

**STATE OF CALIFORNIA  
BEFORE THE CALIFORNIA ENERGY COMMISSION**

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| <b>In the matter of:</b>  | ) |  |
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| Developing Regulations and Guidelines<br>for the 33 Percent Renewable Portfolio<br>Standard | ) | Docket No. 11-RPS-01                                       |
|   | ) |  |
| and   | ) | Docket No. 02-REN-1038                                     |
|   | ) |  |
| Implementation of Renewables<br>Investment Plan Legislation                                 | ) | Comments on 33% RPS<br>Pre-rulemaking Draft<br>Regulations |
|   | ) |  |
| <hr/>   |   | March 30, 2012   |

## **Comments of the Sacramento Municipal Utility District (SMUD) on 33% RPS Pre-rulemaking Draft Regulations**

Thank you for the opportunity to provide comments on the staff document entitled ***33% RPS Pre-rulemaking Draft Regulations***. SMUD appreciates the hard work of Energy Commission staff in preparing the 33% RPS Pre-rulemaking Draft Regulations (Draft Regulations), and applauds the open door to discussions with staff regarding the details of the Draft Regulations.

In these comments, SMUD highlights several significant issues with the Draft Regulations, provides answers to the questions asked in Appendices A and B of the notice releasing the Draft Regulations, and provides a recommended 'redline/strikeout' of the Draft Regulations showing SMUD's recommended changes.

SMUD has one important overriding process recommendation. The Energy Commission must carefully balance the time it will take to craft the best regulations with the fact that POUs are already 15 months into a 36 month compliance period. There is no statutory deadline that applies, other than July 1, 2011, a date that has already passed. With due consideration to getting regulations in place in a reasonable timeframe, given the passage of time in the first compliance period and the applicability of these regulations to 202 and beyond, SMUD encourages the Energy Commission not to allow a nonexistent deadline – July 1, 2012 – to constrain full and complete consideration of stakeholder concerns and comments and shortcut the necessary process for good regulations.

## A. Significant Issues With The Draft Regulations

1. **Unused Historical Procurement.** The Draft Regulations are currently silent on the issue of “unused historical procurement”, or the carryover of surplus procurement from the POU Section 387 programs. In Appendix B, however, Energy Commission staff asks stakeholders for input regarding counting pre-2011 RECs in the first compliance period under SBX1 2. SMUD strongly recommends consideration of carrying over unused historical procurement into the SBX1 2 RPS, and fully describes the rationale for and legal authority for doing so in a separate filing along with Turlock Irrigation District. SMUD also provides regulatory language for doing so in the “redline/strikeout” treatment of the Draft Regulations in these comments.

To summarize here, SMUD contends that SBX1 2 is a continuation of the historical SB 1078 and Section 387 RPS programs that it supplants. It explicitly carries forward some deficits from those programs, and there is no reason to not carry forward surpluses. In fact, banking surpluses is demonstrated to be good policy and is common practice among the historical RPS programs and under SBX1 2 going forward. SMUD contends that language in SBX1 2 that requires historical procurement in most cases to “count in full” requires that the Energy Commission address unused historical procurement in these POU RPS regulations. SMUD contends that the Energy Commission has ample authority under SBX1 2 to address unused historical procurement, as well as authority to solicit information and provide guidance to ensure that the treatment of unused historical procurement is properly structured and does not allow any “double counting” nor a significant inroad into the expected compliance under SBX1 2.

SMUD contends that the Energy Commission should interpret the “count in full” language in SBX1 2 to **both** allow unused pre-2011 RPS-eligible procurement to be used for compliance in the SBX1 2 periods **and** treat historical contracts of less than 10 years as “counting in full” for purposes of calculating carryover from one compliance period to the next under SBX1 2. To do otherwise, in both cases, results in a conflict with SBX1 2, as these historical contracts will no longer “count in full.”

The Draft Regulations also indicate that any RECs from a resource that meets the “count in full” requirement of Section 399.16(d) that are unbundled and sold separately become Category 3 resources. This also is in conflict with the requirement that these resources “count in full”. These unbundled RECs should either be allowed to continue to “count in full” as “grandfathered” resources or be allocated to the category in SBX1 2 appropriate to the resource at the POU’s option, and not automatically deemed Category 3 resources.

**2. Treatment Of Compliance Period Obligation/Reasonable Progress/Excess Procurement.** The Draft Regulations define procurement requirements for the second and third compliance periods as 25% in 2016 and 33% in 2020. They also define excess procurement as any amount above a calculation derived from procurement in all years of the compliance periods in question, not simply the last year designated for compliance. They also indicate a fairly significant requirement to “show” that “reasonable progress” had occurred in the years prior to the final year of the second and third compliance periods.

SMUD strongly prefers a simpler structure, which combines or coordinates the concepts of compliance obligation, excess procurement, and reasonable progress, similar to that adopted by the California Public Utilities Commission for retail sellers. In this construct, reasonable progress is inherent in the calculation of the compliance period obligation, consistent with the obligation in SBX1 2 to establish “quantities” of renewable procurement in intervening years that lead to “reasonable progress” toward the compliance period targets in 2016 and 2020. Excess procurement, then, is a simple calculation of any procurement in the compliance period that is surplus in comparison to the compliance period obligation. There are no annual requirements, only a compliance period requirement, consistent with the intent of SBX1 2. SMUD has adopted this approach in its own Enforcement Plan required by the law, and encourages the Energy Commission to include our adopted approach in the Draft Regulations.

The “single year” approach in the Draft Regulations in effect eliminates the compliance period flexibility envisioned by SBX1 2, by establishing annual compliance obligations. For the second and third compliance periods, it is in the final, single year of each compliance period that entities must meet the targets – there is no flexibility to meet the targets by “procuring early” in the intervening years, spreading the risk over multiple years. In addition, the “single year” approach appears to have led the Energy Commission to require a separate “reasonable progress” showing in the intervening years, to give weight to the reasonable progress language in SBX1 2. Under SMUD’s recommended approach, reasonable progress is captured under the compliance period obligation, and a separate showing is unnecessary.

The “single year” approach is also problematic with regard to determining excess procurement for a compliance period, allowed to be banked forward under the law. The Draft Regulations do not clearly address how excess procurement can be applied from the intervening years to the “single year” of compliance in the period. Nor do the Draft Regulations address how the quantity of excess procurement calculated from multiple years (such as the three years of the first compliance period) should be applied to the “single year” of compliance. For example, would an entity that procured 25% of retail sales from renewables in each year from 2011-2013 then have the equivalent of approximately 15% of retail sales to apply to the “single year” compliance obligation in 2016?

In effect, under the “single year” approach, an entity could appear to have excess procurement considering all years of the compliance period, and yet be out of compliance for the period, if procurement happens to be high in the early years but lower than expected in the final year of the period. Alternatively, procurement above targets in the last year of the compliance period under the “single year” approach may not yield surplus procurement for the compliance period if intervening year procurement is deemed by the Energy Commission to not meet “reasonable progress” obligations. Under SMUD’s recommended approach, calculating surplus procurement is simple – it is that procurement above the amount needed for the compliance period overall.

Finally, the “single year” approach, combined with the quantitative reasonable progress option in the Draft Regulations, in effect inappropriately establishes annual requirements within the second and third compliance periods. This version of the “single year” approach seems inconsistent with SBX1 2.

SMUD will not oppose the Energy Commission adopting a “hybrid” approach, where POUs are allowed to choose the final year compliance structure or the full compliance period structure endorsed by SMUD, as long as the choice of the latter involves no “reasonable progress” obligation and provides a clear and simple calculation for excess procurement. SMUD would be opposed to any structure that established a full compliance period obligation and also established a reasonable progress obligation and disconnected excess procurement from actual compliance.

**3. Portfolio Content Category Definitions:** There are three aspects of the Draft Regulations related to the definition of the three procurement categories in SBX1 2 that should be revised.

**First**, the Draft Regulations inappropriately expand the definition of Category 3 resources to include some resources that meet the statutory requirements to be Category 1 or Category 2 resources. SBX1 2 provides specific requirements that must be met to be considered Category 1 and 2 resources, and states that Category 3 includes all resources that do not meet the requirements of Categories 1 and 2. In the statute, Category 3 is not defined simply as “all unbundled RECs”. While it includes unbundled RECs from resources that do not meet the requirements of Categories 1 and 2, it does not include unbundled RECs from resources that do meet these requirements. The Draft Regulations are in error by including in Category 3 unbundled RECs from resources that meet the requirements of Categories 1 and 2, and by stating that these Category 1 and 2 resources can be stripped of their Category status – though they still meet all the statutory requirements – by the simple act of unbundling the resource attributes from the energy. In fact, it is Categories 1 and 2 that are explicitly defined in the law, and these definitions should be consistently followed. The

Draft Regulations should be modified to indicate that resources should retain the Category status originally bestowed on them by the nature of the resource.

The problem is particularly clear with respect to distributed, behind-the-meter, generation that is connected to a distribution system in California. This generation meets the full requirements of a Category 1 resource and provides the full benefits to California expected of these resources, and yet is treated by the Draft Regulations as a Category 3 resource, ostensibly because the energy is used on-site, and hence if the REC created is sold – it is considered “unbundled.” This treatment may be consistent with the CPUC treatment of these resources, but SMUD disagrees with the CPUC decision and believes that the Energy Commission must independently decide the issue based on the record in its RPS proceeding, with due respect to interagency coordination. The CPUC is wrong on this issue, and the CEC must lead to the right solution.

POU interactions with behind the meter generators are substantively different than the interactions that retail sellers have with these generators. SMUD, and most if not all other POUs, have contracted from the beginning for the RECs from these facilities, while the CPUC by decision prevented retail sellers (IOUs) from owning those RECs. In general, the POU treatment of this generally net-metered generation involves purchase of energy and RECs from customers, and subsequent return of energy through the grid to these customers. A significant portion of the electricity generated by these facilities is sent to grid, along with the RECs, and alternative energy is supplied to the customers under the net-metering arrangement. Even energy that is generated and consumed on-site, however, is in SMUD’s view a Category 1 resource based on the terms in the statute. From that perspective, determining in some fashion how much energy is used on-site versus “sent to the grid via net metering” is thankfully unnecessary, since it would differ on a customer by customer and day by day basis, and would be extremely difficult and expensive to delineate. All on-site generation within California should count as Category 1, without an artificial parsing that is inconsistent with the statutory definition of Category 1 resources.

Failing to reflect the appropriate Category 1 treatment of these in-state resources is also inconsistent with Governor Brown’s goal of having 12,000 MW of distributed renewable generation in California by 2020. SMUD has provided comments in the 2011 IEPR that behind the meter generation is likely to be a significant component of the proposed goal, and that no additional incentive programs are likely to be necessary to achieve that goal. However, SMUD did not envision that the State would actually act to remove existing value streams for these resources. In addition to being inconsistent with the law, treating these resources as Category 3 resources removes substantial potential value from these resources as viable in-state participants in the State’s new 2020 33% RPS. It is bad policy for the California to establish a strong goal to develop 12,000 MW of clean distributed generation and then treat that generation as a statutorily limited and clearly lower-valued Category 3 resource. In some cases, the

limitations on this category may in fact remove **all** RPS value from these resources. The Draft Regulations should be modified to remove this inappropriate burden on in-state distributed renewable generation.

**Second**, there are many circumstances where Category 1 resources become “unbundled” in effect, but retain their Category 1 status. For example, when Category 1 RECs are banked, and carried forward from one compliance period to the next, these RECs are essentially unbundled from the underlying generation after it meets the Category 1 “scheduling” requirements, and then associated with subsequent or substitute energy in the compliance period when claimed for compliance. No one suggests that this implicit unbundling removes Category 1 status. Also, when a Category 1 resource generates in one part of the state, but is procured by an entity that cannot get transmission from that facility to its load, the generation is essentially sold into the ISO market or a similar market, the RECs are brought to the service territory, and these RECs are associated with other energy purchased to serve load. Again, no one suggests that this “within-the-state” market transaction violates Category 1 status. Similarly, then, it is reasonable to treat other instances where Category 1 resources have already provided their benefits (by being scheduled as expected) as remaining in Category 1 as the RECs are resold to other entities. There is no real difference between the three circumstances listed here in terms of purported “benefits” to California. There is no reason to recategorize resources in these circumstances. The Draft Regulations should be modified to avoid this inconsistency.

**Third**, the Draft Regulations impose additional restrictions for Category 2 resources that are not found in the statute. Substitute energy for Category 2 resources is not required to come from outside a CA balancing authority area as indicated in the Draft Regulations. In fact, the statute only requires that such substitute energy be considered “incremental”, which has nothing to do with the location of that energy.

In addition, the Draft Regulations state that substitute energy must be procured within the same calendar year as the Category 2 renewable generation. This requirement is not found in the statute, and is not consistent with the “compliance period” structure or the statute. SMUD contends that the important distinction here is that the “substitute power” be delivered within the same compliance period as when the Category 2 generation is claimed for compliance, so that the generation can be distinguished from Category 3 resources. No finer degree of timing is required by law, and the Energy Commission should not consider such. Section 399.16(b)(2) only requires that Category 2 electricity be “scheduled into a California balancing authority” without any specific timing requirement.

There is no confusion about Category 1 versus Category 2 resources here, just between Category 2 and Category 3. It is sufficient, for purposes of determining between these categories, to track substitute energy on a compliance period basis. This can occur either if the “substitute power” is delivered within the same

compliance period as the renewable generation, or if the renewable generation is not claimed by a POU until associated with "substitute power", which may occur in the next compliance period. Both of these options should be allowed for maximum flexibility to procure power consistent with the varying market needs and procurement timing practices of each POU. Such treatment should minimize or eliminate the 'bottlenecks' where substitute energy for Category 2 resources are constrained by the calendar end of the period.

**4. Portfolio Content Category Limit Implementation:** Section 3204(e) of the Draft Regulations implements the minimum requirements in SBX1 2 for procurement of Category 1 resources, and the maximum requirements in SBX1 2 for procurement of Category 3 resources. The Draft Regulations appear to not be consistent with the direct text of SBX1 2 with regard to these requirements.

As drafted, the Draft Regulations appear to establish an implementation of the portfolio content limitations from SBX1 2 that ignores the important role of "grandfathered" resources. As an example, Section 3204(e)(1) states that "*no less than 50% of the electricity products used to meet the RPS procurement requirement for the compliance period ending December 31, 2013, must meet the definition of Product Content Category 1.*" In fact, what SBX1 2 requires is that no less than the electricity products **from contracts signed after June 1, 2010** must meet the requirements of Category 1. The definition of "electricity products" includes "grandfathered" resources, and these resources, if sufficient, are allowed by the law to meet 100% of the procurement requirements for the compliance period. The 50% requirement only applies to contracts signed after June 1, 2010. Similarly, the 65% and 75% minimum requirements in subsections (2) and (3) should reflect the role of grandfathered contracts, and to the maximum requirements for Category 3 resources in subsections (4), (5), and (6).

**5. Treatment Of Category 3 Resources When Calculating Excess Procurement.** The Draft Regulations require subtraction of procurement from Category 3 resources as well as procurement from < 10-year contracts prior to calculating carryover (SMUD has noted separately that historical "count in full" contracts should not be subject to this treatment). However, SBX1 2 does not treat these two types of resources similarly. In PUC Code Section 399.13(a)(4)(B), SBX1 2 states that procurement from contracts of less than 10 years shall be deducted from the total procurement in a compliance period when calculating excess procurement that can be applied to a subsequent compliance period. The Draft Regulations reflect this language accurately (but, again, note SMUD's proposed exemption to procurement associated with historical contracts).

However, that same section of law does not treat procurement from Category 3 resources similarly. Here, the law states that electricity products meeting the definition of Category 3 cannot be counted as excess procurement. This should simply mean that these resources cannot be carried forward as excess procurement, but must be counted in the compliance period in which they are procured. If the legislature had intended to have these resources treated the same as procurement from contracts of less than 10 years, they could have simply used the same language in the law. The Energy Commission must give weight in the regulations to the different language in the law.

The law states that Category 3 resources shall not be counted as excess procurement, and SMUD's recommended treatment is consistent with those words. Simply put, if these resources are required to be used in the compliance period in which procured, they will not count as excess procurement. To read more into the words, and make them mean something identical to different words that the law uses in the prior sentence, is not accurate interpretation of legislation. The cascading downward maximums for procurement of Category 3 resources are reason enough to not complicate procurement by dealing with carrying these resources over from compliance period to compliance period.

6. **Annual Reporting Requirements.** The Draft Regulations require that POUs provide to the Energy Commission an initial RPS procurement plan by January 1, 2013, and annual reporting on each January 1<sup>st</sup> thereafter of any 'revisions' to a POU procurement plan (Section 3205(a)). The Draft Regulations also require POUs to report, on June 1<sup>st</sup> of every year starting in 2013, a variety of information about RPS procurement progress in the previous year (Section 3207(b)). Finally, the Draft Regulations require "compliance period reports" on June 1, 2014, June 1, 2017; and June 1, 2020, and every June 1<sup>st</sup> thereafter (Section 3207(c)). In effect, **three** separate reporting requirements are established every year (eventually) for POUs. These reporting requirements should be substantially reduced to avoid an undue administrative burden, and reconsidered in light of the actual need for RPS information on such a detailed and frequent basis and in light of the actual words of the statute. The Energy Commission does not need such regular reporting to provide adequate oversight for the POU obligations for RPS procurement. Much of the information is unnecessary, at least on an annual basis, and the volume will challenge the Energy Commission's useful analysis of the reports.

It is important to remember that the statute requires very little of the reporting described in the Draft Regulations. PUC Section 399.30(g) in SBX1 2 requires that POUs submit four pieces of information annually, concerning contracts signed during the previous year, not the entire gamut of POU RPS procurement. This information is simply the duration of the contract, a description of the resource, identification of the contracted facility(s), and the % of retail sales



increase in renewable procurement represented by the contract. PUC Section 399.30 I) requires that POU's annually provide three pieces of information related to RPS compliance and PGC funding in the previous year – the amount of PGC funding spent on renewables, the POU's resource mix, and the POU's RPS status for the previous year. This information is already submitted in the existing Power Content Label reporting structure, and should not be separately required here. Finally, PUC Section 399.30(f) simply requires that POU's post information to customers and the CEC in advance of any Board deliberation on RPS procurement plans, a requirement in terms of CEC reporting met in the statute by a link to information on the POU website. SMUD also believes that a compliance period report is reasonably implied by SBX1 2.

The separate reports potentially required by the Draft Regulations also are to include information that is not necessary and is likely irrelevant. For example, there is no need for an annual report under Section 3205 if the POU does not update its procurement plan. Because retail sales and the development of power projects are relatively uncertain, simple changes in this information from year to year should not be considered a revision to a procurement plan. In many cases, a POU governing Board may not 'deliberate' on such changes. In a full compliance period structure, information about reasonable progress and excess procurement is not necessary or relevant until the end of the compliance period. Enforcement rule changes are more appropriately considered part of a POU enforcement structure, not its procurement planning. .

In Section 3207, it is unnecessary to annually include static information about POU's, such as the POU name, address, etc. WREGIS includes this information and much more as a static obligation, not needed to be updated each year. There is no reason to include information that is nonbinding about past-year product category procurement and potential excess procurement, as this information is not relevant except in a compliance period context.

In short, SMUD suggests that the Energy Commission take the time to discuss with POU's what information is really required by the statute and really necessary for enforcement, in consideration of what information is already provided under separate reporting requirements to WREGIS, the CEC, the ARB, etc., to craft a reporting structure that minimizes the administrative burden on both the CEC and on POU's, recognizes the significant administrative resource differences among POU's, and provides that information to the CEC necessary to timely determine compliance with the law.

**7. Compliance Delay and Cost Containment Authority.** SMUD recommends that the Energy Commission take additional time to understand how the disparate sizes and natures of POU's will affect the conditions of compliance delays and cost containments. Simply placing the general requirements from the retail seller part of SBX1 2 into the Draft Regulations does not do justice to these differences, nor to the differences between retail sellers as

a group and POU. For example, smaller POU may not be able to easily comply with the requirement found on page 17 for delay of timely compliance that a POU “must find” adequate reliance on:

- A sufficient number of viable projects – when one project may be all that is needed for compliance;
- Developing its own transmission projects or storage projects – when these projects would not normally be part of a small utility’s portfolio;

Until dialogue occurs with POU about how compliance delays and cost limitations would apply to the diversity of POU and be consistent with the statute, the Draft Regulations should revert to stating the requirements in Section 399.30, as shown in SMUD’s redline/strikeout language.

8. **POU Governing Board Enforcement Authority.** The Draft Regulations do not give sufficient weight to POU Governing Board enforcement authority. PUC Section 399.30(e) states that POU Governing Boards should adopt a program for the enforcement of the RPS required by SBX1 2. SMUD has adopted such an enforcement program, and fully expects to work with the CEC so that our enforcement actions are consistent with and not duplicative of the CEC’s enforcement authority under PUC Section 399.30(n), which is leading to the Draft Regulations. The Draft Regulations should be modified to reflect an initial phase of POU enforcement action, pursuant to POU Governing Board authority, prior to the Energy Commission taking action to submit potential violations to the Air Resources Board. POU are also local government authorities with public interests in mind, and generally have a good record on RPS compliance historically, and the Energy Commission should avoid burdening the State’s enforcement resources at the Energy Commission or the Air Resources Board prematurely. There is sufficient time in the RPS compliance structure and long term goals to allow POU enforcement structures to work as intended.

Thank you again for the opportunity to comment.

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## **B. Responses To Questions Posed In Attachment A Of The Notice Releasing The Draft Regulations**

**Question A.1 (part 1)** Should the Energy Commission determine reasonableness for cost limitations and delay of timely compliance based on the structure to be determined for retail sellers?

**SMUD Response:** No. The Energy Commission should rely on flexible structures established by POU boards, establishing some loose parameters that aim to achieve the consistency expected by the statute while reflecting the vast differences among POU's. Too great a role for the Energy Commission here risks developing a rate structure role not authorized for the Energy Commission.

**Question A.1 (part 2)** Should rules for excess procurement for POU's also be consistent with excess procurement rules for retail sellers? If not explain how the rules should differ. Please discuss any pertinent legal or policy arguments in support of your position.

**SMUD Response:** Basic rules for compliance periods and excess should be similar amongst all RPS entities, but there is room for differentiation within this overall consistency to reflect circumstances amongst sharply different POU's.

### **B. Timing/Seams Issues**

**Question B.1** Is there any reason why RECs generated before January 1, 2011, could be used for the first compliance period? Should this depend on whether the utility met its procurement target in 2010, or in years before? How would the Energy Commission verify that a POU has met these targets? How would the Energy Commission verify that a REC generated prior to January 1, 2011, has not been claimed for RPS compliance in a previous year?

**SMUD Response:**

Yes, the Energy Commission should allow unused historical RECs generated prior to January 1, 2011 to be used for the first compliance period, within guidance and limits established in the regulations. In a separate joint filing with the Turlock Irrigation District, SMUD provides a rationale for this treatment and

responds to the other parts of Question B.1.

**Question B.2**

Considering a 36-month timeframe for retiring RECs, can RECs generated under a contract approved prior to June 1, 2010, in accordance with PUC section 399.16 (d), be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?

Yes, obviously. Portfolio content categories should not apply, these should be grandfathered resources. NEED MORE HERE.

**Question B.3**

Can RECs produced from contracts that were approved after June 1, 2010 be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?

**SMUD Response:** Yes, obviously RECs can/should be used for compliance – bundled or unbundled, and RECs in different categories should be treated equally within the limitations in the law.

**Question B.4**

Must electricity products be retired in the same compliance period as when they are procured to be used for compliance?

**SMUD Response:** Not sure that there is a legal or policy reason to do so.

## D. Non-Compliance

**Question D.1**

How should late reporting, failure to report, or late submittal of an approved enforcement plan or procurement plan be included in findings of RPS non-compliance for a POU? How should these

items be evaluated when determining reasonable progress?

**SMUD Response:** SMUD believes that it is not in the interest of the Energy Commission to proceed through the enforcement process set out in the Energy Commission's draft regulations for minor errors, such as late filings. SMUD suggests that only the most egregious errors be treated as violations subject to the Energy Commission's enforcement process. Instead, the staff should work with POUs to address minor compliance issues.

### E. Adoption of Enforcement Plans

**Question E.1** Is 90 days after the effective date of the 33 percent RPS regulations a reasonable amount of time for a POU to adjust an enforcement plan, to comply with the provisions of the regulations? If not, what is a reasonable timeframe and why?

**SMUD Response:** SMUD believes that 90 days is a reasonable time frame for updating POU enforcement plans. However, the Energy Commission should make reasonable accommodations for any unique circumstances that may prevent a POU from complying with this time restriction.

**Question E.2** The staff draft regulations allow only staff to file a complaint against a POU for failing to comply with the Energy Commission's regulations. Should other individuals or entities be allowed under the Energy Commission's regulations to file a complaint against a POU for failing to comply with the regulations? If so, what other individuals and entities, and why? What public purpose is served by allowing these individuals and entities to file a complaint against the POU, if Energy Commission staff have already determined the POU to be in compliance?

**SMUD Response:** Section 399.30(n) provides:

On or before July 1, 2011, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The regulations shall include a public process under which **the Energy Commission may issue a notice of violation and correction** against a local publicly owned electric utility for failure to comply with this article, and for referral of violations to the State Air Resources Board for penalties pursuant to subdivision (o).

As clearly stated in the statute, the Energy Commission is the only entity that

may file a notice of violation or correction against a POU. Allowing individuals or entities to file complaints against POUs would create a substantial and unnecessary burden on POUs. Each such complaint would waste crucial public funds, which should be spent instead on compliance with SB 2 (1X).

**Question E.3** If the Energy Commission initiates a public proceeding to consider a staff complaint against a POU, should other individuals or entities be allowed to intervene or otherwise be granted party status in the proceeding? If so, what other individuals or entities, and why? What public purpose is served by allowing these individuals and entities to intervene as parties in the proceeding?

**SMUD Response:** See response to Question E.2

### **C. Responses to Questions Posed in Attachment B Of The Notice Releasing The Draft Regulations**

Question 1: What was the total number of full time employees of the POU in 2011?

***Answer 1: SMUD had approximately 1850 full time employees as of the end of 2011.***

Question 2: How many total hours were part-time/seasonal employees employed by the POU in 2011?

***Answer 2: SMUD is working on this answer.***

Question 3: Does the POU plan to hire additional staff to assist in compliance with the requirements of the RPS?

***Answer 3: SMUD already has staff that were working toward a 33% RPS goal prior to the passage of SBX1 2 and the release of the Energy Commission's Draft Regulations. SMUD expects that we will hire one or two students and or summer interns to help prepare certifications, enter data in WREGIS, and prepare reports to the Energy Commission.***

Question 4: What was or will be the total cost of adoption of a renewable energy procurement plan for the POU? What was or will be the total cost of adoption of a program or plan for RPS enforcement for the POU? Please include a description of necessary actions and costs for adopting these plans and programs.

***Answer 4: SMUD already had staff that were working on renewable procurement plans as part of our Integrated Resource Planning process and on "enforcement" of our own 33% RPS goal, including developing and having approved an eligibility guidebook, prior to the passage of SBX1 2 and the release of the Energy Commission's Draft Regulations. SMUD roughly estimates that the incremental cost above our previous level of effort here is no more than \$100,000 in staff time.***

Question 5: What is the estimated annual cost of implementation of the adopted renewable energy procurement plan for the POU?

***Answer 5: SMUD already had staff working on renewable procurement plans as part of our Integrated Resource Planning process, prior to the passage of SBX1 2 and the release of the Energy Commission's Draft Regulations. SMUD does not believe there is an incremental administrative cost above our previous level of effort.***

Question 6. If the POU applies for the RPS-certification of a facility, what will be the additional cost of applying for and maintaining RPS-certification compared to current operations? Note that the Energy Commission does not impose any fees to apply for or maintain a RPS certification, nor does it require the creation of original documentation for the required supplemental documentation if information created for other purposes is sufficient. Please consider the following facility or location types that require additional reporting requirements:

- a. Renewable facilities using multiple energy resources
- b. Hydroelectric facilities
- c. Municipal solid waste conversion facilities
- d. Repowered facilities
- e. Out-of-state facilities
- f. Out-of-country facilities

***Answer 6: SMUD already had staff working on Energy Commission certification of renewables prior to the passage of SBX1 2 and the release of the Energy Commission's Draft Regulations. SMUD does not believe there is an incremental administrative cost above our previous level of effort.***

Question 7. What was or will be the total cost of participation in the Energy Commission's generation tracking and verification system (Interim Tracking System and/or WREGIS)?

***Answer 7: SMUD already was participating in WREGIS prior to the passage of SBX1 2 and the release of the Energy Commission's Draft Regulations. SMUD does not believe there is an incremental administrative cost above our previous level of effort.***



Question 8: Are there any additional POU costs that should be taken into consideration?

**Answer 8: Yes, the following additional costs should be considered.**

**First, to the extent that the final RPS regulations do not allow counting in full of unused historical procurement, there would be approximately a \$100 million dollar cost to SMUD's ratepayers. This cost is appropriately considered related to the regulations themselves, since regulations pursuant to SBX1 2 can be crafted to appropriately allow unused historical procurement to count in full, so that SMUD ratepayers will avoid these costs.**

**Second, to the extent that the final RPS regulations do not treat behind the meter generation connected to California distribution systems as Category 1 resources, there is a potential cost of approximately \$xxxx to SMUD's ratepayers, who may not be able to fully use the RECs from these resources for the RPS. Similarly, to the extent that the final RPS regulations do not treat unbundled RECs from Category 1 resources as remaining in Category 1, there is a potential cost of \$yyyy to SMUD's ratepayers. These costs are appropriately treated as related to the regulations, as regulations pursuant to SBX1 2 can be crafted to appropriately treat these transactions, so that SMUD ratepayers will avoid these costs.**

**Third, SMUD will see additional costs for reporting to the Energy Commission as suggested in the Draft Regulations. These additional costs can be minimized by crafting the Draft Regulations to establish only that reporting burden that is necessary for the regulations, and by depending where possible on existing reported information. Depending on the final RPS regulations, SMUD roughly expects to see reporting costs of somewhere between \$10,000 and \$100,000 annually.**

**Finally, to the extent that there is a new enforcement role of the Energy Commission and potential penalties from the Air Resources Board for non-compliance, SMUD is at risk for additional costs. Again, the risk of these additional costs can be minimized in the final RPS regulations by taking advantage first of enforcement actions at the POU Governing Board level, and by minimizing the actual requirements that are subject to Energy Commission and Air Resources Board review for potential penalty.**

Question 9: Is there potential for the creation of new businesses as a result of an increase in procurement requirements under the RPS?

**Answer 9: This is a question more related to retail sellers under SBX1 2, not the Publicly Owned Utilities. For the two largest POU's -- SMUD and LADWP -- SBX1 2 represents a decrease, not an increase, in procurement**

***requirements. For retail sellers, on the other hand, SBX1 2 represents a clear increase from a 20% RPS requirement to a 33% requirement.***

***SMUD can say that the increased complexity of the RPS under SBX1 2 could lead to the creation of new businesses for tracking and verifying renewable procurement meets category requirements.***

## D. Redline Strikeout Recommendations On Draft Regulations

### Section 3201 – Definitions

- (a) **“Balancing authority”** means a balancing authority as defined in Public Utilities Code Section 399.12 (b).
- (b) **“Balancing authority area”** means a balancing authority area as defined in Public Utilities Code Section 399.12 (c).
- (c) **“Bundled”** means the procurement of an electricity product that includes both the electricity and the associated renewable energy credits from an RPS certified facility as part of the same contract or ownership agreement.
- (d) **“California balancing authority”** means a balancing authority primarily located in California with more than 50 percent of its end-use electric load physically located within the political boundaries of California. This includes balancing authority areas operated by the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California (~~formerly SMUD~~), Imperial Irrigation District, and Turlock Irrigation District.
- (e) **“Commission”** means the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.
- (f) **“Compliance period”** means the compliance periods as defined in Public Utilities Code Section 399.30 (c).
- (g) **“Compliance report”** means the reports that POUs file with the Commission by June 1 of the calendar year following the end of a compliance period as specified in Section 3207 of these regulations.
- (h) **“Electricity product”** means either:
  - (1) The procurement of electricity and the associated renewable energy credit generated by an RPS certified facility.
  - (2) The procurement of an unbundled renewable energy credit.
- (i) **“Eligible renewable energy resource”** means an electrical generating facility that ~~meets the requirements of Public Utilities Code Sections 399.12(e) or 399.12.5 and that the Energy Commission has determined meets the definition of a “renewable electrical generation facility” in Section 25741 of the Public Resources Code and has~~ certified as an RPS-certified facility.
- (j) **“Megawatt-hour” or “MWh”** means a unit of energy equivalent to one megawatt of electricity supplied for one hour.

- (k) **“NERC e-Tag”** means an electronic record that contains the details of a transaction to transfer energy from a seller to a buyer where the energy is scheduled for transmission across one or more balancing authority area boundaries.
- (l) **“Portfolio content category”** refers to one of three categories of electricity products procured from an RPS certified facility, as specified in Section 3203 of these regulations.
- (m) **“POU”** or **“Local publicly owned electric utility”** means a local publicly owned electric utility as defined by Public Utilities Code Section 224.3.
- (n) **“Procure”** means to acquire electricity products from RPS-certified facilities through executed contracts or ownership agreements.
- (o) **“Procurement”** means to procure electricity products from RPS-certified facilities.
- (p) **“Procurement target”** means the specified percentage of retail sales that a POU must procure of electricity products from RPS-certified facilities for each compliance period as defined in Public Utilities Code Section 399.30 (c). For POU’s that meet the criteria listed in Public Utilities Code Section 399.30 (k), the procurement target is the annual specified percentage of the portion of retail sales not met by the POU’s qualifying hydroelectric generation that must be procured from RPS-certified facilities.
- ~~(q) **“Renewable electrical generation facility”** means a facility as defined in Public Resources Code Section 25741(a).~~
- (r) **“Renewable energy credit”** or **“REC”** means a certificate of proof as defined in Public Utilities Code Section 399.12 (h), associated with the generation of electricity from an RPS-certified facility.
- (s) **“RPS-certified facility”** means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission’s RPS Guidelines. To become an RPS-certified facility, the facility must demonstrate to the Commission that it satisfies the requirements of RPS Guidelines in place at the time the facility applies for RPS certification.
- (t) **“RPS Guidelines”** means the guidelines adopted by the Commission pursuant to Public Resources Code Section 25747 (a) to implement the RPS.
- (u) **“Retire”** means to claim a renewable energy credit in the tracking system established by the Energy Commission pursuant to Public Utilities Code Section 399.25 (c) and thereby commit the renewable energy credit to be used for compliance with the RPS.
- (v) **“Western Electricity Coordinating Council”** or **“WECC”** means the electricity coordinating council as defined in Public Utilities Code Section 399.12 (k). WECC is part of the North American Electric Reliability Corporation and the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection serving all or part of the 14 western states and portions of Mexico (in northern Baja California) and Canada (in British Columbia and Alberta).

- (w) “Western Renewable Energy Generation Information System” or “WREGIS” refers to the independent, renewable energy tracking system implemented for the region covered by the Western Electricity Coordinating Council.

## Section 3202 – Qualifying Electricity Products

- (a) In order for an electricity product to be used to meet an RPS procurement target, the electricity product must meet at least one of the following requirements:

- (1) The electricity product is procured pursuant to a contract or ownership agreement on or after June 1, 2010, and is associated with generation from an RPS-certified facility.
- (2) The electricity product was procured pursuant to a contract or ownership agreement before June 1, 2010, and meets the following criteria:
  - (A) The electricity product was approved by the governing board of a POU for procurement to satisfy renewable energy procurement obligations pursuant to former Public Utilities Code Section 387.
  - (B) The electricity product is associated with generation from a facility that meets the definition of an “eligible renewable energy resource” ~~“renewable electrical generation facility”~~ and is RPS-certified.

- ~~(3) The electricity products that were procured pursuant to a contract or ownership agreement before June 1, 2010, shall count in full towards procurement targets if they meet the following criteria:~~

- (C) The electricity products are associated with generation from a facility that does not meet the definition of a “renewable electric generation facility” but does meet the Commission’s RPS eligibility requirements that were in effect prior to June 1, 2010, when the original procurement contract or ownership agreement was executed by the POU, and the facility is RPS-certified.

- ~~(D) Any contract modifications or amendments occurring after June 1, 2010, do not increase the nameplate capacity, expected quantities of annual generation from the facility, or substitute a different renewable energy resource for the facility. If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, only the amounts agreed to prior to June 1, 2010, shall count in full toward procurement targets. The initial term of such procurement contract may be extended if the initial term of the contract specified a procurement commitment of 15 years or more.~~

(b) Procurement qualifying under Section 3202 (a)(~~23~~)(C) of these regulations will count in full~~may be counted~~ for compliance with the RPS without regard to the quantitative requirements for the use of any portfolio content category if they meet the following:

(A) Any contract modifications or amendments occurring after June 1, 2010, do not increase the nameplate capacity, expected quantities of annual generation from the facility, or substitute a different renewable energy resource for the facility. If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, only the amounts agreed to prior to June 1, 2010, shall count in full toward procurement targets. The initial term of such procurement contract may be extended if the initial term of the contract specified a procurement commitment of 15 years or more.

(c) If any RECs from a contract signed prior to June 1, 2010, are unbundled and sold separately after June 1, 2010, the underlying energy may not be counted for compliance with the RPS, and the unbundled RECs continues to count in full as described in 3202 (b). ~~must be counted in Portfolio Content Category 3, as defined in Section 3203 (c) of these regulations.~~

(d) Procurement qualifying under Section 3202 (a)(2) of these regulations may continue to count in full for compliance with the RPS as described in Section 3202(b) if the contract is sold to another POU and is not modified in a manner disallowed by 3202 (a)(2)(B).

(e) Any unused historical procurement from a contract meeting the requirements of Section 3202 (a) that was not retired to satisfy renewable energy procurement obligations pursuant to former Public Utilities Code Section 387 shall be allowed to count in full as described in Section 3202 (b), subject to the following:

\_\_\_\_ (A) The electricity product meets the requirements of Section 3202(a)(C).

(B) The electricity product is tracked in WREGIS:

(C) The POU achieved 20% of retail sales in 2010 from resources that met the requirements of Section 3202(a)(C).

(f) RECs representing electricity product that are RPS-eligible must be retired within 36 months from the initial month of the generation of the associated electricity in order to be used for RPS compliance.

## Section 3203 – Portfolio Content Categories

### (a) Portfolio Content Category 1

- (1) Portfolio Content Category 1 electricity products must ~~be procured as and remain bundled in order to be classified in Portfolio Content Category 1, must~~ be located within the WECC transmission grid, and must meet at least one of the following criteria:
  - (A) Electricity products must be generated by an RPS-certified facility that has its first point of interconnection to the WECC transmission grid within the metered boundaries of a California balancing authority area. For purposes of this Section 3203, the first point of interconnection to the WECC transmission grid is the substation or other facility where generation tie lines from the RPS-certified facility interconnect to the network transmission grid.
  - (B) Electricity products must be generated by an RPS-certified facility that has its first point of interconnection to an electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area. For purposes of this Section 3203, the first point of interconnection to an electricity distribution system is within the service area boundaries of a utility distribution company (UDC).
  - (C) Electricity products must be generated by an RPS-certified facility and scheduled into a California balancing authority without substituting electricity from another source. For purposes of this Section 3203, electricity generated by the RPS-certified facility must be scheduled into a California balancing authority within the hour in which the electricity is generated, ~~and the POU's governing board must have approved an agreement, before the electricity product is generated, to schedule the electricity from the RPS-certified facility into the California balancing authority during the hour in which the electricity product is generated.~~ If there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered into a California balancing authority, only the lesser of the two amounts may be classified as Portfolio Content Category 1.
  - (D) Electricity products must be generated by an RPS-certified facility and subject to an agreement between a California balancing authority and the balancing authority in which the RPS-certified facility is located, executed before the product is generated, to dynamically transfer electricity from the RPS-certified facility into the California balancing authority area during the hour in which the product is generated.
- (2) Electricity products originally qualifying in Portfolio Content Category 1 and ~~subsequently resold or transferred continue to qualify as Portfolio Content Category 1, must meet the following criteria to remain in Portfolio Content Category 1:~~

- ~~(A) The original contract for procurement of the electricity products meets at least one of the criteria in Section 3203 (a)(1)(A)–(D) of these regulations.~~
  - ~~(B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.~~
  - ~~(C) The electricity transferred by the resale contract is transferred to the ultimate buyer in real time.~~
  - ~~(D) For those electricity products that satisfy Section 3203 (a)(1)(C) of these regulations, the original hourly or subhourly schedule is maintained and the criteria of Section 3203 (a)(2)(A)–(C) of these regulations are met.~~
- (3) ~~Electricity products originally qualifying in Portfolio Content Category 1 and resold that do not meet the criteria of Section 3203 (a)(2)(A)–(D) of these regulations shall not be counted in Portfolio Content Category 1.~~

(b) Portfolio Content Category 2

- (1) Portfolio Content Category 2 electricity products must be generated by an RPS-certified facility, must be located within the WECC transmission grid, and the electricity must be firmed and shaped with substitute electricity to provide incremental electricity that is scheduled into a California balancing authority.
- (2) Portfolio Content Category 2 electricity products must be initially procured as bundled and must meet all of the following criteria:
  - (A) The first point of interconnection to the WECC transmission grid for both the RPS-certified facility and the resource providing the substitute electricity must be located outside the metered boundaries of a California balancing authority area.
  - (B) The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be incremental to the POU. For purposes of this Section 3203, “incremental” means electricity that is not in the portfolio of the POU claiming the transaction for RPS compliance prior to the firmed and shaped transaction(s).
  - (C) ~~The procurement of the substitute resource is adopted by the governing board of the POU~~ The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be delivered to a California balancing authority at the same time or after the procurement for the electricity from the RPS-certified facility ~~is adopted~~ is generated.
  - (D) The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be scheduled into the California balancing authority within the same calendar year as the electricity from the RPS-certified facility is generated.



- (3) Electricity products originally qualifying in Portfolio Content Category 2 and subsequently resold or transferred continue to qualify as Portfolio Content Category 2. must meet the following criteria to remain in Portfolio Content Category 2:
- ~~(A) The original contract for procurement of the electricity products meets the criteria of Section 3203 (b)(2)(A)–(D) of these regulations.~~
  - ~~(B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.~~
  - ~~(C) The resale contract transfers the original arrangement for substitute electricity, including the source and quantity for the substitute electricity.~~
  - ~~(D) The resale contract retains the scheduling of the substitute electricity into the California balancing authority as set out in the original firming and shaping transaction.~~
  - ~~(E) The transaction continues to provide incremental electricity for the POU claiming the transaction for RPS compliance and is scheduled into the California balancing authority.~~
- (4) ~~Electricity products originally qualifying in Portfolio Content Category 2 and resold that do not meet the criteria above must be counted in Portfolio Content Category 3.~~

(c) Portfolio Content Category 3

- (1) All ~~Unbundled renewable energy credits and~~ other electricity products located within the WECC transmission grid and generated by RPS-certified facilities that do not meet the requirements of either Portfolio Content Category 1 or Portfolio Content Category 2 fall within Portfolio Content Category 3.

## Section 3204 – RPS Procurement Requirements

(a) RPS procurement targets for each compliance period:

- (1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, a POU shall demonstrate it has procured electricity products sufficient to equal an average of 20 percent of its retail sales ~~for all~~over the three calendar years in the compliance period.

$$\frac{(EP_{2011} + EP_{2012} + EP_{2013})}{(RS_{2011} + RS_{2012} + RS_{2013})} \geq 0.20$$

$EP_X$  = Electricity Products procured and retired for the specified year  $X$

$RS_X$  = Total retail sales made by the POU for the specified year  $X$

(2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, a POU shall demonstrate it has procured electricity products sufficient to achieve 25 percent of retail sales by December 31, 2016. The numerical expression of this procurement requirement is: meet or exceed 25 percent of its retail sales in the last calendar year of the compliance period.

$$(0.217 \times RS_{2014} + 0.233 \times RS_{2015} + .25 \times RS_{2016})$$

$$\frac{(EP_{2016})}{(RS_{2016})} \geq 0.25$$

(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products sufficient to achieve 33 percent of retail sales by December 31, 2020. The numerical expression of this procurement requirement is: meet or exceed 33 percent of its retail sales in the last calendar year of the compliance period.

$$(0.27 \times RS_{2017} + 0.29 \times RS_{2018} + .31 \times RS_{2019} + .33 \times RS_{2020})$$

$$\frac{(EP_{2020})}{(RS_{2020})} \geq 0.33$$

(4) For the calendar year ending December 31, 2021, and each calendar year thereafter, a POU shall procure electricity products sufficient to equal to 33 percent of its retail sales by the end of that year.

- (5) Notwithstanding Section 3204 (a)(1) – (4) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (h) shall be deemed to be in compliance with this section.
- (6) A POU shall demonstrate that it meets the criteria listed in Section 399.30 (h) by providing the Commission documentation showing the POU receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to Section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386).
- (7) Notwithstanding Section 3204 (a)(1) – (4) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall be deemed to be in compliance with this Section 3204 if all of the POU’s electricity demand in any given calendar year is satisfied with its qualifying hydroelectric generation. For

purposes of this Section 3204, “qualifying hydroelectric generation” is generation from one or more facilities that meets the following criteria:

- (A) The facility is located within the state.
  - (B) The facility is owned and operated by the POU.
  - (C) The facility is a hydroelectric facility, but does not meet the definition of a “Renewable Electrical Generation Facility” and is not RPS-certified.
  - (D) The facility provides greater than 67 percent of the POU’s electricity supply on an annual basis.
- (8) If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has electricity demands unsatisfied by its qualifying hydroelectric generation in any given year, then the POU shall procure electricity products in accordance with Section 3204 (e) of these regulations equal to the lesser of the following:
- (A) The electricity demands unsatisfied by the POU’s qualifying hydroelectric generation.
  - (B) The RPS procurement requirement listed in Section 3204 (a)(1) – (4) of these regulations corresponding to the year during which the POU’s qualifying hydroelectric generation was insufficient to meet its annual electricity demand.
- (b) ~~A POU may not use a REC associated with RPS-eligible electricity products to meet its RPS procurement requirements unless it is retired within 36 months from the initial month of the generation of the associated electricity.~~
- (c) Deficits associated with any one compliance period shall not be added to a future compliance period.
- ~~(d) Reasonable progress in intervening years of the compliance periods ending on December 31, 2016, and December 31, 2020.~~
- ~~(1) Each governing board of a POU is responsible for demonstrating reasonable progress toward meeting its RPS procurement requirements in Section 3204 (a) of these regulations and shall report such findings in its annual reports to the Commission. Reasonable progress shall be a set of actions taken to procure additional electricity products or prospective electricity products, subject to the requirements of Section 3204 (e), including building and contracting for siting activity, and/or quantitative increases in the electricity products procured throughout the compliance period to reach the procurement target for the end of that compliance period. Reasonable progress may include, but is not limited to, acquiring and developing new renewable resources, transmission modeling, land acquisition, initiating environmental studies, securing permits, soliciting requests for offers, executing contracts, and signing interconnection agreements. The POU shall demonstrate in its annual reporting to the Commission its current level of RPS procurement, its procurement target at the end of the compliance period,~~

~~and the steps it has taken in the past year to achieve the procurement target for the compliance period. If a POU has already attained the procurement target or has banked sufficient excess procurement to achieve its procurement target for the compliance period, it shall state this in its annual reporting.~~

~~(2) Notwithstanding Section 3203 (d)(1) of these regulations, an increase in the procurement of electricity products of no less than 1.5 percent of 100 percent of a POU's retail sales in each year of the compliance period ending December 31, 2016, shall be deemed reasonable progress, provided the POU met their procurement target for 2013. The procurement of electricity products to satisfy the requirements of this paragraph must comply with Section 3204 (e).~~

~~(3) Notwithstanding Section 3203 (d)(1) of these regulations, an increase in the procurement of electricity products of no less than 2 percent of 100 percent of a POU's retail sales in each year of the compliance period ending December 31, 2020, shall be deemed reasonable progress, provided the POU met their procurement target for 2016. The procurement of electricity products to satisfy the requirements of this paragraph must comply with Section 3204 (e).~~

(e) In meeting the RPS procurement targets as defined in Section 3204 (a), each POU shall also be subject to the following:

(1) No less than 50 percent of the electricity products from contracts executed after June 1, 2010 used to meet the RPS procurement requirement for the compliance period ending December 31, 2013, must meet the definition of Portfolio~~Product~~ Content Category 1.

(2) No less than 65 percent of the electricity products from contracts executed after June 1, 2010 used to meet the RPS procurement requirement for the compliance period ending December 31, 2016, must meet the definition of Portfolio~~Product~~ Content Category 1.

(3) No less than 75 percent of the electricity products from contracts executed after June 1, 2010 used to meet the RPS procurement requirement for the compliance period ending December 31, 2020, or any compliance period thereafter, must meet the definition of Portfolio~~Product~~ Content Category 1.

(4) Not more than 25 percent of the electricity products from contracts executed after June 1, 2010 used to meet the RPS procurement requirement for the compliance period ending December 31, 2013, can meet the definition of Portfolio~~Product~~ Content Category 3.

(5) Not more than 15 percent of the electricity products from contracts executed after June 1, 2010 used to meet the RPS procurement requirement for the compliance period beginning ending December 31, 2016, can meet the definition of Portfolio~~Product~~ Content Category 3.

(6) Not more than 10 percent of the electricity products from contracts executed after June 1, 2010 used to meet the RPS procurement requirement for the

compliance period ending December 31, 2020, or any compliance period thereafter, can meet the definition of ~~Portfolio~~ product Content Category 3.

~~(7) Except as otherwise required by Section 3204 (e) of these regulations, electricity products meeting the definition of Portfolio~~ product Content Category 2 may be used to meet an RPS procurement requirement.

## Section 3205 – Procurement and Enforcement Plans

### (a) Renewable Energy Resources Procurement Plan

~~(1) By January 1, 2013, Each~~ POU shall submit to the Commission an electronic copy of its renewable energy resources procurement plan, or a uniform resource locator (URL) that directly links to the plan on POU's Internet Web site, for posting on the Commission's Internet Web site. ~~that includes, at a minimum, the following information for the forthcoming calendar year and the current compliance period:~~

- ~~(A) The POU's projected retail sales for the forthcoming calendar year and current compliance period in MWh.~~
- ~~(B) The POU's projected level of RPS procurement for the forthcoming calendar year and procurement target for the current compliance period in MWh.~~
- ~~(C) A description of the type and quantity of electricity products the POU intends to procure in the calendar year and compliance period to meet its RPS procurement requirements. The description shall identify the type of electricity product by product content category and the quantity of each type of electricity product in MWh.~~
- ~~(D) A description and quantity of excess procurement, if any, the POU intends to use in the calendar year and compliance period to meet its RPS procurement requirements.~~
- ~~(E) An annual review of reasonable progress made toward the RPS procurement targets for the prior calendar year and the compliance period.~~
- ~~(F) A description of any of the following rules adopted by the POU in accordance with Section 3206 (a)(1) – (4) of these regulations. These rules must be described in the POU's procurement plan if the POU intends to rely on these rules to satisfy or delay compliance with its RPS procurement requirements:
  - ~~1. Rules for carrying over excess procurement of electricity products from one compliance period to subsequent compliance period in accordance with Section 3206 (a)(1) of these regulations.~~~~

- ~~2. Rules under which the POU may delay timely compliance with its RPS procurement requirements and procurement targets in accordance with Section 3206 (a)(2) of these regulations.~~
  - ~~3. Rules establishing cost limitations for procurement expenditures in accordance with Section 3206 (a)(3) of these regulations.~~
  - ~~4. Rule permitting the reduction of the procurement requirement for electricity products in Portfolio Content Category 1 for a specific compliance period in accordance with Section 3206 (a)(4) of these regulations.~~
- ~~(G) A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall additionally provide a forecast of its annual electricity demand that will be satisfied with qualifying hydroelectric generation from a facility that meets the criteria specified in Section 3204 (a)(7) of these regulations. The forecast shall identify the POU's annual electricity demand and the amount of qualifying hydroelectric generation expected for the calendar year in MWh.~~
- ~~(2) By January 1 of each year following 2013, each POU shall submit any revisions to the renewable energy resources procurement plan, including all requirements of Section 3205 (a)(1), if the procurement plan is updated.~~
- (2) Each POU shall provide the following notice regarding new or updated renewable energy resources procurement plans:
- (A) The POU shall annually post notice, in accordance with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, whenever its governing board will deliberate in public on its renewable energy resources procurement plan.
  - (B) Contemporaneous with the posting of the notice of a public meeting to consider the renewable energy resources procurement plan, the POU shall notify the Commission of the date, time, and location of the public meeting to consider the procurement plan. This requirement is satisfied if the POU provides the Commission with the uniform resource locator (URL) that directly links to the notice for the public meeting. An e-mail with information on the public meeting in Portable Document Format (pdf) may also be provided to the Commission.
  - (C) The POU must notify the Commission if any URL provided by the POU pursuant to this Section 3205 no longer contains the correct link, and the POU must send the Commission a corrected URL that links to the information or a pdf containing the information as soon as it becomes available.

(b) Enforcement Plan

- (1) The governing board of each POU must adopt an enforcement plan or program for RPS enforcement on or before January 1, 2012. A POU shall revise its enforcement plan or program, as needed, to comply with these regulations within 90 days of the effective date of these regulations.
  - (2) -The enforcement plan shall include actions the POU will take if the POU determines that it will not meet its RPS procurement requirements in accordance with Section 3204 of these regulations.
  - (3) The enforcement plan must be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days notice shall be given to the public of any meeting held for purposes of adopting the plan.
  - (4) If the enforcement plan is modified or amended, no less than 10 days notice shall be given to the public before any meeting is held to make a substantive change to the plan.
- (c) If a POU distributes information to its governing board related to its renewable energy resources procurement status or future procurement or enforcement plan, for the governing board's consideration at a public meeting, the POU shall make that information available to the public and shall provide an electronic copy of information to the Commission for posting on the Commission's website.
- (1) This requirement is satisfied if the POU provides to the Commission the URL that directly links to the documents or information regarding other manners of access to the documents. An e-mail with the information in pdf may also be provided to the Commission.
  - (2) The POU must notify the Commission if any URL provided by the POU pursuant to this Section 3205 no longer contains the correct link, and the POU must send the Commission a corrected URL that links to the information or a pdf containing the information as soon as it becomes available.
- (d) Notwithstanding Section 3205 (a) – (c) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (h) is not required to provide the Commission with a renewable energy resources procurement plan, an enforcement plan, or public notice or information concerning any such plan.

## **Section 3206 – RPS Compliance Options**

- (a) In meeting its RPS procurement requirements, a POU may adopt at a noticed public meeting any of the following measures:
  - (1) Excess procurement
    - (A) POU's may adopt rules permitting the POU to apply excess procurement in one compliance period to a subsequent compliance period, except that:

1. Excess procurement of electricity products from Portfolio Content Category 3 may not be applied toward a future compliance period ~~and shall not be included in the calculation of excess procurement.~~
  2. Generation procured under contracts of less than 10 years in duration ~~may not be applied toward a future compliance period and shall not~~ be included in the calculation of excess procurement, unless from a contract that meets the requirements of Section 3202(a)(2)(C).
- (B) Those POUs that opt to allow the application of excess procurement as part of their renewable energy resources procurement plan or enforcement program may begin accruing excess procurement January 1, 2011. This requirement does not apply to unused historical procurement as described in Section 3202(e).
- (C) Electricity products qualifying as excess procurement may be applied toward future compliance periods, including compliance years following 2020, but must be retired within 36 months of the generation month of the associated electricity.
- (D) POUs may accrue excess procurement in a given compliance period only if the POU satisfies the following criteria.

1. Excess procurement for the first compliance period is:

*Excess Procurement*

$$= (EP_{2011} + EP_{2012} + EP_{2013}) - (0.20 \times (RS_{2011} + RS_{2012} + RS_{2013}))$$

*EP<sub>X</sub>*

*= Electricity Products procured and retired for the specified year X*

*RS<sub>X</sub> = Total retail sales made by the POU for the specified year X*

2. Excess procurement for the second compliance period is:

*Excess Procurement*

$$= \underline{(EP_{2014} + EP_{2015} + EP_{2016})} - \underline{(0.2175 \times RS_{2014} + 0.233 \times RS_{2015} + .25 \times RS_{2016})}$$

3. Excess procurement for the third compliance period is:

*Excess Procurement*

$$= (EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020}) - (0.27 \times RS_{2017} + 0.29 \times RS_{2018} + .31 \times RS_{2019} + .33 \times RS_{2020})$$

- (2) Delay of timely compliance

- (A) The governing board of a POU may adopt rules permitting a POU to make a finding that reasonable cause exists to delay the timely compliance with RPS procurement requirements, consistent with subdivision (b) of PUC Section



399.15 . Such a finding shall be limited to one or more of the following causes for delay:

- ~~1.— There is inadequate transmission capacity to allow sufficient electricity to be delivered from a proposed eligible renewable energy resource project. For example, using the current operational protocols of the California Independent System Operator, a POU that owns transmission or has transmission rights, may find that:
  - ~~i.— The POU has undertaken all reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of its expectation for cost recovery.~~
  - ~~ii.— The POU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.~~~~
- ~~2.— 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. POU must also find that:
  - ~~i.— The POU prudently managed portfolio risks, including relying on a sufficient number of viable projects.~~
  - ~~ii.— The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.~~
  - ~~iii.— The POU procured an appropriate minimum margin of procurement above the level necessary to comply with the RPS to compensate for foreseeable delays or insufficient supply.~~
  - ~~iv.— The POU had taken reasonable measures to procure cost-effective distributed generation and allowable unbundled RECs.~~~~
- ~~3.— Unanticipated curtailment of eligible renewable energy resources was necessary to address the needs of a balancing authority.~~

(3) Cost limitations

- (A) The governing board of a local POU may adopt rules permitting a POU to establish a cost limitation on the procurement expenditures used to comply with its RPS procurement requirements consistent with subdivision (c) of PUC Section 399.15.

~~(B) Such cost limitations shall ensure that:~~

- ~~1. The limitation is set at a level that prevents disproportionate rate impacts.~~
- ~~2. The costs of all procurement credited toward achieving the RPS are counted toward the limitation.~~
- ~~3. Procurement expenditures do not include any indirect expenses including, without limitation, imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any POU-owned hydroelectric facilities.~~

~~(C) In adopting cost limitation rules, the POU shall rely on all of the following:~~

- ~~1. The most recent renewables energy resources procurement plan.~~
- ~~2. Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.~~
- ~~3. The potential that some planned resource additions may be delayed or canceled.~~

(4) Portfolio Category Content requirement reduction

- (A) POU may adopt rules that allow the reduction of the procurement requirement for Portfolio Content Category 1 or the increase of the maximum procurement for Portfolio Content Category 3 for a specific compliance period consistent with Public Utilities Code Section 399.16 (e).
- (B) The need to reduce the procurement requirements for Portfolio Content Category 1 or the increase of the maximum procurement for Portfolio Content Category 3 must have resulted because of conditions beyond the control of the POU as provided in Section 3206 (a)(2) of these regulations or because of cost limitations as provided in Section 3206 (a)(3).
- (C) ~~A reduction of the~~ The procurement requirement for Portfolio Content Category 1 shall not be reduced below 65 percent for any compliance period after December 31, 2016, ~~will not be considered consistent with Public Utilities Code Section 399.16 (e).~~
- (D) A POU that reduces its procurement requirements for Portfolio Content Category 1 or increases the maximum procurement for Portfolio Content Category 3 must adopt these changes at a publicly noticed meeting, including at least 10 days advance notice to the Commission, and to subsequently include this information in updated renewable energy resources procurement plan submitted to the Commission. The notice and procurement plan must include the following information:
1. The compliance period for which the reduction or increase may be adopted.

2. The level to which the POU has reduced or increased the relevant requirement.
  3. The reason or reasons the POU has proposed for adopting the reduction or increase.
  4. An explanation of how the needed reduction or increase resulted from conditions beyond the control of the POU as provided in Section 3206 (a)(2) of these regulations.
  5. If applicable, an explanation of why the reduction or increase was needed as a result of cost limitations adopted by the POU as provided in Section 3206 (a)(3) of these regulations.
- (b) Rules adopted under this Section 3206 shall be in place and described in a POU's renewable energy resources procurement plan or enforcement program for a given calendar year if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements for that year.
- ~~(c) POU's shall not adopt a~~Any rule or rule revision covering the compliance options in this adopted under this Section 3206 shall be submitted to the Commission within 30 days after adoption for a determination of that is inconsistently with the requirements of these regulations and Public Utilities Code Section 399.30. If tThe Commission shall make its determination, that a rule or revision is inconsistent, the Commission shall notify the POU of that determination. A POU shall modify its rules to become consistent. within 120 days of receipt of rule. Failure of the Commission to notify the POU of a determination of inconsistency shall not result in a violation by the POU under PUC Section 399.30(o). ~~be deemed a determination that such rule is consistent with the requirements of Public Utilities Code Section 399.30.~~
- ~~(d) Any rule adopted pursuant to this Section 3206 shall provide that the Executive Director of the Commission be given notice no less than 30 days in advance of a proposed action to be taken under such rule. Such notice shall include all reports, analyses, proposed findings, and any other information upon which the POU may rely in taking the proposed action.~~

## Section 3207 – Compliance Reporting for POUs

**NOTE:** SMUD recommends that Section 3207 be substantially redrafted to streamline reporting requirements with currently existing reporting requirements. SMUD will work with the Energy Commission to address this issue.

## Section 3208 – Renewables Portfolio Standard Enforcement

Any complaint pertaining to the enforcement of a RPS requirement, or any regulation, order or decision adopted by the Commission pertaining to the RPS, for POUs shall be filed in accordance with Section 1240.

### Title 20, CCR, Section 1240 – Renewables Portfolio Standard Enforcement

- (a) Notwithstanding anything in this Article to the contrary, the following shall apply to any complaint pertaining to a renewables portfolio standard, or any regulation, order or decision adopted by the Commission pertaining to the renewables portfolio standard, for local publicly owned electric utilities.
- (b) Complaints
  - (1) No complaint for the failure of a local publicly owned electric utility to meet a renewables portfolio standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the renewables portfolio standard, for local publicly owned electric utilities may be filed by any person or entity listed in Section 1231, except Commission staff.
  - (2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the renewables portfolio standard, or any regulation, order, or decision adopted by the Commission pertaining to the renewables portfolio standard, for local publicly owned electric utilities shall include the following:
    - (A) A statement of facts upon which the complaint is based.
    - (B) A statement indicating the statute, regulation, order or decision upon which the complaint is based.
    - (C) The action the Commission is requested to take.
    - (D) The authority for the Commission to take such action.
  - (3) A declaration under penalty of perjury shall not be required for the filing of a complaint under this Section.
- (c) Any person or entity may participate in a proceeding filed under this Section, but shall not be entitled to intervene or otherwise become a party to the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer with the Chief Counsel within 45 calendar days after service of the complaint. In addition to those matters set out in Section 1233 (b), the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, respondent shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the Executive Director along with a complete request for confidential designation in accordance with Section 2505.

(e) Response

- (1) Commission staff may file with the Chief Counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.
- (2) In the event that Commission staff files a response under (e) above, the local publicly owned electric utility may file with the Chief Counsel a reply to such response no later than 10 calendar days from receipt of such response. The reply shall be served upon Commission staff upon filing.

(f) Hearing

- (1) A hearing on the complaint shall be scheduled to commence no sooner than 30 days after the filing of a staff response pursuant to subdivision (e) of this Section.
- (2) A notice of hearing on the complaint shall be provided in accordance with Section 1234 (b). Such notice shall be provided no later than 30 days after the last filing is made.
- (3) The hearing may be scheduled before the full Commission, a committee designated by the Commission, or a hearing officer assigned by the Chair at the request of the committee as provided in Section 1205.
- (4) If the hearing is not held before the full Commission, the proposed decision set out in Section 1235 shall be required to be forwarded to the full Commission no later than 45 days after the hearing has been concluded. If the hearing is held before the full Commission, to the extent reasonably possible, the Commission shall publish its decision within 45 days after the hearing has been concluded.

(g) The decision of the full Commission shall be a final decision. There is no right of reconsideration of a final decision issued under this Section 3208.

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code Section 25901 has passed, Commission staff shall forward a notice of violation, based on the final decision of the full Commission, together with the record of proceedings, to the Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the Commission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, Commission staff shall not forward the notice of violation to the Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof