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BEFORE THE
CALIFORNIA ENERGY COMMISSION

RENEWABLES PORTFOLIO STANDARD

Docket No. 11-RPS-01

**COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE
33% RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT
REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES**

I. SUMMARY

The City and County of San Francisco (CCSF or City) submits these comments on the Draft Regulations that were published on February 17, 2012. CCSF appreciates the time and effort that Commission staff has spent in developing the Draft Regulations, as well as staff's willingness to meet with the CCSF and other stakeholders to hear their concerns.

The City, through its Public Utilities Commission, owns and operates a publicly-owned electric utility (POU), providing approximately 1 million megawatt-hours (MWh) of electricity annually to meet the municipal requirements of CCSF, including water and wastewater systems, public transit, San Francisco International Airport, and other municipal facilities and tenants. CCSF also provides wholesale power to the Modesto and Turlock Irrigation Districts (MID and TID), and to other customers, consistent with contractual obligations and federal law. CCSF's Hetch Hetchy hydroelectric system generates an average of 1.6 million MWh of clean energy each year and our power supply portfolio currently includes 7 MW of solar photovoltaic and biogas installations. The City is committed to the development of renewable resources and supports the implementation of the California Renewable Energy Resources Act (CRERA).

Senate Bill (SB) X1-2, which enacted the CRERA, established an alternative compliance obligation for CCSF to meet its RPS requirements in California Public Utilities Code Section 399.30(k).¹ CCSF is required to procure RPS-eligible resources, including renewable energy

¹ Section 399.30(k) states: "A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to Section

credits, to meet only the electricity demands that are not met by its hydroelectric generation, so long as that generation is greater than 67% of CCSF's electricity resources.

In adopting Section 399.30(k), the Legislature recognized CCSF's historically low GHG emissions from its Hetch Hetchy hydroelectric system, and determined that any RPS requirements applied to CCSF should not displace one GHG-free resource (Hetch Hetchy generation) with another (RPS-eligible resources). This would increase costs for the CCSF with no incremental progress or contribution towards the State's goals for reduced reliance on fossil fuels and reductions in GHG emissions. The provisions of Section 399.30(k) will ensure that CCSF will continue to have among the lowest GHG emissions per MWh of any California electric utilities, even after the 33% RPS standard has been met in 2020.

CCSF recommends four modifications to the Draft Regulations that are intended to achieve the goals of Section 399.30(k), and SBX1-2, while minimizing undue cost and operational burdens.

1. The regulations specifically applicable to the CCSF in Section 399.30(k) should conform to the statutory language. The City also recommends modifications to provide clarification and consistency.
2. The Portfolio Content Category ("Bucket") rules of Section 399.16 should not apply to the CCSF, because it is not required by the statute and creates undue operating burdens for the CCSF, with no corresponding benefits towards achieving State goals for reductions in fossil fuel use and GHG emissions.
3. The regulations should include a "cure period" between the end of the applicable compliance period and the time that POUs file their reports with the Commission during which POUs could voluntarily procure additional RPS resources to meet shortfalls.
4. The Portfolio Content categories should be changed so that RECs associated with RPS resources that initially meet the requirements of "Bucket 1" or "Bucket 2" would keep these designations if they were subsequently sold or transferred separate from the underlying energy.

25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements." Subsequent statutory references are to the Public Utilities Code, unless otherwise indicated.

In addition to these four recommendations, the CCSF is working closely with the California Municipal Utilities Association (CMUA) and supports the broader issues raised by the CMUA in its written comments. Our detailed comments for each of our four recommendations are provided below and we provide suggested modifications to the Draft Regulations in Attachment A.

II. PROPOSED CHANGES TO THE REGULATIONS SPECIFICALLY APPLICABLE TO THE CCSF

A. Changes to Conform to Statutory Language

CCSF has identified some instances where the Draft Regulations use terms that are similar, but not identical, to what is contained in the statute, with the result that the regulations do not accurately reflect the statutory provisions. For example, the Draft Regulations require the CCSF to procure “electricity products” to meet its needs unmet by its Hetch Hetchy generation. Under Section 399.30(k), however, the CCSF is required to “procure eligible renewable energy resources, including renewable energy credits” to meet its “renewable energy procurement requirements.”²

Similarly, Section 399.30(k) defines the CCSF’s qualified hydroelectric generation as a hydroelectric facility that “does not meet the definition of a renewable electrical generation facility pursuant to Section 25741 of the Public Resources Code.” This same definition should be used in the regulations, but the Draft Regulation uses the phrase “eligible renewable energy resource” instead. While these two phrases are comparable in the current Draft Regulations, as CMUA will note, in its comments,³ the definition of “eligible renewable energy resource” should include renewable resources under Sections 399.12(e) and Section 399.12.5.

B. Clarifications

SBX1-2 also contains terms applicable to the CCSF that should be clarified or defined, as follows:

² This section, unlike Sections 399.15(a) applicable to retail sellers or Section 399.30(a) applicable to POUs, does not require the CCSF to procure “electricity products” to meet its RPS obligations.

³ CCSF understands that CMUA intends to submit this mark-up to the CEC by April 6, 2012.

- The CCSF’s RPS obligation pursuant to 399.30(k) is based on our “electric demands,” while the RPS obligations for most other POU’s are based on their “retail sales.” The CCSF recommends that the CCSF’s “electric demands” should be defined as its “retail sales,” clarifying that the CCSF’s RPS obligation does not extend to its sales to wholesale customers, many of whom (such as MID and TID) have their own RPS obligations.
- A definition of “retail sales” should be provided. We recommend using the Commission’s current definition of retail sales used in its Power Source Disclosure (PSD) reporting requirements. Use of similar definitions for both the PSD and RPS programs should simplify POU reporting obligations.

III. THE PORTFOLIO CONTENT CATEGORY (“BUCKET”) RULES OF SECTION 399.16 SHOULD NOT APPLY TO CCSF’S RPS OBLIGATIONS UNDER 399.30(K)

The Draft Regulations require that when the CCSF procures RPS resources to meet its RPS obligations under Section 399.30(k), those resources must be procured according to the Portfolio Content Category (commonly called the “Bucket”) rules of Section 399.16.⁴

This requirement should be removed from the Draft Regulations because it is not required by the statute, does not further achievement of the State’s goals for fossil fuel and GHG reductions, and imposes undue cost burdens on the CCSF by requiring it to procure RPS resources to displace our Hetch Hetchy supplies.

A. Not Required by Statute

The statute does not require application of the Bucket rules to the CCSF’s RPS requirement in Section 399.30(k). The RPS requirements for other POU’s under SBX1-2 are contained in Section 399.30(a)-(c), while the CCSF’s RPS requirement is governed by Section 399.30(k). Section 399.30(a) requires that these POU’s “implement a renewable energy resource procurement plan” to meet their unmet long-term needs that “achieve[s] the target of subdivision [399.30](c),” and the Bucket requirements are contained in 399.30(c)(3).⁵ There is no

⁴ The requirements of the Bucket rules are contained in Section 3204(e) of the Draft Regulations and the CCSF is made subject to these requirements in Sections 3204(a)(8) and 3207.

⁵ Section 399.30(c)(3) requires POU’s to adopt rules “consistent with” the requirements of Section 399.16, which contains the Bucket rules.

comparable requirement in Section 399.30(k) for the CCSF to meet the requirements of Section 399.30(c) broadly, or 399.30(c)(3) (the Bucket rules) in particular.

This reading of the statute is further supported by examining the specific requirements of Section 399.30 (b) and (c) in their entirety. These sections establish several requirements for POUs to (1) meet an increasing RPS requirement over three compliance periods from 2011-2020 (Sections 399.30(b)(1)-(3)), (2) procure 20% of their retail sales from RPS resources for the period 2011-2013 (399.30(c)(1)), (3) reflect reasonable further progress toward meeting the 2020 RPS goal (399.30(c)(2)); and (4) meet the Bucket requirements of Section 399.16 (399.30(c)(3)).

Neither Section 399.30(k), nor the Commission's Draft Regulations, apply Section 399.30(b) and the first two sections of Section 399.30(c) to the CCSF's RPS requirement as established by Section 399.30(k). It is consistent with this reading to determine that the Bucket rules imposed on POUs in 399.30(c)(3) are equally inapplicable.

B. Does Not Further Achievement of State Goals and Imposes Undue Cost Burdens

One of the primary purposes of the Bucket rules (particularly the increasing percentage of RPS resources that must be acquired from Bucket 1) is to encourage and promote increased long-term investment in California renewables.⁶ Imposing these Bucket 1 minimums on CCSF's fluctuating RPS obligations does not contribute to meeting this long-term goal.

Under SBX1-2, POUs' RPS requirements are known in advance and relatively predictable. POUs are given nine years to establish a long-term portfolio of resources and three-year compliance periods to provide time and flexibility to meet the various Bucket categories.

In contrast, the CCSF's RPS requirement pursuant to 399.30(k) is an annual requirement that is driven by the availability of our hydroelectric generation, and can vary significantly based on

⁶ Bucket 1 includes in-state renewable resources directly connected to California's transmission or distribution grid. It also includes renewable energy that is directly scheduled or dynamically transferred to California from out-of-state.

hydroelectric conditions and maintenance outages. As a result, the CCSF's RPS requirement will be short-term, variable, and relatively unpredictable.⁷

A requirement to meet possible but uncertain short-term shortfalls with Bucket 1 resources will result in over-procurement in most years, while making up shortfalls on a short term basis as they occur will not contribute to long-term investment in RPS resources. In either case, the CCSF will be subject to increased costs with no commensurate contribution towards state-wide RPS goals. The potential for undue cost burdens on the CCSF is heightened by the Draft Regulation's proposed prohibition of unbundled RECs in Bucket 1 and Bucket 2, both of which limit the ability and/or increase the cost of the CCSF acquiring and/or selling these RPS resources within a short time frame.

Moreover, imposing the Bucket requirements on the CCSF runs counter to the intent behind the adoption of Section 399.30(k) -- to establish a compliance mechanism that does not result in displacing one zero-GHG resource (Hetchy generation) with another, costly, zero-GHG resource (RPS-eligible resources).

IV. THE REGULATIONS SHOULD INCLUDE A "CURE PERIOD" DURING WHICH POUS COULD VOLUNTARILY PROCURE ADDITIONAL RPS RESOURCES TO MEET SHORTFALLS

Under the Draft Regulations, there is a gap of five months between the end of the calendar year and the date (June 1st) when each POU reports its RPS compliance to the Commission. This gap should provide an opportunity for POUs to "true-up" or fix shortfalls that are identified as the POU prepares its compliance reports. Reasonable shortfalls could occur due to such conditions as unexpected outages late in the compliance period, normal forecasting or reporting errors, or other reasons for which POUs should not be penalized.⁸

This approach would allow for (and encourage) the earlier procurement of RPS resources than otherwise would occur under the administrative enforcement process. A true-up period would

⁷ Annual forecasted generation available from the Hetch Hetchy system cannot be accurately estimated with certainty until after the spring run-offs (at least several months into the year) and can vary after that due to unexpected outages later in the year.

⁸ If the Commission is concerned that a "cure period" might allow entities to game the system or defer compliance, the Commission could establish guidelines that limit the amount of shortfall that could be trueed-up and/or establish other conditions for use of the "cure period".

allow a POU to procure resources to make up its shortfall at most within five months after the end of the calendar year. Under the administrative enforcement process of SBX1-2, where the Commission first determines if a violation has occurred and the Air Resources Board then determines the appropriate sanction, there could be a delay of several years before new renewable resources could be procured.⁹ Allowing a cure period would further the primary goal of the RPS standard, which is to hasten the use of RPS eligible resources. Establishing a cure period would also simplify the Commission's administrative burdens. Further, the cure period does not relieve the POU from procuring renewable resources to meet its RPS obligations.

A cure period would be similar to a notice of correction, which the Commission is authorized to issue under Section 399.30(n). The Commission could also develop such a procedure in coordination with the ARB as it implements its own administrative process to enforce the RPS requirements.

V. THE PORTFOLIO CONTENT CATEGORIES SHOULD BE CHANGED SO THAT RECS ASSOCIATED WITH RPS RESOURCES THAT INITIALLY MEET THE REQUIREMENTS OF "BUCKET 1" OR "BUCKET 2" WOULD KEEP THESE DESIGNATIONS IF THE RECS ARE SUBSEQUENTLY SOLD OR TRANSFERRED SEPARATELY FROM THE UNDERLYING ENERGY.

The Draft Regulations propose to adopt the definitions of Bucket 1 and Bucket 2 portfolio content category definitions that were recently adopted by the California Public Utilities Commission (CPUC).¹⁰ This was one of the more contentious issues addressed by the CPUC in its proceeding. As the CCSF and CMUA both stated in their comments in that proceeding,¹¹ the

⁹ A likely scenario is that, first, a POU that found itself slightly short would identify the shortfall in its June 1st filing. Second, Commission staff would need time to review and verify the shortfall. Third, the Commission would institute its administrative proceeding process, which could take an additional six months if contested by the POU. Fourth, the Air Resources Board (ARB) would require additional time to conduct its administrative process to establish a penalty. Fifth, assuming the ARB assessed a penalty, the proceeds would be retained by the ARB until allocated by the State Legislature to procure additional renewable resources.

¹⁰ Decision (D.)11-12-052.

¹¹ See "COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SIMON REGARDING PORTFOLIO CONTENT CATEGORIES" available at <http://docs.cpuc.ca.gov/efile/CM/146436.pdf> and "COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM" available at <http://docs.cpuc.ca.gov/efile/CM/146795.pdf>.

requirements of Section 399.16 (which provides the Bucket criteria) should be read to mean that only RECs that do not “otherwise qualify” as either Bucket 1 or Bucket 2 RPS resources should be classified as “unbundled” Bucket 3 RECs.

The CCSF supports CMUA’s written comments to the Commission submitted today regarding the Draft Regulations’ reliance on the CPUC’s portfolio content category definitions. In particular, limiting Bucket 1 and 2 to solely to “bundled” products will increase RPS compliance costs because POUs will need to over-procure to ensure compliance. The bundling requirement will largely require POUs to acquire all Bucket 1 and 2 products in advance, often prior to having certainty as to their RPS obligation. Once acquired, Bucket 1 and 2 products will be difficult to resell, limiting the secondary market and constraining market liquidity for these resources. Over-procurement will result in increasing the cost of meeting State goals unnecessarily. The limitation will be particularly burdensome on smaller utilities, as well as on the CCSF, which, as noted above, will have fluctuating and unpredictable needs for RPS resources.

Separating a REC from its underlying energy (unbundling) does not change the quality or benefits obtained from the electricity generated by an RPS resource. A REC simply establishes a single and unique claim to the underlying RPS generation, its bucket characteristics, and its system benefits. If the REC is initially associated with either Bucket 1 or Bucket 2 generation, then it has already provided the system benefits associated with these categories. This value is not lost if the REC is subsequently sold or transferred.

The Commission should not be bound by the CPUC decision, and instead should develop its own record in this proceeding on the associated statutory and policy issues. This is particularly important since the Commission is developing regulations to enforce Section 399.30, while the CPUC was interpreting Section 399.15(a). The language of these sections is not identical.

The CCSF appreciates the opportunity to comment on the Draft Regulations and looks forward to working with the staff of the California Energy Commission on further revisions to the regulations to address the CCSF's concerns.

Respectfully submitted,

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Attachment A

Suggested modifications to the CEC Draft Regulations applicable to the CCSF.

Suggested Revisions to Draft Rules

Section 3201 – Definitions

(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 POU's electricity demands portion of retail sales not met by the POU's qualifying hydroelectric generation that must be procured from eligible renewable energy resources or renewable energy credits during a calendar year.

Comment [H31]: CONFORMS TO STATUTE
PU Code Section 399.30(k) refers to the "electricity demands" not met by our qualifying hydroelectric generation.

Comment [H32]: CONFORMS TO STATUTE
PU Code Section 399.30(k) requires that the SFPUC "procure eligible renewable energy resources, including renewable energy credits" to meet its "renewable energy procurement requirements."

Comment [H33]: This detailed definition was developed from the Energy Commission's Power Source Disclosure reporting requirements.

() Retail sales mean electrical energy produced by a generating facility that a retail seller offers to sell to consumers in California under terms and conditions specific to an offer or to a tariff. It does not include the provision of electric services on site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate, as defined in Section 372, subdivision (a), of the Public Utilities Code.

Section 3204 – RPS Procurement Requirements

(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, and not subject to the requirements of Sections 3204 (a)(1) – (4), (c), (d), and (e) of these regulations 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:

Comment [H34]: CLARIFICATION.
We propose replacing the current use of the phrase "notwithstanding" with a more declarative statement of the SFPUC's obligations under the regulations.

(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 pursuant to Section 25741 of the Public Resources Code" and is not RPS certified.

Comment [H35]: CONFORMS TO STATUTE
PU Code Section 399.30(k) defines the SFPUC's qualified hydroelectric generation as a hydroelectric facility that "does not meet the definition of a renewable electrical generation facility pursuant to Section 25741 of the Public Resources Code."

(D) The facility, in conjunction with other facilities meeting the requirements of this Section (7) provides greater than 67 percent of the POU's electricity demands supply on an annual basis.

Comment [H36]: CONFORMS TO STATUTE
The SFPUC must receive "greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates" in order to meet the requirements of PU Code Section 399.30(k). The SFPUC meets this requirement through the operation of four hydroelectric generation facilities.

(E) For purposes of these regulations, the POU's electricity demand is the same as its retail sales.

Comment [H37]: CONFORMS TO STATUTE
PU Code Section 399.30(k) refers to the "electricity demands" not met by our qualifying hydroelectric generation.

(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 be deemed to be in compliance with this Section 3204 and not be subject to the requirements of Section 3204 (a)(1) – (4), (c), (d), and (e) of these regulations if the POU procures eligible renewable energy sources, including renewable energy credits electricity products in accordance with Section 3204 (d) of these regulations equal to the lesser of the following:

Comment [H38]: CLARIFICATION: As discussed in our comments, a definition of retail sales would be useful.

(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.

Comment [H39]: Repeats language from Section (7) so that it also applies to Section 8, and clearly identifies the provisions of Section 3204 that the SFPUC is in compliance with if it meets the requirements of Section 8.

Comment [H40]: CONFORMS TO STATUTE
PU Code Section 399.30(k) requires that the SFPUC "procure eligible renewable energy resources, including renewable energy credits" to meet its "renewable energy procurement requirements."

Suggested Revisions to Draft Rules

Section 3205 – Procurement and Enforcement Plans

(a) Renewable Energy Resources Procurement Plan

(1) By January 1, 2013, each POU shall submit to the Commission a renewable energy resources procurement plan that includes, at a minimum, the following information for the forthcoming calendar year and the current compliance period:

~~(G) A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall meet only the calendar year reporting requirements of Sections 3205(a)(1) and additionally shall provide a forecast of its annual electricity demand that will be satisfied with qualifying hydroelectric generation in MWh from a facility that meets the criteria specified (as defined in Section 3204 (a)(7)) used to meet its of these regulations. The forecast shall identify the POU's forecasted annual electricity demand, and the amount of qualifying hydroelectric generation expected for the calendar year in MWh. It shall not be required to meet the reporting requirements of Section 3205(a)(2).~~

Comment [HJ11]: CONFORMS TO STATUTE
A "compliance period" corresponds to the three time periods laid out in PU Code Section 399.30(b). The SFPUC does not have a similar compliance obligation, instead it is required to meet its RPS obligations on a yearly basis.

Comment [HJ12]: CONFORMS TO STATUTE
Same issues as previous comment.

Section 3207 – Compliance Reporting for POU's

~~(e) Notwithstanding Section 3207 (a) (e) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall not be subject to the requirements of Sections 3207(a) –(c) but shall instead annually submit to the Commission, by the deadline for annual reports, documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state, and that the POU receives greater than 67 percent of its electricity supply sources to meet its electricity demands on an annual basis from a qualified hydroelectric facilities y as defined in that meets the criteria of Section 3204 (a)(7), of these regulations. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k). A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) must additionally submit its total retail sales and documentation of its annual qualifying hydroelectric generation, and provide evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with the procurement from eligible renewable energy resources, including renewable energy credits, of electricity products in accordance with Section 3204 (e) of these regulations.~~

Comment [HJ13]: CLARIFICATION
We propose replacing the current use of the phrase "notwithstanding" with a more declarative statement of the SFPUC's obligations under the regulations.

Comment [HJ14]: CONFORMS TO STATUTE
PU Code Section 399.30(k) refers to the "electricity sources" used to meet our "electricity demands" not met by our qualifying hydroelectric generation.

Comment [HJ15]: CONFORMS TO STATUTE
PU Code Section 399.30(k) requires that the SFPUC "procure eligible renewable energy resources, including renewable energy credits" to meet its "renewable energy procurement requirements."