. In contrast, some of the POUs that would benefit from subdivision (l) are located in the wealthiest regions of the state. In light of California's clear policies supporting disadvantaged communities, it is very unlikely that the Legislature sought to punish the District as compared to other POUs. The CEC must be able to explain this discrepancy in its implementation of subdivision (k).

[2] Cal. Pub. Util. Code § 399.30(l) (emphasis added).

A more reasonable interpretation of the purpose of paragraph (5) is that it was intended to accomplish the opposite. As stated in prior comments, the purpose of SB 591 was not only to recognize the unique hydroelectric characteristics of the District, but also to provide relief to the geographic region served by the District, which is among the most economically disadvantaged in the state. In contrast, the purpose of subdivision (l) was purely focused on the hydroelectric issues faced by some POUs and not on the underlying economic conditions of those communities. In light of these differing purposes, the intent of the Legislature was that subdivision (k) was meant to provide ***greater*** benefit than subdivision (l) and, consistent with that interpretation, paragraph (B) was intended to protect the District rather than punish it.

C. Subdivision (l) Expressly States that the Procurement Requirements of Section 399.16 Apply to a POU Qualifying for the Hydro Adjustment.

Paragraph (5) of subdivision (l) provides:

> This subdivision does not modify the compliance obligation of a local publicly owned electric utility to satisfy the requirements of subdivision (c) of Section 399.16.

Unlike subdivision (k), subdivision (l) expressly states that the requirements of section 399.16 apply to a POU that qualifies for the subdivision (l) adjustment. The rules of statutory construction dictate:

> Proper construction of a statute results from construing it as a whole and harmonizing inconsistencies in its various parts. . . . It should likewise be interpreted in relation to other statutes on the same subject so as to harmonize the whole law and give effect to each part.[3]

In order to harmonize subdivision (l) and subdivision (k), significance must be given to inclusion of an express reference to section 399.16 in subdivision (l) and the lack of any reference to section 399.16 in subdivision (k). By interpreting subdivision (k) as a stand-alone,

[3] *Piazza Properties, Ltd. v. Dep't of Motor Vehicles*, 71 Cal. App. 3d 622, 633 (1977).

alternative compliance obligation without the requirements to comply with section 399.16, this would accomplish two goals. First, it would both give significance to the differing language between subdivision (k) and (l). Second, it would avoid singling out the District for worse treatment under the RPS. Such an interpretation would more faithfully achieve the intent of the Legislature.

III. CONCLUSION

In light of the issues described above, the District requests that the CEC reconsider its implementation of subdivision (k).

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Respectfully submitted,

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