



**M E M O R A N D U M**

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**TO:** California Energy Commission

**FROM:** Modesto Irrigation District  
Redding Electric Utility  
Turlock Irrigation District

**SUBJECT: DOCKET NO. 11-RPS-01**  
33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper

**DATE:** September 12, 2011

**The Utilities**

Modesto Irrigation District (“MID”), Redding Electric Utility (“REU”), and Turlock Irrigation District (“TID”), collectively the “Utilities,” appreciate the opportunity to comment on the 33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper (“Concept Paper”) developed by the California Energy Commission (CEC).

MID, REU, and TID are local publicly owned electric utilities. MID and TID are irrigation districts located in the Central Valley, while REU is a municipal utility within the City of Redding. MID serves over 113,000 electric customers with a peak load of over 640 Megawatts (MW). REU serves 42,000 customers with a peak load of 247 MW. TID serves about 100,000 electric customers with a peak load of approximately 600 MW. The Utilities maintain similar resource mixes, including hydroelectric, eligible renewable resources and fossil fuel sources.

**Introduction**

SBX1 2 (Simitian) established a new mandate for all of California’s local publicly owned electric utilities (POUs) to serve designated percentages of their load with eligible renewable resources by certain compliance deadlines (Renewables Portfolio Standard or RPS). Prior to the enactment of SBX1 2, RPS structures were put in place for POUs that recognized the different governance and business models under which POUs operate. Public Utilities Code section 385 set forth the RPS requirements for POUs: each POU governing body was to set an RPS goal for itself that met the intent of the Legislature in establishing an RPS program in

California. Thus, in 2006 MID's elected board of directors adopted a goal of meeting 20% of its load with renewable resources certified as eligible by the CEC by 2017; REU's RPS policy of 20% by 2017 was adopted in 2002; and TID adopted its current RPS Policy of 20% by 2017 in 2004. In 2011 each utility anticipates that it will achieve an RPS of over 25%.

SBX1 2 continues to distinguish POU's as Section 399.30 sets forth the new RPS rules for POUs, separate and distinct from the RPS rules applicable to retail sellers. Section 399.30, however, does provide that several aspects of the POU program shall be "consistent with" or "the same as" identified sections of the retail seller requirements. Specifically, procurement requirements adopted by the POUs are to be "consistent with" Section 399.16 (399.30(c)(3)); rules for carryover of excess procurement from one compliance period to another reference Section 399.13; and other flexible compliance mechanisms are to be consistent with subdivisions (b) and (c) of Section 399.15.

Section 399.30 assigns the CEC the task of adopting regulations "specifying procedures for enforcement" of the RPS for POUs. (Section 399.30(n)) In doing so the CEC is authorized to adopt "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." Thus the challenge faced in developing the required regulations is to develop a process for determining whether a POU has met its compliance obligations at each of the three compliance points without dictating, directing, pre-determining or second-guessing how the POU does so.

The Utilities look forward to working with the CEC and its staff to develop regulations that will implement the new RPS in a manner that recognizes the authorities vested in the local governing bodies of the individual POUs and protects California's economy and ratepayers. We offer the comments attached to this cover Memorandum addressing the specific issues and options raised in the CEC Concept Paper. The Utilities continue to be concerned that in many instances the issues raised in the Concept Paper may be outside the authority granted to the CEC in SBX1 2. However, the Utilities reserve further expression of these concerns to other opportunity, and provide their best responses to each issue raised.

In addition, the Utilities are members of the California Municipal Utilities Association (CMUA) and support the comments submitted by CMUA. MID and REU are also members of the M-S-R Public Power Authority and support the comments submitted by M-S-R. REU is a member of the Northern California Power Agency (NCPA) and supports the comments submitted by NCPA.

## 33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper

Energy Commission staff has drafted this concept paper to explore the issues underlying the regulations specifying procedures for enforcement of the renewable portfolio standard (RPS) for publicly owned electric utilities (POUs). Staff has provided a list of options for each issue, as well as staff recommendations where they exist. Staff requests that stakeholders respond to staff recommendations, supplying rationale for those areas in which the stakeholder disagrees with staff's opinion. Staff also requests that stakeholders provide their own recommendations where no staff recommendation exists and list additional issues and/or options they feel should be considered by the Energy Commission in drafting the regulations. In contributing these additional recommendations, issues and/or options, stakeholders should include an explanation as to why the Energy Commission should consider them.

*The Utilities comments are in red and italicized and follow each point in the Concept Paper. The Utilities comments that are in red and underlined provide for suggested language in cases where the Utilities are recommending a new option or alterations to current options.*

### Foundational Issues

- a) Meaning of “consistent with” and “in the same manner as” (Public Utilities Code Sections 399.30 (c)(3), 399.30 (d) (1), 399.30 (d) (2), 399.30 (d)(3))
  - i) Options:
    - (1) Always same as those for retail sellers
    - (2) In spirit of rules for retail sellers; up to POUs and Energy Commission to define for specific cases
    - (3) Some rules the same as those for retail sellers (for instance, definitions of portfolio content categories), and some in the spirit of the rules for retail sellers, as determined by POUs and the Energy Commission
    - (4) Some rules in the spirit of the rules as those for retail sellers; up to POUs to define for specific cases.
  - ii) Staff recommendation: Option (3); the law should be applied to all entities using the same rules to the extent practicable. In areas in which different rules apply to POUs, those rules will be as consistent as possible with those for retail sellers. (In response to this particular issue, staff requests that stakeholders specify which rules should be the same for POUs and retail sellers and what criteria should be used to determine “in the spirit of.” Please include rationale.)

*The Utilities recommend a new option, labeled above as Option (4).*

*SBx1 2 clearly outlines that the following areas, among others, remain under the discretion of the POU governing body.*

- 1. Resource planning and adoption of a renewables procurement plan;*

2. *Implementation of renewables procurement targets;*
3. *Reasonable progress toward renewables procurement targets;*
4. *Mix of eligible renewable resources to achieve RPS;*
5. *Rules permitting the POU to apply excess renewable procurement in one compliance period to subsequent compliance periods;*
6. *Rules implementing cost limitations for expenditures on renewables procurement;*
7. *Program for the enforcement of the RPS;*
8. *Contract length rules;*
9. *Conditions that allow for a deviation from procurement content requirements; and*
10. *Conditions that allow for delay of timely compliance.*

*Where directed by SBx1 2 the POUs will adopt rules “consistent with” or that are applied “in the same manner as” requirements applicable to retail sellers. It will be very important for the CEC to recognize that a one size fits all approach would be untenable. Rules that make sense for large investor owned utilities cannot work for smaller utilities that rely solely on their ratepayers for revenue streams. At the risk of stating the obvious “consistent with” and “same manner as” do not mean “identical to.” Broad identification of appropriate factors for governing bodies to consider when establishing their programs would be helpful, but a designation of required calculations or calculation methodologies would be outside the CEC’s authority as granted by the legislation. Such factors may be formulated in reference to the legislative directives described in designated code sections, but not the California Public Utilities Commission or other interpretation of these directives applied to retail sellers. In following this approach the spirit and intent of the legislation is met.*

*Thus, the Utilities disagree with Staff’s recommendation that the “same rules” be applied in any instance.*

## **Eligibility of resources**

- i) Pre-June 1, 2010, contracts approved by POU under former Public Utilities Code 387 (Public Utilities Code Sections 399.12 (e)(1)(C))
- ii) Options:
  - (1) Resources must meet Energy Commission’s eligibility rules at time of

- contract execution
- (2) Resources must meet the definition of renewable electric generation facility in Public Resources Code Section 25741
- (3) Resources must meet the Energy Commission’s eligibility requirements applicable at the time the facility applies for RPS certification.
- (4) Resources must meet the POU’s eligibility rules and the definition of renewable electric generation facility at time of the contract was approved.

iii) Staff recommendation: Option (3).

*Option (3) is contradictory to the policy that early actions to procure renewable resources should continue to be recognized and rewarded. Instead, the Utilities recommend a new option, labeled above as Option (4). CEC Staff has stated that their rationale for choosing option 3 is that Public Resources Code 25741 establishes eligibility for renewable resources, which is further defined in the RPS Guidebook.*

*It seems reasonable to assume that those eligibilities would be taken into consideration in implementing the new statute; however, requiring a POU to wait until the Guidebook is updated to apply for RPS Certification seems punitive, as historically the CEC has not taken a “look back” given the new requirements. In other words, what once counted under State law must always count. PUC 399.12 (e)(1)(C) states that any POU contracts approved before June 1, 2010 under former sec 387 must be certified by the Commission pursuant to Sec 25741, so as long as the Pre-June 1, 2010 resource was eligible under the law at the time the contract was entered into. Thus, the resource is eligible to count in full towards the POU’s compliance obligation as long as that resource has been certified by WREGIS.*

*Although this question only refers to Section 399.12 (e)(1)(C), it is important to note that section 316 (d)(1), the “grandfathering provision”, must also be addressed and included in this discussion. Section 399.16 (d)(1) allows for resources procured under the POU governing body’s rules in place at the time the contract was executed to count in full towards compliance under the new RPS requirements. This shall apply for any contract executed prior to June 1, 2010 and must include those resources that the POU has contracted for using the definition of “renewable” as allowed under the rules in place for the POUs as dictated by the POU governing body pursuant to SB 1078;*

## **Classification of procurement products**

- a) Portfolio content categories
  - i) Portfolio Content Category 1 – interconnected or scheduled to a California balancing authority (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))
    - (1) Definition:
      - (a) Options (one or more of the following):
        - (i) Generation from a facility that has its first point of

interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is automatically considered eligible, even if it is procured as an unbundled product or is unbundled after procurement

- (ii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as and remains a bundled product
- (iii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as a bundled product, even if it is subsequently unbundled
- (iv) Generation scheduled into a California balancing authority is considered eligible if it is procured as a bundled product, even if it is subsequently unbundled
- (v) Generation scheduled into a California balancing authority is considered eligible only if it is procured as and remains a bundled product
- (vi) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as a bundled product, even if it is subsequently unbundled
- (vii) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as and remains a bundled product

(viii) All of the above.

(b) Staff recommendation: None at this time

*The Utilities recommend a new option, labeled as Option (viii) above.*

*This would ensure that all eligible California generation (both bundled or unbundled), and all out of state generation that meet any of the criteria above, are included in Portfolio Content Category 1, as was clearly intended in SBx1 2. All in-state REC's will be included and all out-of-state contracts will be included in this Portfolio Content category under any of the criteria above. Out of State contracts that begin as a bundled product and are subsequently unbundled after entering into California will also remain in this category as was intended in SBx1 2. For example, if an entity has a bundled renewable resource scheduled into the State, once the energy is delivered into the State it should be classified in Portfolio Content Category 1 and remain in that category to the ultimate holder of the REC's. So if TID had a wind resource in Washington that was scheduled into the State, once it is delivered, the Portfolio Content Category 1 designation should remain with the REC, as the energy has been delivered to California and has served California load, regardless of the ultimate sink BA.*

- (2) Minimum percentage of reduction of procurement content requirement, upon successful application by POU, applied to this category (Public Utilities Code Sections 399.16 (e) and 399.30 (c)(3))
- (a) Compliance period ending December 31, 2013
- (i) Options:
1. Not less than 40%
  2. Not less than 33%
  3. Not less than 25%
  4. No defined limit; decided on a case-by-case basis
- (ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.

*The Utilities support the Staff recommendation. The POU's governing bodies are expressly given the discretion under SBx1 2 to address such considerations. The CEC may consider outlining the criteria and process it may use to identify violations of the POU application of this portion of the RPS.*

- (b) Compliance period ending December 31, 2016
- (i) Options:
1. Not less than 50%
  2. Not less than 40%
  3. Not less than 33%
  4. No defined limit; decided on a case-by-case basis
- (ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.

*The Utilities refer to the response under 2 (a) above.*

- (3) Determination that generation belongs in this category
- (a) Options (one or more of the following):
- (i) POU indicates which generation it believes belongs in this category as part of compliance reporting
  - (ii) Staff determination at request of POU
  - (iii) Committee determination at request of POU
  - (iv) Commission determination at request of POU
  - (v) At end of compliance period as part of compliance and verification by staff, approved by Commission
- (b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

*The Utilities agree with the Staff recommendation. In applying this process the*

*Utilities would urge the CEC to utilize existing reports and processes in place for submitting data to the CEC.*

- ii) Portfolio Content Category 2 – firmed and shaped incremental (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30

(c)(3)) (1) Definition:

(a) Location of renewable resource interconnection:

(i) Options:

1. May or may not be interconnected to a California balancing authority
2. Not interconnected to a California balancing authority

(ii) Staff recommendation: None at this time

*The Utilities support Option 2 above. As outlined above, all renewable generation interconnected to a California Balancing Authority (BA) should be considered Portfolio Content Category 1. Any firmed and shaped renewable resource not interconnected to a CA BA should be considered for Portfolio Content Category 2. It was clearly recognized early in the development of the new RPS legislation that in order to facilitate the “least cost, best fit” approach, the State would have to consider a way to facilitate the transfer of renewable electricity from out of the state in a manner that encouraged an efficient use of limited transmission assets. SBx1 2 does not outline any restrictions on the interconnection requirements of firmed and shaped resources in order to qualify for Portfolio Content Category 2.*

(b) Timing of incremental electricity resource scheduling into California balancing authority (scheduling may not precede generation of renewable product)

(i) Options:

1. Within one month of generation
2. Within same calendar year as generation
3. Within 12 months of generation
4. Within same compliance period as generation
5. Within 36 months of generation

(ii) Staff recommendation: None at this time

*The Utilities do not believe it is appropriate to set arbitrary time limits within which incremental electricity resources must occur. However, it would not be appropriate to establish a period any less than the existing 12 month true-up process outlined in the current RPS Guidebook, 4<sup>th</sup> Edition (August 2010). Further the Utilities, believe that using the calendar year 12 months for this true-up is overly restrictive, as the December true up can be onerous and punitive. Consider the dilemma of forecasting a variable renewable resource and bringing enough firming energy home to get full credit for the renewable generation while trying to make efficient use of limited transmission assets. A Utility could find itself having to schedule an inordinate amount of generation in 1 month just to comply with the calendar year requirement,*



*which would preclude the Utility from bringing firming energy into the State at a more appropriate high load interval. Thus the Utilities believe the 12-month requirement should be at a minimum only, given the current and expected transmission constraints on paths into the State. Any extension of the delivery requirement would encourage more efficient use of transmission paths, reduce costs, and be consistent with the least cost, best fit language in SBx1 2.*

(c) Renewable resource

(i) Options:

1. Intermittent resources only
2. Both intermittent and non-intermittent resources permitted

(ii) Staff recommendation: None at this time

*The Utilities support Option 2 as there is no distinction or reference made to “intermittent renewable resources” in the statute. If applying the Utilities suggestion above that Portfolio Content Category 2 resources should be those firmed and shaped resources not interconnected to a CA BA, it makes no difference whether the resource is intermittent or not. Both base-load and intermittent renewable resources need to be firmed and shaped for delivery into the state absent direct CA BA interconnection.*

(d) Incremental resource

(i) Options:

1. Incremental to California
2. Incremental to POU

(ii) Staff recommendation: None at this time

*The Utilities recommend applying both Options (i) and (ii). “Incremental Electricity” is akin to serving the next MW of demand, or said otherwise, energy demand over base load resources. The way the breakdown of renewable resources is in statute, it would be the “remaining” amount of a utility’s RPS obligation after Section 399.16(d) (“Early Action”), Section 399.16(b)(1), (“Procurement Category 1”), and Section 399.16 (b)(3) (“Procurement Category 3”) procurement criteria are applied. Utilities use firmed and shaped contracts to serve base demand, and follow incremental changes through the real time and day-ahead markets with additional, most commonly conventional, procurement from the energy and capacity markets.*

*Further, the Utilities would like to clarify that incremental energy need not be tied to a specific resource, and should be eligible to be sourced from anywhere within the WECC. In the webinar, CEC Staff explained its understanding on why the term “incremental” was used in statute. It was said that it was to ensure that utilities procure energy from “new or additional” sources other than had historically served California. The Utilities are curious as to why the requirement would be on firming energy and not the renewable resources themselves. Utilities are investing in renewable resources at unprecedented levels, and the use of firming energy should not be confused with “incremental” renewable resources. All references to “incremental” in statute refer to additional renewable procurement, and not the*

*firming energy itself. The Regulations must reflect this use of the term.*

- (e) Location of incremental resource relative to renewable resource
  - (i) Options:
    - 1. Must be within same balancing authority
    - 2. May or may not be within same balancing authority
  - (ii) Staff recommendation: None at this time

*The Utilities support Option 2. The current RPS Guidebook does not put a requirement on where the firming energy is located, and to do so now could significantly increase costs for all compliance entities.*

- (f) Execution of incremental resource contract
  - (i) Options:
    - 1. Must occur at the same time or after renewable resource contract is executed
    - 2. May occur before, at the same time, or after renewable resource contract is executed
    - 3. May occur before, at the same time, or after the renewable resource contract is executed, provided that the renewable resource and firming contract are referenced.
  - (ii) Staff recommendation: None at this time

*The Utilities recommend a new option, Option (3). Due to the nature of renewable procurement, the renewable and firming contracts are often not on parallel paths. Each contract can be with different counter parties and is commonly negotiated separately. Pre-determining the required order for execution of these various contracts advances no policy interest and would increase administrative and resource costs for procurement entities. Additionally, there is no reference in the statute to any requirement for firming energy to be contracted for concurrently with the underlying renewable contract.*

- (g) Contractual relationship between renewable and incremental resources
  - (i) Options:
    - 1. Clear relationship must exist in contract for the renewable and/or incremental resource in order for the generation to count toward this category
    - 2. No contractual relationship necessary
    - 3. No contractual relationship is necessary, but a clear reference between the renewable resource and the firming energy contract must exist.
  - (ii) Staff recommendation: None at this time

*The Utilities recommend a new option, Option (3). The Utilities acknowledge that a clear connection must exist between the renewable resource and firming resources. We disagree, however, that such connection must be in contract. As stated above, the renewable and firming contracts are often not on parallel paths. Each contract*

*can be with different counter parties and is commonly negotiated separately. Requiring that the two arrangements have a contractual relationship would again impose arbitrary mandates that advance no policy objective, and would increase costs for procurement entities.*

- (2) Determination that generation belongs in this category
  - (a) Options (one or more of the following):
    - (i) POU indicates which generation it believes belongs in this category as part of compliance reporting
    - (ii) Staff determination at request of POU
    - (iii) Committee determination at request of POU
    - (iv) Commission determination at request of POU
    - (v) At end of compliance period as part of compliance and verification by staff, approved by Commission
  - (b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

*The Utilities support the Staff recommendation.*

*The Utilities believe the definition as currently drafted in the RPS Eligibility Guidebook, which references Public Resources Code 25741, is the most accurate definition of “firmed and shaped” and should continue to be used for the RPS program under SBx1 2. Generally, the RPS Guidebook reference to firming and shaping provides for different location and time parameters of delivering the RPS eligible energy into California. Specifically, out-of-state energy may be “firmed” or “shaped” within the calendar year. “Firming and shaping” refers to the process by which resources with variable delivery schedules may be backed up or supplemented with delivery from another source to meet customer load” (RPS Guidebook, p37-38). To count generation from out-of-state facilities for RPS compliance, the RPS-certified facility must enter a power purchase agreement with a retail seller, procurement entity, or third party. The power purchase agreement must include both the RECs and electricity generated by the facility as a bundled commodity, and a matching quantity of electricity must be delivered to an in-state market hub (also referred to as “zone”) or in-state point of delivery (also referred to as “node”). The retail seller or procurement entity and the seller may negotiate which party is responsible for securing transmission, as necessary, at any point along the delivery path as long as the energy is delivered into California.*

*The measurement, reporting, and verification of this category could be accomplished in the following manner:*

- 1. Measurement: At the Generator Level through WREGIS and MV90 records; at the delivery level through WREGIS).*
- 2. Reporting: Through the protocols already established in WREGIS.*
- 3. Verification: A cross-check of the POU Power Source Disclosure Form and the GHG Mandatory Reporting Regulation Power Transactions Template.*

iii) Portfolio Content Category 3 – all other, including unbundled renewable energy credits (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))

(1) Definition:

(a) Options:

(i) All out of State unbundled renewable energy credits and any other generation that does not qualify for portfolio content category 1 or 2

(ii) Any generation that does not qualify for portfolio content category 1 or 2

(b) Staff recommendation: None at this time

*The Utilities support a modified version of Option (i), as shown above. The qualifying phrase “that do not qualify for portfolio content category 1 or 2” to both RECs and generation. Given that all in-state REC’s should be included in Portfolio Content Category 1, the remaining RECs would be designated for Portfolio Content Category 3. In addition, it was intended that all other renewable generation not meeting the requirements of Portfolio Content Categories 1 and 2 will fall into this Category.*

(2) Determination that generation belongs in this category

(a) Options (one or more of the following):

(i) POU indicates which generation it believes belongs in this category as part of compliance reporting

(ii) Staff determination at request of POU

(iii) Committee determination at request of

POU (iv) Commission determination at request of POU

(v) At end of compliance period as part of compliance and verification by staff, approved by Commission

(b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

*The Utilities support Staff’s recommendation. Once the CEC has finalized the definitions of each procurement category, the Utilities believe it is ultimately up to each POU, under the direction of its governing body, to make their individual determination of which category each contract belongs in since the POU’s governing body has the ultimate authority and responsibility to guide the POU’s procurement planning and decisions. WREGIS could be modified, if necessary, to include a contract classification designation in order to track these various categories.*

## **Compliance and verification**

a) Verification process

i) Options:

- (1) Include POU verification as part of current RPS Verification Report; full report will be sent to both CPUC and ARB
    - (a) Adopt annually
    - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
  - (2) POUs have a separate verification report
    - (a) Adopt annually
    - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
- ii) Staff recommendation: Option (2)(b); Verification of POU and IOU compliance should take place under separate reports, so that a complication in verifying information from one group will not needlessly delay the timely verification of the other. As compliance can only be determined at the end of each compliance period, staff recommends only adopting a verification report after each period. For years when a report is not adopted, annual procurement data will be posted to allow tracking of progress toward RPS targets. An annual workshop could be held to publicly discuss findings.

*The Utilities agree with Staff's recommendation. Since the CEC already collects renewable procurement information in the Power Source disclosure and IEPR processes, we believe a simple end of compliance period filing with annual postings is appropriate. The Utilities agree with the CEC in that a third party verifier is not needed to verify the POU's contracts. If using the process described above, whereby WREGIS is modified to allow for a category declaration at the time of retirement, the CEC can run a query of the retirement database, or perform spot checks on a few select RECs to assure the Utility is in compliance with the governing body's directive and the requirements of SBx1 2. As the POU will have the authority and responsibility to plan and procure its resource mix to meet the content category requirements of the legislation, the POU will necessarily maintain documentation it relies on to substantiate its category designation*

*The "RPS Verification Report" referred to is a process currently undertaken by the CEC to review the IOU compliance with existing RPS requirements. The question being asked is whether the CEC should include POU compliance review as part of their existing IOU report. The Utilities agree that this would not be appropriate for the reasons discussed at the outset of these comments. The Utilities likewise agree with Staff's approach to the secondary question of when such a report should be conducted and presented to the full Commission for adoption. The Utilities understand that such report could be used to identify and refer violations of the RPS by POUs, but caution that any such report for POUs should not be a prescriptive process with the effect of stepping into the shoes of the governing board, and should not be transmitted to the CPUC.*

- b) Non-compliance triggers
  - i) Options (one or more of the following):

- (1) Does not meet procurement target requiring the utility to procure a minimum quantity of eligible renewable energy resources for a compliance period, ~~without a demonstration of conditions beyond the control of the POU that would delay timely compliance~~ unless the governing board of the local publicly owned electric utility adopts conditions that allow for delaying timely compliance consistent with section 399.15(b)(5) and those conditions were met or unless the governing board of the local publicly owned electric utility adopts cost limitations for procurement expenditures consistent with section 399.15(c) and compliance would require exceeding the cost limitations
  - (2) Does not meet portfolio content category required minimum or maximum percentages for a compliance period, ~~without a demonstration of conditions beyond the control of the POU that would delay timely compliance~~ unless the governing board of the local publicly owned electric utility adopts conditions that allow for delaying timely compliance consistent with section 399.15(b)(5) and those conditions were met or unless the governing board of the local publicly owned electric utility reduces a procurement content requirements consistent with section 399.16(e).
  - (3) Not timely filing sufficient documentation for the Energy Commission to determine POU compliance with the law at the end of a compliance period, without successful application for a late filing
    - (a) More than 30 days late
    - (b) More than 60 days late
    - (c) More than 90 days late
    - (d) Not submitted
    - (e) Other
  - (4) One or more required annual reports is not received in a timely manner
    - (a) More than 30 days late
    - (b) More than 60 days late
    - (c) More than 90 days late
    - (d) Not submitted
    - (e) Other
  - (5) Procurement plan is adopted late
  - (6) Does not provide adequate documentation to demonstrate that conditions exist beyond the control of the POU that would delay timely compliance, and that reasonable measures were taken to overcome those conditions
- ii) Staff recommendation: Options (1), (2), (3)(c), (3)(d), (6); the law clearly sets targets for each compliance period and minimum and maximum percentages for each portfolio content category. Additionally, the Energy Commission will need to timely determine each POU's status in achieving the goals of the RPS targets for each compliance period and will rely on reports and documentation submitted by the POU's for those compliance years.

*The Utilities support the Staff recommendation to include options (1) and (2) and (3)(c) and 3(d) with the clarifying language included above. However, the Utilities believe that option (6) is duplicative and irrelevant given the inclusion of Options (1) and (2). Furthermore, option (6) lacks certainty.*

*The Utilities also caution that no two non-compliance triggers should be weighted the same. A delay in reporting should not be construed to be equal to a fundamental lack of cooperation and ignoring of the statute all together.*

- c) Criteria and process for determining whether POU have met procurement requirements
  - i) Procurement targets for each compliance period
    - (1) Process used to determine POU compliance
      - (a) Options:
        - (i) Same process as that used for retail sellers
        - (ii) Same process, but require POU to procure renewable resources for the remaining unmet need after long-term contracts executed after June 1, 2010, are removed, up to the total number of kWhs that represents the percentage of total retail sales required for that compliance period
        - (iii) Count POU renewable resources procured to meet the remaining unmet need after all long-term contracts are accounted for, up to the total number of kWhs that represents the percentage of total retail sales required for that compliance period
      - (b) Staff recommendation: None at this time

*The Utilities recommend a new option, Option (iii).*

*It is the POU governing body's responsibility to adopt, implement and enforce procurement targets for their respective POU that meet the required standards, as well as various measures that may excuse delays in or failure to reach such targets. The CEC's responsibility is to review reports from these entities and determine whether the goals were met. As such, it is appropriate for the CEC to identify general criteria and parameters which the CEC will consider to determine whether the required standards were met by a POU, or properly excused. Such criteria will assist the POU governing bodies in establishing their individual RPS programs. Thus, some guidance can be provided to ensure that the CEC regulations lead POU toward compliance and not pit-falls.*

*It would not be appropriate for the CEC regulations to set up specific program designs that all POU are bound to. Such an approach would be contrary to the letter and spirit of the new legislation. In previous undertakings when faced with a similar question of how to balance the various aspects of local control, providing the local governing authorities sufficient flexibility to create a program that meets the state's goals in a manner best suited for the local community, as well as some level of regulatory certainty, the CEC created a voluntary advice procedure. This procedure allows a POU to submit a nonbinding request for a pre-determination of qualification. (See, e.g., CEC SB 1368 Regulations establishing and implementing a greenhouse gases emission performance standard for local publicly owned electric utilities, Chapter 11, Article 1 Section 2907.) The Utilities suggest the CEC consider whether a similar approach could be considered here.*

*As discussed in response to the foundational issues and elsewhere in these comments, it is not appropriate for the CEC to adopt IOU criteria or processes for the POU's.*

- (2) Time period used to determine compliance for compliance period ending December 31, 2016 (Public Utilities Code Section 399.30)
- (c)(2) (a) Options:
- (i) January 1, 2016 to December 31, 2016
  - (ii) January 1, 2014 to December 31, 2016
  - (iii) Other time period
- (b) Staff recommendation: None at this time

*The Utilities support Options (i). For the 1<sup>st</sup> compliance period it is clear that the compliance obligation is measured by the load served over each of the years in the compliance period. For the second and third periods it is equally clear that the measuring point is whether the designated target is met as of the end of the final year. This does not preclude POU's from establishing "minimum quantity" and "percentage" targets for intervening years that show "reasonable progress" as determined by POU governing body.*

- (3) Time period used to determine compliance for compliance period ending December 31, 2020 (Public Utilities Code Section 399.30)
- (c)(2) (a) Options:
- (i) January 1, 2020 to December 31, 2020
  - (ii) January 1, 2017 to December 31, 2020
  - (iii) Other time period
- (b) Staff recommendation: None at this time

*Same response as for the previous issue.*

ii) Percentage limitations for portfolio content categories

- (1) Portfolio content category 1 (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))
- (a) Options (one or more of the following):
- (i) Use contract information, which could demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable resource and whether generation in this category is procured as a bundled product
  - (ii) Use NERC e-Tags to verify generation scheduled into a California balancing authority; the NERC e-Tag must show that the generation came from the same RPS-eligible resource as the RECs with which the NERC e- Tag is matched
  - (iii) Use dynamic transfer agreements to verify generation dynamically transferred to a California balancing authority
  - (iv) Meter data on generation that never leaves a California Balancing Authority
- (b) Staff recommendation: Options (i), (ii), (iii); contract information would



provide appropriate assurance, as needed, that generation counted toward this category is scheduled into a California balancing authority and/or bundled. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority from the renewable resource. Dynamic transfer agreements with the balancing authority sufficiently demonstrate that the generation represented belongs in this category.

*The Utilities support the Staff recommendation, but suggest that an additional option, outlined above as Option (iv), be included and supported by Staff, as well as a statement that one of these four options can provide the needed verification, and not all four must be utilized.*

*Metered data can provide the necessary proof that, 1) Generation came from a resource qualified under Portfolio Content Category 1 and, 2) that said generation occurred in the time period as claimed by an entity.*

*While the Utilities agree in principal with the use of any and all information necessary to verify the POU's compliance, we caution that NERC e-tags contain confidential information and are primarily used as a reliability tool. Handling NERC e-tags in a manner which maintains the confidential nature is critical. WREGIS has procedures in place that pull only the necessary information from an e-tag, and confidential information like Market Path and Transmission Path contracts remain confidential.*

(2) Portfolio content category 2 (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))

(a) Firmed and shaped:

(i) Options (one or more of the following):

1. Use contract information to demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable and incremental resources and/or a contractual link between the renewable resource and the incremental resource
2. Use NERC e-Tags to verify firmed and shaped generation scheduled into a California balancing authority; NERC e-Tags must include the RPS ID # of the resource with which the NERC e-Tag is matched

(ii) Staff recommendation: Options 1, 2; contract information would provide appropriate assurance, as needed, that generation counted toward this category is scheduled into a California balancing authority and/or demonstrates a contractual connection. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority and can show a link to the RPS-eligible resource via the RPS ID#.

*The Utilities support the Staff recommendation and refer to our comments directly above.*

(b) Incremental:

- (i) Options:
  1. Contract information to demonstrate, as necessary, the timing of contract execution for and/or the contractual relationship between the renewable and incremental resources
- (ii) Staff recommendation: Option 1; contractual information should be adequate to demonstrate the incremental nature of the generation that is used to firm and shape renewable generation.

*The Utilities support the Staff recommendation*

- (3) Portfolio content category 3 (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))
  - (a) Options:
    - (i) Any renewable generation or RECs that do not qualify for the first two categories is automatically counted in this category
    - (ii) All unbundled renewable energy credits, regardless of whether the renewable resource has its first point of interconnection with a California balancing authority, automatically count toward this category
  - (b) Staff recommendation: None at this time

*The Utilities support a modified version of Option (i) as identified above. In addition, the Utilities would like clarity that the questions above pertain to the verification of the POU's Portfolio Content Category only AFTER a compliance filing has been made by the POU.*

- iii) Reasonable progress in intervening years of each compliance period (Public Utilities Code Section 399.30 (c)(2))

- (1) Options (one or more of the following):
  - (a) Summarize how POUs define their own reasonable progress without opinion
  - (b) Define reasonable progress in the regulations as a percentage
  - (c) Define the process and criteria in the regulations used to determine reasonable progress for POUs
  - (d) Release verified data
    - (i) Adopted by full Commission
    - (ii) Not adopted by full Commission
  - (e) Release unverified data
    - (i) Adopted by full Commission
    - (ii) Not adopted by full Commission

(f) Outline the process and criteria in a guidance document that the CEC will use to assess whether the POU has met its individual goal for reasonable progress in the intervening years.

- (2) Staff recommendation: Options (c), (e)(ii); statute limits the authority to mandate demonstration of specific quantities of procurement for intervening years. If a reasonable process was identified in regulations for POUs to follow in achieving their ultimate RPS achievement goals at the end of each compliance period, the Energy Commission could release unverified data submitted in the

POUs' annual reports to serve as a snapshot of POU progress in intervening years.

*The Utilities disagree with Staff's recommendation, and offer option (f) for consideration. The legislation requires POUs in "intervening years" to procure quantities of eligible renewable resources that reflect reasonable progress toward the compliance targets. The POUs governing bodies have the statutory authority to adopt renewables procurement plans for their utilities so long as those plans provide for such "reasonable progress". The CEC's role is limited to reviewing POU renewables procurement plans and checking to see that reasonable process was made. The Utilities further note that if the compliance targets are achieved at the end of the compliance period, by definition such reasonable progress obligation is met.*

iv) Deficits associated with a previous renewables portfolio standard (Public Utilities Code Section 399.15 (a))

(1) Options:

- (a) No deficits shall be applied to future compliance periods if a POU procured at least 14 percent of retail sales from renewable energy resources in 2010 (from 399.15 (a))
- (b) No deficits shall be applied to future compliance periods if a POU procured at least 10 percent of retail sales from renewable energy resources in 2010
- (c) No deficits shall be applied to future compliance periods regardless of the percentage of retail sales procured from renewable energy resources in 2010

(2) Staff recommendation: None at this time

*The Utilities support Option (c) above. Section 399.15 (a) addresses IOU deficits. There is no comparable provision for POU's.*

v) Excess procurement from previous compliance periods (Public Utilities Code Sections 399.13 (a)(4)(B) and 399.30 (d)(1))

(1) When can excess procurement begin to be applied to future compliance periods, for those POUs that adopt rules permitting the use of excess procurement?

(a) Options:

- (i) January 1, 2011 (date provided in 399.13(a)(4)(B))
- (ii) June 1, 2010
- (iii) Another date
- (iv) At the discretion of POUs

(b) Staff recommendation: Option (i); staff can see no compelling reason to apply a different standard from that applying to retail sellers.

*According to SBx1 2, procurement after January 1<sup>st</sup>, 2011 is eligible to be "applied to any subsequent compliance period." As such, the Utilities believe that any excess procurement pre-2011 can be applied to the 1<sup>st</sup> compliance period (2011-2013), as we believe the language in the statute only applies to the 2016 and 2020 compliance*

*periods. Further, SBx1 2 does not preclude a POU's local governing body from carrying forward any pre-2011 procurement.*

*This would also be consistent with the grandfather clause in the bill, as any procurement that counted at the time shall "count in full" (399.16). For example, TID was one of the POU's that acted early by purchasing the Tuolumne Wind Project(TWP) in 2009. The funds for the project were committed in 2008 based on Governor Schwarzenegger's Executive Order establishing the 33% RES, and impending legislation. The purchase of the wind farm was more than TID needed to do to comply with it's Board mandated policy of 20% RPS by 2017, however TID was assuming, based on the legislative and regulatory activity at the time, that TID would receive credit for being "ahead of the game". In 2010, following the startup of the Tuolumne Wind Project in 2009, TID's renewable procurement was roughly 24%. The extra 4% of eligible renewable energy is an example of early action that should allowed to be carried forward. Thus the Utilities suggest that POUs be allowed to apply pre-2011 procurement to the 2011-2013 compliance period provided that:*

- i. The excess procurement comes from a resource eligible under SBx1 2;*
- ii. The excess procurement is not a Portfolio Content Category 3 type of transaction.*

- (2) Can excess procurement from portfolio content category 3 be applied toward a future compliance period, for those POUs that adopt rules permitting the use of excess procurement?
  - (a) Options:
    - (i) Yes
    - (ii) No (from 399.13 (a)(4)(B))
  - (b) Staff recommendation: Option (ii); staff can see no compelling reason to apply a different standard from that applying to retail sellers

*See response to (v),(1) above.*

- (3) Length of contracts allowed for excess procurement that can be applied to a future compliance period, for those POUs that adopt rules permitting the use of excess procurement?
  - (a) Options:
    - (i) At least 10 years (from 399.13(a)(4)(B))
    - (ii) At least 5 years
    - (iii) At least 3 years
    - (iv) At the discretion of POUs
  - (b) Staff recommendation: Option (iv); as contracts remain under the purview of POUs and are not approved by the Energy Commission, it is reasonable to leave this issue to the discretion of POUs.

*The POU's support the Staff recommendation as this captures the intent and spirit in statute to recognize the authority of the POU's local governing bodies to dictate the contracting activities of the POU on behalf of their ratepayers.*

d) Conditions allowing waiver of enforcement

- i) Reasonable conditions that allow for delay of timely compliance (including inadequate transmission, unanticipated curtailment of resources, and permitting, interconnection or other circumstances that delay procurement), for those POU's that adopt such conditions (Public Utilities Code Sections 399.15 (b)(5)-399.15 (b)(9) and 399.30 (d)(2))

(1) Options (one or more of the following):

- (a) Use the same criteria for timely compliance delays as those used for retail sellers
- (b) Establish criteria in regulations by which Energy Commission will determine reasonableness of timely compliance delays; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POU's that do not meet targets
- (c) Tiered compliance based on size of POU
- (d) Exemption from demonstrating compliance for POU's under a certain size
- (e) Establish criteria and process in a guidance document to outline the criteria Energy Commission will use to evaluate at the end of each compliance period for those POU's that do not meet targets**

(2) Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of timely compliance delays should be similar for retail sellers and POU's, there may be different considerations that need to be taken into account, requiring slight disparities. In addition, no language in the statute indicates that exemptions or variations in the rules are necessary for smaller POU's.

*The Utilities support a new option (e), as shown above.*

*There are a multitude of reasons why a POU may have difficulty in meeting the RPS compliance targets outlined in SBx1 2. Generation and transmission curtailments, along with unexpected, force majeure type events can create unexpected circumstances of non-compliance. Unforeseen cost impacts of a renewable resource, potential rate impacts from contracting with that resource, along with tight credit markets that may prevent the financing of a particular resource, may all impact a POU's ability to meet the targets in SBx1 2.*

*Some examples of barriers encountered by the Utilities follow:*

*Third party policies, such as those currently being deployed by the Bonneville Power Administration (BPA), are creating a barrier for the Utilities, and other POU's, from receiving the wind generation they have contracted for. The BPA Dispatcher Standing*

*Order 216 (DSO 216) was implemented in 2009 and is causing wind generators to limit generation or curtail schedules when BPA runs out of imbalance reserves. BPA's Environmental Redispatch Policy was implemented by BPA in spring of 2011 and limits generation from wind generators in the BPA balancing area. Although BPA serves the curtailed generation with Federal hydropower, some of this replacement energy is not recognized as an eligible renewable resource under SBx1 2. These policies have directly affected renewable procurement in 2010 and 2011 in a negative way. For example, TID, conservatively, lost over 8500 Mwhrs of wind generation this spring due to the Environmental Redispatch Policy alone. In addition, there was an increase in DSO 216 Limits due to the "crimping" of incremental and decremental reserves due to high spring time flows. To put the loss in perspective, TID's cumulative RPS obligation for May and June 2011 was roughly 65,000 Mwhrs. Conservatively, the loss of 8500 Mwhrs equates to over 13% of TID's RPS requirement for those 2 months.*

*Permitting issues and environmental litigation can also impact a POU's ability to meet the targets of SBx1 2. For example, REU entered into a 15-year contract for biomass energy from a Northern California lumber mill in November 2005. In February 2007 a local environmental group challenged the project, essentially halting construction. After various project certifications and appeals by the environmental group, the project finally became operable in early 2011. Unfortunately, Redding had terminated its contract with the project prior to its becoming operable.*

*A local biogas digester project MID contracted with experienced a delay of over 6 months due to local air permitting obstacles and the extended timeline for processing grants for which the renewable project qualified. Although the relative size of the project was very small compared to other projects within MID's electric portfolio, nonetheless the delays were outside the control of MID. Similar delays in new projects could cause a utility to miss a specific RPS compliance target.*

*Potential delays can also occur due to financing delays. In one of MID's experiences, the negotiation of a renewable power purchase agreement lasted over two years. The developer was a small firm that could not retain investors for the revitalization of a biomass project. Ultimately no contract was finalized, removing this potential base load facility from MID's available resource mix.*

*An often ignored cause of delay is the receptiveness of a project by the local community. Recently, MID worked on the development of two different projects where, in each instance, there was local opposition to the location of the projects. Although MID was able to work through these concerns with landowners such opposition can often lead to project delays due to extended environmental processes and subsequent litigation. Moreover, nothing prevents the general public from filing a*

*protest to any determination made by a local Board- thus this is another instance where the control of the delay can easily escape and cause a POU to miss an RPS compliance target.*

*Lastly, the location of the renewable resource will play a big role in the procurement strategy for the POUs. The Utilities participated in the TANC Transmission Project which was in part designed to open access to additional amounts of California eligible renewable resources. However, the public vehemently protested the project, ultimately leading to its termination. The inability to procure sufficient transmission is another example of a delay that is out of the control of a POU's ability to meet future RPS compliance targets.*

*Further, Section 399.30 (d)(2), through reference to 399.15 (b)(5), clearly outlines conditions beyond the control of the POU that could prevent compliance. Ultimately, identifying the individual conditions that allow for delaying specific POU's compliance, pursuant to Section 399.30(d)(2) are at the discretion of the POU's governing board.*

- ii) Reasonable conditions that allow procurement expenditures to meet or exceed cost limitations, for those POUs that adopt such conditions (Public Utilities Code Sections 399.15 (c) and 399.30 (d)(3)) (1) Options:
  - (a) Use the same criteria for cost limitations as those used for retail sellers
  - (b) Establish criteria in regulations by which Energy Commission will determine reasonableness of cost limitations; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POUs that do not meet targets
  - (c) *Establish criteria and process in a guidance document to outline the criteria Energy Commission will use to evaluate at the end of each compliance period for those POUs that do not meet targets*
- (2) Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of exceeding cost limitations should be similar for retail sellers and POUs, there may be different considerations that need to be taken into account, requiring slight disparities.

*The Utilities support a new Option (c), as shown above.*

*As mentioned above, POU's and IOU's contract in very different ways. Whereas the IOU's are operated on a for profit basis, POU's are operated in a manner that seeks to maximize ratepayer benefit and recognize local control. Due to a variety of factors, renewable contracts fetch a premium in the marketplace. A POU's governing body must weigh the statutory requirements with the sentiment of the ratepayers and the mandate to provide cost based service in an equitable manner. POU's maintain cash*

*reserves to maintain high credit ratings because they are not publicly traded and subject to the whim of shareholders or Wall Street. POU's answer to the people they serve and their local governing body ultimately has the authority to decide how much appetite, or "premium", a constituency is willing to support. The POU governing bodies could, for example, tie the cost limitation to rate impacts, along with several other variables determining the overall financial health of the POU, which maintain the governing bodies' authority to protect previous ratepayer investments.*

e) Dispute resolution process

- i) If POU's dispute Energy Commission findings
  - (1) Options:
    - (a) Same process currently used for retail sellers that dispute Energy Commission findings
    - (b) Different process from that used for retail sellers
  - (2) Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that applying to retail sellers.
- ii) If another party disputes Energy Commission findings
  - (1) Options:
    - (a) Same process outlined in the Renewable Energy Program Overall Program Guidebook
    - (b) Different process from that outlined in the Renewable Energy Program Overall Program Guidebook
  - (2) Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that presented in the RPS Guidebook.

*The Utilities support the CMUA comments referencing the foundational issues that remain with respect to Commission and POU governing board jurisdiction. Dispute resolution should be discussed later in these proceedings once the substantive foundational issues have been resolved.*

## **Reporting**

- a) Regulatory streamlining
  - i) Options (one or more of the following):
    - (1) Modify existing forms submitted to the Energy Commission by POU's to reflect reporting requirements imposed by SB X1 2
    - (2) Allow consolidated/aggregated reports at the discretion of POU's; those whose reports are aggregated by another party must submit an attestation verifying that all of the information representing their POU is correct and complete
    - (3) Do not allow consolidation of reports



- ii) Staff recommendation: Options (1), (2); staff feels that reporting should be streamlined in any possible way, including aggregated reports and modifications to existing reports already submitted to the Energy Commission.

*The Utilities support the staff recommendation and are pleased to see that Staff recognizes the opportunity for report consolidation, as the POU's already report the pertinent information to assess compliance with the RPS in various other filings. In the past, the Utilities have collaborated with SCPPA and NCPA to promulgate revised templates for reporting in the interest of efficiency, and look forward to engaging in a similar process.*

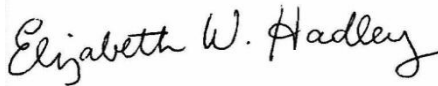
**CONCLUSION**

The Utilities appreciate the opportunity to comment on the CEC **Docket No. 11-RPS-01** and welcome the chance to discuss these concepts further.

Respectfully submitted,



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Elizabeth Hadley  
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