

California Energy Commission  
**DOCKETED**  
**11-RPS-1**  
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**BEFORE THE ENERGY COMMISSION  
OF THE STATE OF CALIFORNIA**

In the matter of: )  
 )  
Developing Regulations and Guidelines ) Docket No. 11-RPS-01  
For the 33 Percent Renewables )  
Portfolio Standard )

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND  
POWER TO THE CALIFORNIA ENERGY COMMISSION'S 33 PERCENT  
RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT  
REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES**

RANDY S. HOWARD  
Chief Compliance Officer – Power System  
Los Angeles Department of Water and Power  
111 N. Hope St., Room 921  
Los Angeles, CA, 90012  
Telephone: (213) 367 – 0381  
Email: [Randy.Howard@ladwp.com](mailto:Randy.Howard@ladwp.com)

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Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC), the Los Angeles Department of Water and Power (LADWP) respectfully submits these comments in response to the CEC's 33 Percent Renewables Portfolio Standard Pre-Rulemaking draft Regulations for Publicly Owned Electric Utilities (Draft Regulations) issued by the CEC on July 20, 2012.

**I. INTRODUCTION**

The City of Los Angeles is a municipal corporation and charter city organized under the provisions of the California Constitution. LADWP is a proprietary department of the City of Los Angeles, pursuant to the Los Angeles City Charter, whose governing structure includes the Mayor, fifteen member City Council, and a five-member Board of Water and Power Commissioners. As the third largest electric utility in the state and the nation's largest municipal utility serving a population of over four million people, LADWP is a vertically integrated utility, both owning and operating the majority of its generation, transmission and distribution systems.

As a result of combined regulatory mandates for increased renewable energy, emissions performance standard on fossil fuel generation, energy efficiency, solar roofs, reduction in greenhouse gas emissions, and the elimination of once-through cooling for coastal power plants, LADWP is facing a utility-wide transformation and making billions of dollars in investments on behalf of its ratepayers to replace about 70% of its resources over the next 17 years that it has relied upon for the last 50 years.

California's most recent legislation for its RPS Program requires "each local publicly owned electric utility to procure a minimum quantity of electricity products from eligible renewable energy resources." Since LADWP is a local publicly owned electric utility (POU), it is required to comply with Senate Bill (SB) 2 (1X).

## **II. Comments**

The LADWP would like to take this opportunity to thank CEC staff and Commissioners for their outreach efforts seeking stakeholder feedback on various important outstanding RPS issues, and for taking the appropriate steps to ensure its draft regulations meet the provisions set forth in SB 2 (1X). There are still several key changes that need to be made to the revised Draft Regulations to support and recognize the historical investments made by utilities in renewable technologies prior to the enactment of SB 2 (1X).

The authority of the CEC in the California Renewable Energy Resources Act (commonly known as and referred to as SB 2 (1X)) is set forth in Section 399.25 of the Public Utilities Code (PUC). In this Section, the Legislature

mandated the CEC to (a) “certify eligible renewable energy resources;” (b) “design and implement an accounting system” to count renewable energy, to certify renewable energy credits and to verify retail product claims; (c) “establish a system for tracking and verifying renewable energy credits;” and (d) certify renewable energy credits so that POU’s may sell them to retail sellers. There are other places where the Energy Commission is specifically mentioned. However, these generally relate to the Legislature’s intent and the aforementioned duties in PUC section 399.25. For example, PUC Section 399.14(e)(1)(C) directs the CEC to certify “an eligible renewable energy resource” if it was approved by a POU “pursuant to former Section 387.”<sup>1</sup>

As such, LADWP disagrees with proposed Regulations that are beyond the scope of the CEC’s jurisdictional authority under SB 2 (1X). The only grant of authority to the CEC over POU’s or their governing boards is to “adopt regulations specifying procedures for enforcement of this article” pursuant to PUC Section 399.30(n). The CEC’s Regulations must not exceed the specific regulatory authority granted to the CEC under SB 2 (1X) or abrogate the authority of a POU’s governing board.

LADWP’s comments present modifications to the draft regulations which align with LADWP’s interpretation of the statute. The LADWP wants to ensure that the CEC’s regulations do not exceed the specific regulatory authority granted

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<sup>1</sup> See also 399.12(h)(1) [accounting system for renewable energy credits], 399.12(h)(3) [accounting system for “de minimis nonrenewable fuels” for each renewable energy technology], 399.21(a)(1) [tracking system is operational], 399.21(a)(5) [tracking of electricity purchase contracts for retail sellers], 399.17(b)(2) and (3) [electrical corporation serving 60,000 or fewer customers participates in the Energy Commission’s accounting system], 399.18 [electrical corporations with a limited number of customers participates in an accounting system], 399.19 [reporting to the Legislature of its progress].

to the CEC under SB 2 (1X) or abrogate the authority of LADWP's governing board. LADWP's comment on a specific topic should not be interpreted to mean that LADWP is agreeing to the CEC's position on that particular topic.

#### **A. Section 3201 - Definitions**

##### **1. Consistency with the Statute**

As LADWP mentioned in its previous comments on the Draft Regulations<sup>2</sup>, the CEC needs to utilize definitions that are already defined in SB 2 (1X) and not create additional restrictions on such definitions. For example, PUC Section 399.12(f) defines the term "Procure" as "to acquire through ownership or contract," whereas the Draft Regulations Section 3201(s) defines it as "means to acquire electricity products from RPS certified facilities through executed contracts or ownership agreements." LADWP recommends that unless it is absolutely necessary, the CEC conform to the statutory language. LADWP has provided related modifications to the definitions of "Procure," "Eligible Renewable Energy Resources," and "RPS Procurement Target."

##### **2. Necessary Definitions**

The LADWP recommends that the CEC define several key terms utilized throughout the Draft Regulations that are not defined in Section 3201. LADWP proposes to add the following definitions for the CEC's consideration:

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<sup>2</sup> Comments from the Los Angeles Department of Water and Power to the California Energy Commission's Staff Workshop on 33 Percent Renewables Portfolio standard Pre-Rulemaking Draft, dated March 30, 2012. Available At: [http://www.energy.ca.gov/portfolio/documents/2012-03-01\\_workshop/comments/Los%20Angeles%20Department%20of%20Water%20and%20Power%20Response%20to%20the%20CEC%20RPS%20Draft%20Regulations.pdf](http://www.energy.ca.gov/portfolio/documents/2012-03-01_workshop/comments/Los%20Angeles%20Department%20of%20Water%20and%20Power%20Response%20to%20the%20CEC%20RPS%20Draft%20Regulations.pdf)

### **a. Distributed Generation**

Given that PUC Section 399.16(b)(1)(A) allows for an eligible renewable energy resource connected to “distribution systems that serve end users within a California balancing authority area<sup>3</sup>,” to count as a Portfolio Content Category (PCC) 1 electricity product, then Distributed Generation needs to be defined.. LADWP recommends the following definition:

**“Distributed Generation”** means any electric generation facility as defined in Public Utilities Code Section 387.6(b) and any eligible renewable electrical generation facility used by an eligible customer-generator as defined in Public Utilities Code Section 2827(b)(5).

### **b. Count In Full**

Given that the definition for “Count In Full” significantly impacts the treatment of pre-June 1, 2010 resources, LADWP recommends that the CEC define the term “Count In Full.” LADWP recommends that the CEC adopt a definition similar to the definition adopted by the CPUC:

**“Count In Full”** means that resources procured prior to June 1, 2010 count for RPS compliance without regard to Portfolio Content Category or Portfolio Balance Requirements for procurement meeting the requirements of the Public Utilities Code Section 399.16(b)(1) or Section 399.16(b)(3), respectively. Such procurement is outside the Portfolio Balance Requirements; it neither counts nor does not count in any particular Portfolio Content Category.

(1) At the discretion of the POU, procurement that meets current RPS Eligibility Guidebook requirements at the time the entity files for certification will count towards the Portfolio Content Categories and will be accounted for in the Portfolio Balance Requirements.

### **c. Incremental Electricity**

The LADWP recommends that the CEC define the term “Incremental Electricity” and utilize the definition adopted by the CPUC:

<sup>3</sup> PUC Section 399.16(b)(1)(A)

**“Incremental Electricity”** means electricity not in the portfolio of the POU claiming the transaction for RPS compliance prior to a Firmed and Shaped transaction<sup>4</sup>

**a. Firmed and Shaped**

Given that PCC 2 electricity products heavily rely on the term “Firmed and Shaped,” LADWP recommends that the CEC define the term “Firmed and Shaped.” The definition provided by the CPUC is acceptable:

**“Firmed and Shaped”** means transactions that provide substitute energy in the same quantity as the contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation, which can be set in a manner that meets the timing and quantity requirements of the retail seller. The original RPS-eligible generation is consumed elsewhere, typically but not necessarily close to the generator<sup>5</sup>.

**3. “RPS Certified Facility” definition**

LADWP has previously commented<sup>6</sup> that it does not fully agree with the CEC’s proposed limited RPS certification process. The definition of “RPS Certified Facility” provided in Section 3201(w) states the following:

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<sup>4</sup> Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, California Public Utilities Commission, Decision 11-12-052 December 15, 2011 Page 49. Available At: [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/156060.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf)

<sup>5</sup> Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, California Public Utilities Commission, Decision 11-12-052 December 15, 2011 Page 46. Available At: [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/156060.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf)

<sup>6</sup> Comments from the Los Angeles Department of Water and Power to the California Energy Commission’s Notice to Consider Adoption of Revisions to the Renewables Portfolio standard Eligibility Guidebook and Overall Guidebook for the Renewable Energy Program, dated July 3, 2012. Available at: [http://www.energy.ca.gov/portfolio/documents/comments\\_2012\\_guidebooks\\_adoption/LADWP\\_Comments\\_on\\_the\\_6th\\_Edition\\_RPS\\_Guidebook.pdf](http://www.energy.ca.gov/portfolio/documents/comments_2012_guidebooks_adoption/LADWP_Comments_on_the_6th_Edition_RPS_Guidebook.pdf)

**“RPS-Certified Facility”** means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission’s RPS Guidelines, or that has limited RPS certification in place for the duration of that facility’s contract or ownership agreement term. 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. To become a facility with limited RPS certification, the facility must demonstrate to the Commission that it satisfied the requirements of the RPS Guidelines that were in place at the time of the contract or ownership agreement approval.

The “limited certification” process proposed by the CEC does not fully align with the provisions and legislative intent set forth in SB 2 (1X). PUC Section 399.16(d)(1) requires that “the renewable energy resource was eligible under the *rules in place* as of the date when the contract was executed” (emphasis added). For resources procured by POU’s prior to June 1, 2010 when POU’s were responsible for developing and self-enforcing their own RPS program, the “rules in place” were the POU’s adopted RPS Policy, not the CEC’s RPS Eligibility Guidebook. Furthermore, the resources that should count towards the goals set forth in SB 2 (1X) are those which were adopted by the POU’s governing board as part of its RPS program. The CEC’s proposed limited certification would penalize POU’s that were historically not required to comply with the CEC certification process.

The Legislature intended to respect those historical procurement decisions made by POU governing boards prior to SB 2 (1X). Further, there is no provision in SB 2 (1X) that provides for an alternate certification process for resources procured before June 1, 2010. Had the legislature intended for all existing POU RPS resources to be certified in accordance with the most current edition of the Eligibility Guidebook or be certified through the proposed “limited certification”



process, it would have stated it outright, or at minimum, would have never included the language in section 399.12(e)(1)(C). The CEC should not make any artificial interpretations of the statute.

Furthermore, the CEC states that a 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." PUC section 399.12 (1)(1)(C) states that "a facility approved by the governing board of a local publicly owned electricity prior to June 1, 2010... *shall be certified* as an eligible renewable energy resource by the Energy Commission... if the facility is a 'renewable electrical generation facility' as defined in Section 25741 of the Public Resources Code." This code section does not invite CEC scrutiny on whether pre-June 1, 2010 resources should have been an RPS Certified Facility for a POU's then existing voluntary RPS Program. It simply states that these resources *shall be certified*. This provision of the statute does not provide the CEC with selective grandfathering of RPS resources adopted under the full legal authority granted to POU governing boards prior to SB 2 (1X) within the limitations of PRC Section 25741.

If the CEC wishes to apply its current certification process to pre-June 1, 2010 resources, it should be at the discretion of the POU. The CEC should allow utilities to have the discretion to further certify resources under the current RPS Eligibility Guidebook, if the utility chooses to have such resource be scrutinized under the Portfolio Content Category requirements and not "count in full."

The Energy Commission's proposed definition would not only create an additional unsupported certification process, but would also retroactively apply certification requirements on renewable energy resources previously adopted by the governing boards of POU's prior to June 1, 2010 and penalizes early actions taken by such POU's for cost-effectively procuring resources to meet voluntary RPS programs adopted by governing boards. LADWP recommends that the definition be modified as provided in the Redline to align with the full intent of SB 2 (1X). Furthermore, LADWP recommends that if the CEC wish to apply its current certification process to pre-June 1, 2010 resources, it should be at the discretion of the POU with the ability to classify such resource in a Portfolio Content Category.

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

### **1. Pre-June 1, 2010 Resources**

The LADWP disagrees with the Commission's proposed language under Section 3202(a)(2):

The electricity product is procured pursuant to a contract or ownership agreement executed before June 1, 2010, and the electricity product is associated with generation from a facility that met the Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU.
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As stated above, the Energy Commission's interpretation on the treatment of Pre-June 1, 2010 Resources would retroactively apply certification requirements upon renewable resources previously adopted by the governing boards of POU's prior to June 1, 2010. Furthermore, PUC Section 399.16 (d)(1) requires that "the renewable energy resource was eligible under the rules in place as of the date

when the contract was executed.”<sup>7</sup> As previously emphasized by LADWP, the ‘rules in place’ are the POU’s adopted RPS Policy, not the CEC’s RPS Eligibility Guidebook. Therefore, LADWP recommends that the change to Section 3202 as proposed in the Redline be amended into the Draft Regulations.

Furthermore, Section 3202(a)(2)(A) states that procurement of such Electricity Products shall “count in full,” yet, the CEC provides no concrete definition for this term. The LADWP requests that the CEC take its suggestion into consideration.

## **2. Section 3203(a)(3) Resource Treatment**

The LADWP appreciates the CEC’s efforts in addressing the issue of resources that are eligible under new eligibility requirements, but did not meet the RPS eligibility requirements at the time the resource was procured by a POU. However, the LADWP believes that this section adds another unnecessary convoluted barrier for the RPS Certification process. Furthermore, the LADWP does not agree with the CEC’s proposal of ‘placing’ Electricity Products generated by these facilities in a PCC, but not allowing such procurement to count towards the RPS Balance Requirements.

First off, LADWP does not fully concur with the CEC’s proposed treatment of resources that “did not meet the RPS eligibility requirements at the time of contract or ownership agreement was executed by a POU.” As stated above, Pre-June 1, 2010 resources were not required to meet the CEC’s RPS Guidebook. To now require a retroactive application of Guidebook requirements to these resources on utilities that only had a voluntary compliance is unjustified.

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<sup>7</sup> PUC Section 399.16(d)(1)

Furthermore, the CEC did not consider resources that were approved by a POU governing board that pre-date the RPS Eligibility Guidebooks. These requirements would penalize such utilities for taking early action to meet voluntary RPS targets.

The LADWP does not agree with the CECs proposal of placing these electricity products into PCC, but not counting such resources towards the Portfolio Balance Requirements. If a resource meets the CEC's current eligibility requirements and is placed in a PCC such electricity product *should* count towards the Portfolio Balance Requirements (emphasis added). Reshuffling the PCC rules for Pre-June 1, 2010 resources while utilities are operating under the first compliance period is unacceptable because of the costs, time to comply, and existing uncertainty with the changing regulations.

At the July 30, 2012 workshop<sup>8</sup>, the CEC stated that the reasoning behind this proposal is for such resources to be counted towards the RPS Procurement Target and be taken into account in the calculation of Excess Procurement, but not be counted towards the PCC. The only criteria provided for the generation of excess procurement is located in PUC Section 399.13(a)(4)(B), which states that excess procurement "shall [be]deduct[ed] from accrual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement." SB 2 (1X) does not provide for the avenue suggested by the CEC.

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<sup>8</sup> [http://www.energy.ca.gov/portfolio/notices/2012-07-30\\_workshop\\_notice.pdf](http://www.energy.ca.gov/portfolio/notices/2012-07-30_workshop_notice.pdf)

Since the resources contemplated by this section would satisfy current CEC Eligibility Requirements, the LADWP recommends that this section (3203(a)(3)) be merged with Section 3202(a), as suggested in the Redline. This would allow such resources to count towards a PCC, and fall under the scrutiny of the PCC requirements.

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

#### **1. Substitute Energy Delivery**

Section 3203(b)(2)(D) currently states that :

<p>“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.</p>
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This requirement is operationally infeasible. Several Firming and Shaping entities perform balancing in January and February for December energy, which conflicts with the CEC’s Proposed Regulations. In order to incorporate these existing needed operations, the LADWP recommends that the CEC again reconsider a “rolling 12-month” approach, where a POU would be required to schedule substitute energy within 12 months from the date the electricity is generated (modifications reflected in the Redline, Section 3203(b)(2)(D). Further, SB 2 (1X) did not contemplate or specify a timeframe requirement for firming or shaping. A Calendar Year approach to substitute energy would effectively defeat the purpose of Firming and Shaping energy in the October-December timeframe. There is no statutory basis to preclude a rolling 12-month approach, whereas there is an existing operational need for this approach.

## **2. Portfolio Content Category 1 – Distribution**

### **Resources**

LADWP recommends that the CEC move Section 3203(a)(1)(B) which addresses PCC 1 distribution resources and create a new subsection under 3203(a). It is important that Transmission level resources be distinguished from Distribution-level resources.

#### **a. Metering Requirements**

LADWP's Solar Incentive Program (SIP) provides ratepayer-funded incentives for residential and commercial customers to install solar photovoltaic systems on their facilities. The SIP has been in existence for over 10 years, is in full compliance with SB 1 guidelines, and has successfully promoted the installation of over 5,000 solar photovoltaic systems, totaling over 51 Megawatts (MW) of generation capacity.

Current requirements require POUs to use the Western Renewable Energy Generation Information System (WREGIS) to track and report, on a monthly basis, the energy generated by RPS-eligible facilities solely for REC purposes. The current WREGIS Operating Rules require all original metered data sources for reporting to come from the output of a revenue-quality meter<sup>9</sup>.

Currently, these SIP installations have performance meters (not revenue-quality meters) that are installed by the customer and which may not be fully accessible by the verifier (LADWP). In addition, LADWP as well as other POUs, still read most residential meters and bill bi-monthly. To comply with WREGIS

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<sup>9</sup> WREGIS Operating Rules. Pg. 29 Available At: Available at: <http://www.wecc.biz/WREGIS/Documents/WREGIS%20Operating%20Rules%20v%205%2031%202012.pdf>

monthly tracking and reporting requirements, new revenue-quality (i.e. high-accuracy) meters will have to be installed to allow LADWP to verify the generation in a sustainable manner and additional special meter readings may be required. This will be extremely laborious, costly and grossly inefficient relative to the energy generated by the small-scale solar systems. The estimated cost to meter, record, and report monthly energy production for systems smaller than 10 kilowatts (kW) would rise substantially, is an un-wise use of ratepayer funds for accounting purposes considering the cost of procuring RPS-Eligible resources compared to the use of traditional fossil-fueled generation.

The LADWP again asserts that the Energy Commission should exempt small-scale photovoltaic projects from the use of WREGIS metering requirements. WREGIS Operating Rules allows for exceptions to the metering requirements at the direction of the state regulator<sup>10</sup>. For small-scale solar installations, these metering requirements are counterproductive to the program goal to promote distributed generation, may put an economic damper on future solar photovoltaic development, and will add significant and unnecessary expense to the ratepayer-funded program.

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<sup>10</sup> WREGIS Operating Rules, Pg. 29. Recognition of generation for creation of WREGIS Certificates from renewable electricity generation resources that do not have metering that meets the ANSI C-12 or equivalent standard will only be at the direction of state or provincial regulators or voluntary program administrators. Program administrators must notify the WREGIS Administrator in writing of approved exceptions to the ANSI C-12 standard; upon receipt, WREGIS will make that information publicly available on its website. Available at: <http://www.wecc.biz/WREGIS/Documents/WREGIS%20Operating%20Rules%20v%205%2031%202012.pdf>

LADWP and other utilities with customer solar incentive programs have based incentive rebates on expected performance data for smaller systems for many years, and have found that these estimates are very close to actual energy output. Furthermore, these small-scale solar installations meet all of the unique benefits to California detailed in PUC Section 399.11(b) and meet the delivery requirement detailed in PUC Section 399.16(b)(1)(A). To preclude eligibility of such a valuable resource simply because of a metering requirement detailed outside of legislation is unjustified.

LADWP recommends that the CEC consider adding the following language into Section 3203(a)(3)(C) into the draft regulations:

<p>Section 3203(a)(3)(C): Electricity Products generated by a facility that meets Section 3203(a)(3) may request for an exemption of Western Renewable Energy Generation Information System (WREGIS) Classes H-J Metering Requirements if such requirement is considered cost-prohibitive.</p> <ol style="list-style-type: none"><li>i. A POU must report for these projects with expected performance data, which is based on the characteristics of the photovoltaic system (e.g. size, location, orientation, tilt, tracking, shading, etc.).</li></ol>
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LADWP is willing to work with the CEC to develop such reporting criteria.

LADWP also recommends the CEC to allow small-scale photovoltaic projects resources procured by POUs prior to June 1, 2010 and adopted by the POUs' governing boards as part of their RPS program and towards the goals set forth in SB2 (1X). As stated above, these resources were procured prior to June 1, 2010 when POUs were responsible for developing and self-enforcing their own RPS program. The "rules in place" were the POUs adopted RPS Policy, not the CEC's RPS Eligibility Guidebook.



### **3. Portfolio Content Category 2**

#### **a. Scheduled Energy Requirement**

The LADWP would like to thank CEC staff for making the proposed modifications Section 3203(a)(1)(C) of the Draft Regulations to recognize that the authority to approve an agreement to schedule energy into a California Balancing Authority can be delegated by a governing board. The LADWP would like to also suggest that the CEC to include Joint Power Agencies comprised of one or more POU's, such as the Southern California Public Power Agency (SCPPA) from this criteria. Currently, one of LADWP's participation mechanisms with SCPPA is through the use of Power Sales Agreements, which provide LADWP the necessary renewable energy but do not confer title of the facility from SCPPA to LADWP. For the purpose of these regulations, LADWP recommends that the CEC add language to recognize POU participation through Joint Power Agencies.

#### **b. Storage Energy**

LADWP recommends the CEC to recognize the need for storage of renewable energy and recommends that the CEC changes Section 3202 with additional language that allows for stored renewable energy count for compliance towards the RPS Procurement Requirements.

#### **c. Energy Resale**

Sections 3203(b)(3) specifies limiting criteria for the resale of Bucket 2 products. Such restrictions on resale are not found in SB 2 (1X). The LADWP recommends that the CEC remove these resale restrictions for PCC 2.

**D. Section 3204 – RPS Procurement Requirements**

The LADWP would like to thank the CEC for taking into consideration POU's recommendation to modify the RPS Procurement Requirements. This modification now aligns with the full intent of SB 2 (1X).

**E. Section 3205 - Procurement Plans and Enforcement Programs**

Beyond the proposed Redlines provided, LADWP does not have any comments on this section at this time.

**F. Section 3206 – Optional Compliance Measures**

**1. Calculation of Excess Procurement Equations**

The LADWP is concerned with the CEC's current Excess Procurement equations. As currently written, the CEC has created an artificial layer of RECs that do not count towards the Portfolio Balance Requirements, but count for the RPS Target and calculation of Excess Procurement. Again, reshuffling the PCC rules for Pre-June 1, 2010 resources while utilities are operating under the first compliance period is unacceptable. Therefore, as suggested above, the resources contemplated by these criteria suffice current CEC Eligibility Requirements and should be merged with Section 3202(a).

Since we know that Excess Procurement can only be generated from PCC 1 and 2 resources, LADWP recommends that the CEC split the allowed PCC 1 and PCC 2 excess procurement calculations:

PCC1 2011- 2013	$\begin{aligned} & \textit{Excess Procurement PCC1} \\ & = EP_{2011-2013}^{PCC1} + CIF_{2011-2013} - .10(RS_{2011-2013}) \end{aligned}$
PCC1 2014- 2016	$\begin{aligned} & \textit{Excess Procurement PCC1} \\ & = EP_{2014-2016}^{PCC1} + CIF_{2014-2016} - .13(RS_{2014}) - .13(RS_{2015}) \\ & \quad - .1625(RS_{2011}) \end{aligned}$

PCC 1 2017- 2020	<i>Excess Procurement PCC1</i> $= EP_{2017-2020}^{PCC1} + CIF_{2017-2020} - .1875(RS_{2017}) - .1875(RS_{2018}) - .1875(RS_{2019}) - .2475(RS_{2020})$
PCC 1 2021	<i>Excess Procurement PCC1</i> = $EP_{2021}^{PCC1} + CIF_{2021} - .2475(RS_{2021})$
PCC 2 2011- 2013	<i>Excess Procurement PCC2</i> = $EP_{2011-2013}^{PCC2} - EPR_{2011-2013}^{PCC2}$
PCC 2 2014- 2016	<i>Excess Procurement PCC2</i> = $EP_{2014-2016}^{PCC2} - EPR_{2014-2016}^{PCC2}$
PCC 2 2017- 2020	<i>Excess Procurement PCC2</i> = $EP_{2017-2020}^{PCC2} - EPR_{2017-2020}^{PCC2}$
PCC 2 2021	<i>Excess Procurement PCC2</i> = $EP_{2021}^{PCC2} - EPR_{2021}^{PCC2}$
PCC 3	A Local Publicly Owned Electric Utility is not allowed to generate Excess Procurement from Portfolio Content Category 3 Renewable Energy Credits.
Where:	
PCC1	= Portfolio Content Category 1
PCC2	= Portfolio Content Category 2
EPx	= Electricity Products Procured for the specified year X
CIFx	= Count In Full procurement for a specified year that meets the criteria of 3202(a)(2).
RSx	= Total retail sales made by the POU for the specified year X.
ERPx	= Electricity Products retired in the specified year X.
*All generation that meets the criteria for 3202(a)(1) or 3202(a)(3) and is associated with contracts of less than 10 years induration procured and retired for compliance period X may not be used to generate excess procurement.	

These proposed equations are meant to take into consideration LADWP's suggested modification of removing the concept of Pre-June 1, 2010 resources that fall under a PCC, but are not taken into consideration in the calculation of Portfolio Balance Requirements.

The PCC 1 Equations are meant to take the difference of PCC 1 RECs procured by an entity plus Pre-June 1, 2010 resources that "Count In Full and the overall RPS PCC minimum requirement based on retail sales. Once an entity

satisfies its PCC 1 minimum requirement, it is allowed to store excess procurement.

A similar equation was developed for PCC 2. Since there is no minimum procurement requirement for PCC 2, the generation of excess procurement will simply be the difference between the PCC 2 electricity products procured and the PCC 2 electricity products retired.

The proposed equations strike balance between LADWP's interpretation of the statute's intent with the proposed modifications to the Draft Regulations.

## **G. Section 3206 RPS Compliance Options**

### **1. Delays**

When looking at PUC Section 299.15(e) and 299.19 in SB 2 (1X), the Legislature recognized that in some instances the targets may be unachievable due to real-world implementation issues. The California Public Utilities Commission, "in consultation with the Energy Commission," is required to report to the Legislature in 2016 "assessing whether each electrical corporation can achieve a 33 percent RPS by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations." In addition, the Commission and the CEC are required to report to the Legislature every other year to assess the "ability of each electrical corporation" to meet the RPS targets.

Reporting to the Legislature is the extent of the CEC's role when a POU may be faced with a delay. As stated above, SB 2 (1X) limits direct involvement by the Public Utilities Commission in implementing a retail seller's plans until a retail seller notifies the Public Utilities Commission that it will not be able to meet

the targets. Only then is authority granted to the Public Utilities Commission to grant a waiver, or delay from compliance.

The SB 2 (1X) is then specific as to the exceptions that will be tolerated. Those exceptions are itemized in PUC Section 399.15(b)(5), including transmission issues as in PUC Section 399.15(b)(5)(A) and some exceptions will not be allowed, as in failing to obtain a waiver from the Public Utilities Commission per PUC Section 399.15(b)(8). No such similar authority is granted to the Energy Commission over POU's.

The LADWP would like to emphasize that PUC Section 399.30(c)(3) states that a POU "shall adopt procurement requirements consistent with PUC Section 399.16" and PUC Sections 399.30(d) states that a POU governing board "may adopt the following measures (emphasis added)." The CEC's authority is therefore limited to determine whether POU's abide by their procurement plan.

Moreover, LADWP would like to remind the CEC that procurement plans are continuously being shaped by technology, community engagement processes, and system modeling unique to the POU's retail customers. Furthermore, the POU's resource procurement and ratemaking process is different from the IOU's, as they are consolidated within the POU and costs are recovered from the POU's customer-owners. It is paramount that POU's maintain discretion over costs and delays incurred while procuring eligible renewable resources.

As such, the POU governing boards would have the authority to adopt rules suitable for their specific POU structure. As stated above, the CEC's

authority under PUC Section 399.30(n) is therefore limited to determining whether POUs abide by their procurement plan. LADWP requests the CEC to remove Section 3206(d) from the Draft Regulations.

#### **H. Section 3207 – Compliance Reporting for POUs**

The LADWP would like to thank the CEC for adding the following language to Section 3207(b):

<p>The format for the annual report shall be specified by the Commissions, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Commission.</p>
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#### **I. Section 3208 – Renewables Portfolio Standard Enforcement**

Beyond the proposed Redlines provided, LADWP does not have any comments on this section at this time.

#### **J. Change in Law Effects**

A major concern between POUs and project developers (Developers) is the risk associated with Change in Law. Change in Law risks are inherent and affect all contracts/agreements executed for compliance with California's RPS moving forward. The ponderous point of contention between parties in negotiations is "Who should bear the risk of Change in Law? The Utility or the Developers?" It is getting harder and harder to negotiate contracts due to this issue which can significantly reduce the net value of a project. To be clear, this is not a speculative risk: it is real and has already affected several POUs and Developers. Developers constantly point to the Biomethane Moratorium installed earlier this year, which instituted economic impacts on historical decision and left biomethane contracts in a murky state of eligibility. As such, both the POUs and

Developers refuse to accept Change of Law liability due to the potential of not obtaining certification and/or appropriate Portfolio Content Category treatment, thus devaluing the net worth of a project.

The CEC needs to be cognizant that changes (whether they be considered miniscule or not) have a significant effect on procurement decisions made by POU's and will impact meeting compliance. Therefore, the CEC needs to add "Change of Law" as a reason that a POU might not comply with the RPS rules

### **III. REQUEST FOR CEC TO RESPOND TO FILED COMMENTS**

As this proceeding continues to evolve, the LADWP feels that several key decisions made on statute interpretations are made without a full explanation. Furthermore, several previous comments made by LADWP are not addressed in subsequent decisions/revision. Subsequently, LADWP continuously repeats its concerns in proceeding comments. For the sake of reducing stakeholder comments and understating CEC justification on interpretation of the SB 2 (1X), the LADWP respectfully requests that the CEC respond to stakeholder comments in subsequent revisions to key documents in this proceeding.

#### IV. CONCLUSION

The LADWP remains committed to transitioning to a greater usage of a renewable energy resource mix in a cost-effective manner while maintaining grid reliability. The LADWP recommends that the CEC take into consideration the proposed Redlines. LADWP appreciates the opportunity to comment on this important issue and looks forward to cooperating with the Energy Commission in this proceeding.

Dated August 13, 2012

Respectfully Submitted,



By:

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RANDY S. HOWARD  
Chief Compliance Officer – Power System  
Los Angeles Department of Water and Power  
111 N. Hope St., Room 921  
Los Angeles, CA, 90012  
Telephone: (213) 367 – 0381  
Email: [Randy.Howard@ladwp.com](mailto:Randy.Howard@ladwp.com)



# LADWP's Redline to the California Energy Commission's Draft Regulations

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## CHAPTER 2:

### Proposed Text for 33 Percent RPS Pre-Rulemaking Draft Regulations

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

#### Section 3200 – Scope

The regulations in this Chapter implement enforcement procedures for the Renewables Portfolio Standard for local publicly owned electric utilities established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

#### Section 3201 – Definitions

- (a) “**Annual Pprocurement Ttarget**” means the amount of procurement that a POU must meet for a particular year for the purposes of calculating **hHistoric** carry-over.
- (b) “**Balancing Aauthority**” means a balancing authority as defined in Public Utilities Code Section 399.12 (b).
- (c) “**Balancing Aauthority Aarea**” means a balancing authority area as defined in Public Utilities Code Section 399.12 (c).
- (d) “**Baseline**” means the initial RPS procurement of a POU that will form the basis of that POU’s **aAnnual pProcurement tTargets**.
- (e) “**Bundled**” means ~~an electricity product that, when initially procured the procurement of an electricity product that~~ includes both the electricity and the associated **rRenewable eEnergy eCredits** ~~from an RPS-certified facility as part of the same contract or ownership agreement.~~
- (f) “**California Bbalancing Aauthority**” means a **bBalancing aAuthority** 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 **bBalancing aAuthority** areas operated by the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California, Imperial Irrigation District, and Turlock Irrigation District.

(g) **“Commission”** means the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

(h) **“Compliance Pperiod”** means the compliance periods as defined in Public Utilities Code Section 399.30 (c).

(i) **“Compliance Rreport”** means the report that each POU files with the Commission by June 1 of the calendar year following the end of a compliance period as specified in Section 3207.

(j) **“Count In Full”** means that procurement from contracts or ownership agreements signed prior to June 1, 2010 count for RPS compliance without regard to Portfolio Content Category or Portfolio Balance Requirements for procurement meeting the requirements of Section 399.16(b)(1) or Section 399.16(b)(3), respectively. Such procurement is therefore simply outside the portfolio balance requirements; it neither counts nor does not count in any particular portfolio content category.

(1) At the discretion of the POU governing board, procurement that meets current RPS Eligibility Guidebook requirements at the time the entity files for certification count towards the Portfolio Content Categories and will be accounted for in the Portfolio Balance Requirements.

(k) **“Distributed Generation”** means any electric generation facility as defined in Public Utilities Code section 387.6(b) and any eligible renewable electrical generation facility used by an eligible customer-generator as defined in Public Utilities Code Section 2827(b)(5)

(l) **“Electricity Pproduct”** means either:

(1) The procurement of Eelectricity and the associated renewable energy credit generated by an RPS-certified facility from an eligible renewable energy resource.

(2) The procurement of aAn unbundled renewable energy credit.

(m) **“Eligible Rrenewable Eenergy Rresource”** means an electrical generating facility that the Commission has determined meets the definition of a "renewable electrical generation facility" in Section 399.12 (e) of the Public Utilities Code and has certified as an RPS-certified facility meets the requirements of Public Utilities Code sections 399.12(e) or 399.12.5.

(n) **“Firmed and Shaped”** means transactions that provide substitute energy in the same quantity as the contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation, which can be set in a manner that meets the timing and quantity requirements of the retail seller. The original RPS-eligible generation is consumed elsewhere, typically but not necessarily close to the generator<sup>1</sup>.

(o) **“Historic Ccarry-Oover”** means a POU’s procurement that satisfies the following criteria:

(1) 1) The procurement is for electricity and the associated RRenewable eEnergy eCredit generated by a facility that met the Commission’s RPS-eligibility requirements in effect

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<sup>1</sup> Decision Implementing Portfolio Content Categories For the Renewables Portfolio Standard Program, California Public Utilities Commission, Decision 11-12-052 December 15, 2011 Page 46. Available At: [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/156060.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf)

~~when the original procurement contract or ownership agreement was executed by the POU,~~<sup>2)</sup>

~~(2) The original contract or ownership agreement was entered into by the POU prior to June 1, 2010, and~~<sup>3)</sup>

~~(3) The procurement was not applied to or otherwise claimed by the POU for purposes of satisfying the Renewables Portfolio Standard program established by the POU pursuant to former Public Utilities Code Section 387, or any other compliance or voluntary claim.~~

~~(p) “Incremental Electricity” means electricity not in the portfolio of the POU claiming the transaction for RPS compliance prior to a firmed and shaped transaction<sup>2</sup>”~~

~~(q) “Metered Boundaries” in relation to a California Balancing Authority Area, means either:~~

~~(1) The point at which metering equipment monitors the flow of electric energy between balancing authorities; or~~

~~(1)(2) If metering equipment is not available, the point of the transmission grid where a balancing authority assumes from another balancing authority the responsibility for the operation of the transmission grid.~~

~~(k)(r) “Megawatt-hour” or “MWh” means a unit of energy equivalent to one megawatt of electricity supplied for one hour.~~

~~(l)(s) “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.~~

~~(m)(t) “Ownership Agreement” includes:~~

~~(1) An agreement between a POU and a third party to acquire or develop an electrical generation facility; or~~

~~(2) If the POU built and owns the electrical generation facility and therefore has no such agreement with a third party, the arrangement by which the POU built the facility, in which case the date of the arrangement for the purposes of Section 3202(a) is the commercial operation date of the facility.~~

~~(n)(u) “Portfolio Balance Requirement” refers to the Portfolio Content Category minimum and maximum requirements defined in Public Utilities Code Section 399.16.~~

~~(o)(v) “Portfolio Content Category” refers to one of three categories of Electricity Products procured from an RPS-certified facility, as specified in Section 3203.~~

~~(p)(w) “POU” or “Local Publicly Owned Electric Utility” or “POU” -means a local publicly owned electric utility as defined by Public Utilities Code Section 224.3.~~

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<sup>2</sup> [Decision Implementing Portfolio Content Categories For the Renewables Portfolio Standard Program, California Public Utilities Commission, Decision 11-12-052 December 15, 2011 Page 49. Available At: http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/156060.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf)

(q)(x) **“Procure”** means to acquire ~~electricity products from RPS-certified facilities through executed contracts or ownership agreements through ownership or contract.~~

(r)(y) **“Renewable Electrical Generation Facility”** means a facility as defined in Public Resources Code Section 25741(a).

(s)(z) **“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.~~

(t)(aa) **“Renewables Portfolio Standard”** or **“RPS”** has the same meaning as defined in Public Utilities Code Section 399.12 (i).

(b) **“RPS-Certified Facility”** means a facility that the Commission has certified as being eligible for the RPS if:

(1) The facility meets pursuant to the Commission’s RPS Guidelines; or

(2) The facility was approved by a POU governing board prior to June 1 2010 and meets the definition of a “Renewable Electrical Generation Facility” as defined in Section 25741 of the Public Resources Code, or that has limited RPS certification in place for the duration of that facility’s contract or ownership agreement term. 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. To become a facility with limited RPS certification, the facility must demonstrate to the Commission that it satisfied the requirements of the RPS Guidelines that were in place at the time of the contract or ownership agreement approval.

(u)(cc) **“RPS Guidelines”** means the guidelines adopted by the Commission pursuant to Public Resources Code Section 25747 (a) to implement the RPS.

(v)(dd) **“RPS Procurement Requirement”** refers to both the Portfolio Balance Requirement and the RPS Procurement Target with which a POU must comply.

(w)(ee) **“RPS 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 POUs 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, or the Soft Target for that year, whichever is less, that must be procured from RPS-Certified Facilities.

(x)(ff) **“Retire”** means to claim a ~~renewable energy credit~~ REC in the tracking system established by the Commission pursuant to Public Utilities Code Section 399.25 (c) and thereby commit the ~~renewable energy credit~~ REC to be used for compliance with the RPS.

(y)(gg) **“Soft Target”** means an amount equivalent to the percentage of retail sales for a single year within a Compliance Period that is used to calculate the RPS Procurement Target for that Compliance Period. For example, the soft target for 2014 is equal to 20 percent of retail sales for that year.

(z)(hh) **“Unbundled REC”** means a REC, without the associated electricity, from an eligible renewable energy resource, from an RPS-certified facility that is not procured as part of the

~~same contract or ownership agreement with the underlying energy from that facility;~~ This includes RECs that were originally procured as a ~~b~~Bundled product but were subsequently resold separately from the underlying energy.

(aa)(ii) **“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).

(bb)(jj) **“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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 25741 and 25747, Public Resources Code; and Section 399.30, Public Utilities Code.

## Section 3202 – Qualifying Electricity Products

(a) ~~For An e~~Electricity ~~p~~Product to be used for compliance toward the RPS ~~p~~Procurement ~~r~~Requirements specified in Section 3204, ~~the electricity product~~ must meet one of the following requirements:

~~(1) The e~~Electricity ~~p~~Product is ~~procured pursuant to a contract or ownership agreement executed on or after June 1, 2010 or f~~the electricity product is procured pursuant to a contract or ownership agreement executed before June 1, 2010, but and while the facility did not meet the Commission's RPS eEligibility ~~r~~Requirements ~~when the originally procured~~ment contract or ownership agreement was executed by the POU it meets the Commissions RPS Eligibility Requirements at the time the entity submits a Certification Application.

~~(2)~~(1) \_\_\_\_\_:

(A) Procurement must be classified into a portfolio content category in accordance with Section 3203.

(B) Procurement will be included in the calculation of the portfolio balance requirements as defined in Section 3204 (c).

~~(3)~~(2) \_\_\_\_\_ The electricity product is procured ~~pursuant to a contract or ownership agreement executed before June 1, 2010, and deemed certified as an eligible renewable energy resource by the Commission if the facility was approved by a POU governing board for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387. the electricity product is associated with generation from a facility that met the Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU.~~

(A) Except as provided in paragraphs (B) and (C), the procurement shall ~~e~~Count in ~~f~~Full toward the RPS procurement requirements, ~~subject to the following where Count in Full means:~~

1. Procurement will count toward the RPS procurement targets as defined in Section 3204 (a).

2. Procurement will not be classified within a portfolio content category and will not count toward the requirements of Section 3204 (c).

3. Procurement from contracts of less than 10 years will not be subtracted when calculating excess procurement in accordance with Section 3206 (a).

(B) If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource, only the amounts or resources agreed to prior to June 1, 2010, shall count in full toward the RPS ~~p~~Procurement ~~r~~Targets.

~~(C)~~ 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.

~~(4)~~(3) \_\_\_\_\_ At the discretion of the POU governing board, all Electricity Products procured before June 1, 2010 may count towards Section 3202 (a)(1) if the eligible renewable

energy resource satisfies the Portfolio Content Category Requirements specified in Section 3203.

~~(5) The electricity product is procured pursuant to a contract or ownership agreement executed before June 1, 2010, but the facility did not meet the Commission's RPS eligibility requirements when the original procurement contract or ownership agreement was executed by the POU.~~

~~(A) Procurement must be classified into a portfolio content category in accordance with Section 3203.~~

~~(B) Procurement will not be included in the calculation of portfolio balance requirements in Section 3204 (c).~~

- (b) If any electricity products procured ~~pursuant to a contract or ownership agreement executed~~ prior to June 1, 2010, are resold on or after June 1, 2010, and the resale is not explicitly ~~included-allowed~~ in the original contract or ~~ownership agreement terms~~ POU policy regarding RPS Procurement Requirements, the electricity products must be classified in a portfolio content category and follow the portfolio balance requirements of Section 3204 (c).
- (c) A POU may not use a REC associated with 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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16, 399.21, and 399.30, Public Utilities Code.

## Section 3203 – Portfolio Content Categories

### (a) Portfolio Content Category 1

(1) Portfolio Content Category 1 ~~e~~Electricity ~~p~~Products RECs must be initially ~~p~~Procured as and remain ~~b~~Bundled in order to be classified in Portfolio Content Category 1.

~~(1)~~(2) The facility generating the electricity and associated RECS must be interconnected to a transmission network within the WECC service territory or and must be ~~an~~ RPS-Certified ~~facility~~. 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. The quantity of electricity counted for compliance is the quantity of electricity procured by the POU as measured the busbar of the RPS-Certified Facility. Portfolio Content Category 1 ~~e~~Electricity ~~p~~Products must also meet at least one of the following criteria:

(A) Electricity ~~P~~products must be generated by a facility that has its first point of interconnection within the metered boundaries of a California ~~b~~Balancing ~~a~~Authority ~~a~~Area.

~~(B)~~ Electricity products must be generated by a 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.

~~(C)~~(B) Electricity products from the facility must be scheduled into a California ~~b~~Balancing ~~a~~Authority without substituting electricity from another source. For purposes of this Section 3203, electricity generated by the facility must be scheduled into a California ~~b~~Balancing ~~a~~Authority within the hour in which the electricity is generated, and the POU's governing board or other authority, including joint power authorities, as delegated by the POU governing board, must have approved an Ownership Agreement or other type of agreement and/or amendments to such agreement, before the electricity is generated, to schedule the electricity from the facility into the California balancing authority during the hour in which the electricity 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 shall be classified as Portfolio Content Category 1.

(C) Electricity products must be subject to an agreement between a California balancing authority and the balancing authority in which the facility is located, executed before the product is generated, to dynamically transfer electricity from the facility into the California balancing authority area during the hour in which the product is generated.

(3) The facility generating the electricity and associated RECs must have 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.

(A) Electricity Products generated by a facility that meets Section 3203(a)(3) where the utility owns the REC shall be classified in Portfolio Content Category 1.

(B) Electricity Products obtained by a POU as part of its Solar Incentive Program under Senate Bill 1 and where the POU has obtained RECs from its customers shall be classified in Portfolio Content Category 1.

(C) Section 3203(a)(3)(C): Electricity Products generated by a facility that meets Section 3203(a)(3) may request for an exemption of Western Renewable Energy Generation Information System (WREGIS) Classes H-J Metering Requirements if such requirement is considered cost-prohibitive.

1. A POU must report for these projects with expected performance data, which is based on the characteristics of the photovoltaic system (e.g., size, location, orientation, tilt, tracking, shading, etc.).

~~(2)~~(4) Electricity products originally qualifying in Portfolio Content Category 1 and resold must meet the following criteria to remain in Portfolio Content Category 1:

(A) The original contract for procurement of the ~~e~~Electricity ~~p~~Products meets at least one of the criteria in Section 3203 (a)(1)~~(A)~~ – ~~(3D)~~.

(B) The resale contract transfers only ~~electricity and~~Bundled RECs that have not yet been generated prior to the effective date of the resale contract.

(C) The electricity and associated RECs must be transferred by the resale contract to the ultimate buyer, ~~and the electricity must be transferred in real time.~~

(D) For those electricity products that satisfy Section 3203 (a)(1)(C), the original hourly or subhourly schedule is maintained and the criteria of Section 3203 (a)(2)(A) – (C) are met.

~~(3)~~(5) Electricity products originally qualifying in Portfolio Content Category 1 and resold that do not meet the criteria of Section 3203 (a)(2)(A) – (D) 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 that is interconnected to a transmission network within the WECC service territory, and the electricity must be firmed and shaped with substitute electricity to provide incremental electricity that is scheduled into a California ~~b~~Balancing ~~a~~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 ~~b~~Balancing ~~a~~Authority ~~a~~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 or other authority, as delegated by the POU governing board, at the same time or after the procurement for the electricity from the RPS-certified facility is adopted.

(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~~ 12 months from the date that as the electricity from the RPS-Certified Facility is generated.

(E) The electricity from the RPS-Certified Facility may not be sold back to that facility.

~~(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:

~~(4)~~ The original contract for procurement of the electricity products meets the criteria of Section 3203 (b)(2)(A)–(E).

~~(5)~~ The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.

~~(6)~~ The resale contract transfers the original arrangement for substitute electricity, including the source and quantity for the substitute electricity.

~~(7)~~ 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.

~~(8)~~ The transaction continues to provide incremental electricity for the POU claiming the transaction for RPS compliance.

~~(9)~~ (3) The transaction 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.

~~(10)~~ (5) The quantity of electricity counted is the quantity of electricity procured by the POU as measured at the busbar of the RPS-Certified Facility

(c) Portfolio Content Category 3

(1) ~~All unbundled renewable energy credits and other~~ Electricity products procured from RPS-Certified Facilities located within the WECC transmission grid 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 over the three calendar years in the compliance period. The numerical expression of this requirement is:

$$\frac{EP_{2011} + EP_{2012} + EP_{2013}}{RS_{2011} + RS_{2012} + RS_{2013}} \geq .20$$

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

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(5) toward its RPS procurement target for this period.

- (2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 20 percent of its 2014 retail sales, 20 percent of its 2015 retail sales, and 25 percent of its 2016 retail sales. The numerical expression of this requirement is:

$$EP_{2014} + EP_{2015} + EP_{2016} \geq .20(RS_{2014}) + .20(RS_{2015}) + .25(RS_{2016})$$

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(6) toward its RPS procurement target for this period.

- (3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 25 percent of its 2017 retail sales, 25 percent of its 2018 retail sales, 25 percent of its 2019 retail sales, and 33 percent of its 2020 retail sales. The numerical expression of this requirement is:

$$EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020} \geq .25(RS_{2017}) + .25(RS_{2018}) + .25(RS_{2019}) + .33(RS_{2020})$$

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(7) toward its RPS procurement target for this period.

- (4) For the calendar year ending December 31, 2021, and each calendar year thereafter, a POU shall procure electricity products sufficient to equal 33 percent of its retail sales by the end of that year. No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(8) toward its RPS procurement target for the calendar year ending December 31, 2021, or for any calendar year thereafter.
- (5) For a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnish electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with Section 20500] of the Water Code), the percentage of total retail sales, upon which the RPS procurement targets in Section 3204 (a)(1)-(4) are calculated, shall be based on that POU's average annual retail sales over the seven years preceding the end of each compliance period. (For example, for the compliance period ending December 31,

2013, the retail sales for each year within that compliance period should equal the average annual retail sales for January 1, 2007 – December 31, 2013.) If the POU has not furnished electric service for the seven years preceding the end of a compliance period, then the calculation shall be based on average annual retail sales over the number of completed years during which the authority has provided electric service.

- (6) Notwithstanding Section 3204 (a)(1) – (4) or Section 3204 (c)(1)-(9), 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.
- (A) 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). The documentation shall include a copy of any written notice filed with the United States Secretary of the Interior or the Western Area Power Administration declaring the POU’s intent to exercise its preference rights under the Trinity River Diversion Act and any integrated resource plan filed with the Western Area Power Administration confirming the POU’s election to receive all of its electricity pursuant to its preference rights, and any updates or amendments to those written notices and integrated resource plans. The POU shall initially submit documentation to the Commission within 30 calendar days of the adoption of these regulations. Thereafter, the POU shall submit to the Commission a copy of any new or updated written notices or integrated resource plans filed with the United States Secretary of the Interior or the Western Area Power Administration. Copies of such notices and plans shall be submitted to the Commission within 30 days of the date the notices and plans are filed with the United States Secretary of the Interior or the Western Area Power Administration. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (h).
- (7) Notwithstanding Section 3204 (a)(1) – (4) or Section 3204 (c)(1)-(9), 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 retail sales in any given calendar year is satisfied with its qualifying hydroelectric generation.
- (A) For purposes of this Section 3204, “qualifying hydroelectric generation” is generation from one or more facilities that meets the following criteria:
1. The facility is located within the state.
  2. The facility is owned and operated by the POU.
  3. The facility is a hydroelectric facility but does not meet the definition of a “Renewable Electrical Generation Facility” and is not RPS-certified.
  4. The facility, in conjunction with other facilities meeting the requirements of this Section 3204 (a)(7), provides greater than an average of 67 percent of the POU’s retail sales for the five years preceding the beginning of each compliance period.

- (B) A POU shall demonstrate that it meets the criteria listed in Section 399.30 (k) by providing the Commission documentation showing the POU received at least an average of 67 percent of its retail sales in the five years preceding each compliance period from hydroelectric sources that the POU owns and operates. The POU shall initially submit documentation for the five years preceding January 1, 2011, within 30 calendar days of the adoption of these regulations. New documentation must be submitted within 90 calendar days of the end of each compliance period.
- (C) If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has retail sales unsatisfied by its qualifying hydroelectric generation in any given year, the POU shall procure electricity products equal to the lesser of the following:
1. The portion of the POU's retail sales unsatisfied by the POU's qualifying hydroelectric generation.
  2. The soft target listed in Section 3204 (a)(1) – (4) corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual retail sales.

(b) RPS ~~p~~P~~r~~ocurement ~~r~~R~~e~~quirement deficits incurred in any one compliance period shall not be added to a future compliance period.

(c) In meeting the RPS ~~p~~P~~r~~ocurement ~~t~~T~~a~~rgets as defined in Section 3204 (a), each POU shall also be subject to the following ~~p~~P~~r~~ocurement ~~b~~B~~a~~lance ~~r~~R~~e~~quirements:

- (1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, not less than 50 percent of ~~e~~E~~l~~ectricity ~~p~~P~~r~~ocurement ~~t~~T~~a~~rget shall meet the criteria of Section 3202 (a)(1) and credited toward the RPS ~~p~~P~~r~~ocurement ~~t~~T~~a~~rget shall meet the definition of Portfolio Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2011-2013} \geq 0.50 \times (POST_{2011-2013})$$

*PCC1<sub>x</sub> = Electricity products applied to compliance period X that must meet the criteria of Section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in Section 3203 (a)*

*POST<sub>x</sub> = Portion of qualifying eElectricity ~~p~~P~~r~~ocurement ~~t~~T~~a~~rget ~~pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target for compliance period X that meet the criteria of Section 3202(a)(1)~~*

- (2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, not less than 65 percent of ~~e~~E~~l~~ectricity ~~p~~P~~r~~ocurement ~~t~~T~~a~~rget shall meet the criteria of Section 3202 (a)(1) and credited toward the RPS ~~p~~P~~r~~ocurement ~~t~~T~~a~~rget shall meet the definition of Portfolio Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2014-2016} \geq 0.65 \times (POST_{2014-2016})$$

- (3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, not less than 75 percent of electricity products that meet the criteria of Section 3202 (a)(1) and

credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2017-2020} \geq 0.75 \times (POST_{2017-2020})$$

- (4) For the calendar year ending December 31, 2021, and each calendar year thereafter, not less than 75 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2021} \geq 0.75 \times (POST_{2021})$$

- (5) For the compliance period beginning January 1, 2011, and ending December 31, 2013, no more than 25 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2011-2013} \leq 0.25 \times (POST_{2011-2013})$$

*PCC3<sub>x</sub> = Electricity products applied to compliance period X that must meet the criteria of Section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in Section 3203 (c)*

- (6) For the compliance period beginning January 1, 2014, and ending December 31, 2016, no more than 15 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2014-2016} \leq 0.15 \times (POST_{2014-2016})$$

- (7) For the compliance period beginning January 1, 2017, and ending December 31, 2020, no more than 10 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2017-2020} \leq 0.10 \times (POST_{2017-2020})$$

- (8) For the calendar year ending December 31, 2021, and each calendar year thereafter, no more than 10 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2021} \leq 0.10 \times (POST_{2021})$$

- (9) Except as otherwise required by Section 3204 (c), electricity products meeting the definition of Product Content Category 2 specified in Section 3203 (b) may be used to meet an RPS procurement requirement.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16 and 399.30, Public Utilities Code.

## Section 3205 – Procurement Plans and Enforcement Programs

### (a) Renewable Energy Resources Procurement Plan

- (1) By January 1, 2013, each POU shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS ~~P~~Procurement ~~R~~Requirements for each compliance period. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption. This is satisfied if the POU provides a Uniform Resource Locator to the Commission that directly links to the plan on POU's Internet Web site for posting on the Commission's internet web site.
- (2) A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS targets annually. The renewable energy resources procurement plan shall additionally provide a forecast of the qualifying hydroelectric generation expected to meet the POU's forecasted annual electricity demand. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 days of adoption.
- (3) Each POU shall provide the following notice regarding new or updated renewable energy resources procurement plans.
  - (A) The POU shall 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. Alternatively, 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 Program

- (1) By January 1, 2012, each POU shall adopt an enforcement program detailing actions the POU will take if the POU determines that it will not meet its RPS ~~P~~Procurement ~~R~~Requirements in accordance with Section 3204. The enforcement program, and any revisions or updates to the program, shall be submitted to the Commission within 30 calendar days of adoption.



- (2) Each POU shall provide notice regarding new or updated enforcement programs. The enforcement program must be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 calendar days notice shall be given to the public of any meeting held for purposes of adopting the enforcement program.
- (3) If the enforcement program is modified or amended, no less than 10 calendar days notice shall be given to the public before any meeting is held to make a substantive change to the enforcement program.
- (c) If a POU distributes information to its governing board related to its renewable energy resources procurement status or future procurement plans, for the governing board's consideration at a public meeting, the POU shall make all that information available to the public and shall provide an electronic copy of that 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. Alternatively, 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), 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, enforcement program, or public notice or information concerning any such procurement plans or enforcement programs.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.30, Public Utilities Code.

## Section 3206 – Optional Compliance Measures

(a) In meeting its RPS ~~p~~P~~r~~Procurement ~~r~~R~~e~~quirements, the governing board of a POU may adopt at a noticed public meeting any of the following measures:

(1) Excess procurement

(A) A POU may adopt rules permitting the POU to apply excess procurement in one compliance period to a subsequent compliance period, as specified in paragraphs

(B) – (D) and subject to the following limitations:

1. Electricity products that exceed the maximum limit for Portfolio Content Category 3, as specified in Section 3204 (c), must be subtracted from the calculation of excess procurement.
2. Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product counts in full in accordance with Section 3202 (a)(2).

(B) A POU that opts to allow the application of excess procurement as part of its renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.

(C) Electricity products qualifying as excess procurement may be applied toward any future compliance periods, including compliance years following 2020.

(D) Excess procurement shall be calculated as follows:

<u>PCC 1</u> <u>2011-</u> <u>2013</u>	$\text{Excess Procurement PCC1} = EP_{2011-2013}^{PCC1} + CIF_{2011-2013} - .10(RS_{2011-2013})$
<u>PCC 1</u> <u>2014-</u> <u>2016</u>	$\begin{aligned} \text{Excess Procurement PCC1} \\ = EP_{2014-2016}^{PCC1} + CIF_{2014-2016} - .13(RS_{2014}) - .13(RS_{2015}) \\ - .1625(RS_{2011}) \end{aligned}$
<u>PCC 1</u> <u>2017-</u> <u>2020</u>	$\begin{aligned} \text{Excess Procurement PCC1} \\ = EP_{2017-2020}^{PCC1} + CIF_{2017-2020} - .1875(RS_{2017}) - .1875(RS_{2018}) \\ - .1875(RS_{2019}) - .2475(RS_{2020}) \end{aligned}$
<u>PCC 1</u> <u>2021</u>	$\text{Excess Procurement PCC1} = EP_{2021}^{PCC1} + CIF_{2021} - .2475(RS_{2021})$
<u>PCC 2</u> <u>2011-</u> <u>2013</u>	$\text{Excess Procurement PCC2} = EP_{2011-2013}^{PCC2} - EPR_{2011-2013}^{PCC2}$
<u>PCC 2</u> <u>2014-</u> <u>2016</u>	$\text{Excess Procurement PCC2} = EP_{2014-2016}^{PCC2} - EPR_{2014-2016}^{PCC2}$
<u>PCC 2</u> <u>2017-</u> <u>2020</u>	$\text{Excess Procurement PCC2} = EP_{2017-2020}^{PCC2} - EPR_{2017-2020}^{PCC2}$
<u>PCC 2</u>	$\text{Excess Procurement PCC2} = EP_{2021}^{PCC2} - EPR_{2021}^{PCC2}$

<u>2021</u>	
<u>PCC 3</u>	<u>A Local Publicly Owned Electric Utility is not allowed to generate Excess Procurement from Portfolio Content Category 3 Renewable Energy Credits.</u>

Where:

- PCC1 = Portfolio Content Category 1  
PCC2 = Portfolio Content Category 2  
EPx = Electricity Products Procured for the specified year X.  
CIFx = Count In Full procurement for a specified year that meets the criteria of 3202(a)(2).  
RSx = Total retail sales made by the POU for the specified year X.  
ERPx = Electricity Products retired in the specified year X.

\*All generation that meets the criteria for 3202(a)(1) or 3202(a)(3) and is associated with contracts of less than 10 years in duration procured and retired for compliance period X may not be used to generate excess procurement.

~~The numerical expression of the excess procurement permitted for the first compliance period is:~~

~~$$\text{Excess Procurement} = ) - ( + + )$$~~

~~EPx = Electricity Products procured and retired for the compliance period X.~~

~~RPSx = The RPS procurement target calculated in section 3202(a) for compliance period X.~~

~~S3x = Retired PCC3 RECs in excess of the maximum calculated in Section 3204(e) for compliance period X.~~

~~STCx = All generation that meets the criteria of 32-2(a)(1) or 3202 (a)(3) and is associated with contracts less than 10 years in duration procured and retired for compliance period X.~~

~~The numerical expression of the excess procurement permitted for the second compliance period is:~~

~~$$\text{Excess Procurement} = ) - ( + + )$$~~

~~The numerical expression of the excess procurement permitted for the third compliance period is:~~

~~$$\text{Excess Procurement} = ) - ( + + )$$~~

~~The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, and each calendar year thereafter is:~~

~~$$\text{Excess Procurement} = ) - ( + + )$$~~

(2) Delay of timely compliance

- (A) A POU may adopt rules permitting the POU to make a finding that reasonable cause exists to delay the timely compliance with RPS procurement requirements, as

defined in Section 3204. 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. 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. The POU must also find that:
    - i. The POU prudently managed portfolio risks, including but not limited to, holding solicitations for RPS eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.
    - 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) A POU may adopt rules for cost limitations on the procurement expenditures used to comply with its RPS procurement requirements.
  - (B) Such cost limitation rules 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.

(D) When applying procurement expenditures under an adopted cost limitation rule, the POU shall only apply those types of procurement expenditures that are permitted under the adopted cost limitation rule.

(4) Portfolio balance requirement reduction

(A) A POU may adopt rules that allow for the reduction of the portfolio balance requirement for Portfolio Content Category 1 for a specific compliance period consistent with Public Utilities Code Section 399.16 (e).

(B) The need to reduce the portfolio balance requirements for Portfolio Content Category 1 must have resulted because of conditions beyond the control of the POU as provided in Section 3206 (a)(2) or because of cost limitations as provided in Section 3206 (a)(3).

(C) A reduction of the portfolio balance requirement for Portfolio Content Category 1 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 portfolio balance requirements for Portfolio Content Category 1 must adopt these changes at a publicly noticed meeting, providing at least 10 calendar days advance notice to the Commission, and must include this information in an updated renewable energy resources procurement plan submitted to the Commission. The notice to consider the portfolio balance requirement reduction and the procurement plan must include the following information:

1. The compliance period for which the reduction may be adopted.
2. The level to which the POU has reduced the requirement.
3. The reason or reasons the POU has proposed for adopting the reduction.
4. An explanation of how the needed reduction resulted from conditions beyond the control of the POU as provided in Section 3206 (a)(2).
5. If applicable, an explanation of why the reduction was needed as a result of cost limitations adopted by the POU as provided in Section 3206 (a)(3).

(5) Historic Carry-over

(A) A POU may adopt rules that allow for procurement generated before January 1, 2011, that meets the criteria of Section 3202 (a)(2), and that was not applied to the RPS program established by the POU pursuant to former Public Utilities Code Section 387, or any other compliance or voluntary claim, to be applied to the POU's RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period.

- (B) Both the historic carry-over and the procurement applied to the POU's RPS compliance obligation pursuant to the former Public Utilities Code Section 387 must be from facilities that were RPS-eligible under the rules in place for retail sellers at the time of procurement, except that the generation from such facilities need not be tracked in the Western Renewable Energy Generation Information System.
- (C) Historic carry-over shall be calculated by subtracting procurement generated between January 1, 2004, and December 31, 2010, that was applied to a POU's RPS compliance obligation, or that was sold, retired, or otherwise claimed, from the total procurement generated during that same period. If a POU was not in existence as of January 1, 2004, historic carry-over shall be calculated based on procurement generated between the date on which the POU became operational and December 31, 2010.
- (D) The RPS compliance obligation used to calculate a POU's historic carryover shall be based on the following:
1. A baseline of an amount no less than 2001 procurement multiplied by 2003 total retail sales, divided by 2001 total retail sales, plus one percent of 2001 total retail sales (or, if the POU was not in existence in 2001, "2001" in this calculation shall be replaced by the first full calendar year in which the POU was operational, and "2003" in this calculation shall be replaced by the year that is two years after the first full calendar year in which the POU was operational). The numerical expression of the baseline is:
 
$$\text{Baseline} = (EP_{2001} \div RS_{2001}) \times RS_{2003} + (.001 \times RS_{2001})$$
  2. Annual procurement targets for the years 2004-2010 that are no less than 1 percent of the previous year's retail sales greater than the annual procurement target for the previous year. The POU's annual procurement target for 2004 shall be no less than the baseline plus 1 percent of 2003 total retail sales, and the annual procurement target for 2010 shall be an amount no less than 20 percent of 2010 total retail sales.
- (E) Any REC qualifying as historic carry-over shall be retired within 36 months of the month in which the REC was generated.
- (F) A POU that adopts rules allowing for the use of historic carry-over shall submit all applicable procurement claims for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations, annual procurement target calculations, and any other pertinent documentation to the Energy Commission by June 1, 2013.
- (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 compliance period if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements. The Commission may, when hearing a complaint against a POU under Section 1240, consider the date of adoption of any rules adopted pursuant to this section that the POU relied upon to satisfy or delay its RPS procurement requirements.

- (c) Any rule or rule revision adopted under this Section 3206 shall be submitted to the Commission within 30 calendar days after adoption. The rule or rule revision shall be submitted along with all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision.
- (d) In determining a POU's compliance with the RPS procurement requirements, the Commission will not consider the application of any rule or rule revision adopted by a POU under this Section 3206 that the Commission determines does not comply with Public Utilities Code Section 399.30, these regulations, or any applicable order or decision adopted by the Commission pertaining to the RPS.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.15, 399.16 and 399.30, Public Utilities Code.

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

- (a) Each POU shall submit the following reports to the Commission as required by this section. The information provided by a POU in these reports will be verified using the verification process specified in the RPS Guidelines to determine a POU's compliance with the RPS.
- (b) By June 1, 2013, and by June 1 of each year thereafter, each POU shall submit an annual report to the Commission that includes the information in paragraphs (1) and (2) below for the prior calendar year. The format for the annual report shall be specified by the Commission, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Commission. If the annual report refers to information provided to the Commission through existing reports, the annual report shall reference the information by identifying the name, submittal date, and page number of the existing report.
  - (1) POU identifying information, including:
    - (A) POU name, contact name, mailing address, phone number, and e-mail address.
    - (B) Year the POU was established.
    - (C) Number of retail customer accounts in California.
  - (2) RPS annual progress information, including:
    - (A) Amount of total retail sales to end-use customers for the reporting year, and projected retail sales for the forthcoming calendar year and current compliance period.
    - (B) Percentage of RPS-eligible procurement, based on total retail sales, for the reporting year.
    - (C) An initial, nonbinding classification per RPS-certified facility of the amount of electricity products in each portfolio content category, from a procurement contract
    - (D) A description of each of the RPS-certified facilities from which the POU is procuring electricity products, including the facility fuel type, the start and end dates of the procurement contract or ownership agreement, the status of the facility, the date the

facility came on-line using a renewable fuel or technology, RPS certification information, and the county and state in which each facility is located.

- (E) Documentation demonstrating the portfolio content category classification claimed. This documentation may include interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and contract information.
- (F) An explanation of any public goods funds collected for eligible renewable energy resource development, including a description of programs, expenditures, and expected or actual results.
- (G) A description of any identified issues that occurred during the reporting year that have the potential to delay the POU's timely compliance with the RPS procurement requirements defined in Section 3204. Such issues may include, but are not limited to, inadequate transmission and higher-than-expected costs.
- (H) An attestation, signed by an authorized agent of the POU, affirming that the information provided in the report is true and correct.

(c) By June 1, 2014; June 1, 2017; June 1, 2021; and by June 1 of each year thereafter, each POU shall submit to the Commission a compliance report that includes the following information for the preceding compliance period:

- (1) Classification per RPS-certified facility of the amount of procurement in each ~~p~~Portfolio ~~e~~Content ~~C~~ategory, ~~from a procurement contract or ownership agreement~~ approved by a POU governing board or other authority, as delegated by the POU governing board, after June 1, 2010.
- (2) Documentation demonstrating the ~~p~~Portfolio ~~e~~Content ~~e~~Category classification claimed. This documentation may be demonstrated by any of the following: WREGIS compliance reports, interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and contract information.
- (3) The POU's RPS ~~p~~Procurement ~~t~~Target for the ~~e~~Compliance ~~p~~Period.
- (4) The amount of excess procurement from previous ~~e~~Compliance ~~p~~Periods, if any, and ~~H~~Historic ~~C~~arry-~~O~~ver, if any, that the POU is applying to the ~~e~~Compliance ~~p~~Period.
- (5) The procurement that the POU wishes to claim toward the RPS ~~p~~Procurement ~~t~~Target for the purposes of calculating the ~~p~~Portfolio ~~b~~Balance ~~r~~Requirements.
- (6) The amount of excess procurement for the ~~e~~Compliance ~~p~~Period, if any, that may be applied toward future ~~e~~Compliance ~~p~~Periods, as determined by applying the calculation in Section 3206 (a)(1)(D).
- (7) If a POU's compliance report indicates that the POU's RPS ~~p~~Procurement ~~r~~Requirements were not met, the POU shall provide documentation to justify the application of any optional compliance measures adopted by the POU in accordance with Section 3206. The documentation shall include all reports, analyses, proposed findings, and any other information upon which the POU relied in applying the measure. The POU shall also submit an updated enforcement program that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU's shortfall.



(A) If a POU applies adopted cost limitation rules, the POU shall report that cost limitation to the Commission in dollars spent during the compliance period. The POU shall also provide the Commission with an estimate of the total cost for the POU to ~~pP~~rocur~~e~~ ~~sufficient electricity products~~ to meet its RPS ~~pP~~rocur~~e~~ment ~~rR~~equir~~e~~ments for the preceding ~~eC~~ompl~~i~~ance ~~pP~~eriod.

- (d) Notwithstanding Section 3207 (a) – (c), a POU that meets the criteria listed in Public Utilities Code Section 399.30 (h) shall submit to the Commission documentation as specified in Section 3204 (a)(6).
- (e) Notwithstanding Section 3207 (a) – (c), a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall annually submit to the Commission, by the deadline for annual reports specified in Section 3207 (b), documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state, that the POU receives greater than 67 percent of its electricity sources to meet its electricity demands on an annual basis from qualified hydroelectric facilities as defined in Section 3204 (a)(7). 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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 25747, Public Resources Code; and Sections 399.13, 399.15, 399.16 and 399.30, Public Utilities Code.

### **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 POU's shall be filed in accordance with Title 20, Section 1240 of the California Code of Regulations.

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

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

- (a) Notwithstanding anything in this Article to the contrary, the following shall apply to any complaint pertaining to 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.
- (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, but not be limited to, 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 1240.
- (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. Participation includes the ability to provide oral and written comments in 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. The answer may include a discussion of factors deemed relevant by the local publicly owned utility in mitigating any penalties that may be imposed by the Air Resources Board pursuant to Public Utilities Code Section 399.30, subdivisions (n) and (o), because of the utility's failure to meet a requirement of the Renewables Portfolio Standard, these regulations, or any order or decision adopted by the Commission pertaining to the Renewables Portfolio Standard.
  - (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 calendar 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 calendar 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 calendar 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 calendar 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 ~~thirty (30) 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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.