California Municipal Utilities Association

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March 30, 2012

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

Re: CMUA Comments on the CEC's 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (Commission) for the opportunity to provide these comments on the *33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations* (draft regulations). Additionally, CMUA would like to express its appreciation for the willingness of staff to meet with CMUA members individually and as a group.

CMUA supported the establishment of a 33% Renewable Portfolio Standard (RPS). Our members are charged with the implementation of the RPS through numerous provisions of SB 2 (1X). CMUA members' boards and city councils act as legislative and ratemaking bodies for their relevant communities. They must ensure that the implementation of the RPS can be achieved consistent with procurement requirements specified in California Public Utilities Code section 399.30(a), subject to the flexible compliance mechanisms permitted by sections 399.30(c)(3) and 399.30(d).[1]

SB 2 (1X) represents a defining change for the energy policy of California. Meeting a 33 percent RPS without detrimentally impacting the reliability of the electric grid or placing an undue burden on ratepayers represents a substantial challenge. It is essential that any regulation implementing this legislation be carefully and precisely designed to meet the statutory goals in the most cost-effective and least administratively burdensome manner. Additionally, any implementing regulation should be adopted in a thorough and open process. This means that stakeholders should have numerous opportunities to comment on the regulations and there should be a clear and open forum to discuss these issues.

The California Public Utilities Commission (CPUC) is currently engaged in implementing SB 2 (1X) for the CPUC-jurisdictional entities. The CPUC has issued

[1] Unless otherwise specified, all statutory references are to the California Public Utilities Code.

two major decisions on SB 2 (1X)[2] and parties have filed several hundred sets of comments. While the CPUC has addressed some of the fundamental aspects of its implementation of SB 2 (1X), substantial portions of the regulations are still to be developed and adopted. The CPUC's process will likely take several years.

As the Commission continues the process of adopting "regulations specifying procedures for enforcement" of SB 2 (1X), CMUA cautions against a rush to finalize the regulations. As is demonstrated in these comments, CMUA has significant concerns with the current version of the draft regulations. However, recent discussions with Commission staff have been very productive in clarifying and in some cases resolving some of these concerns. At a minimum, Commission staff should release at least one more version of the draft regulations, followed by another opportunity for comments and discussion with staff. CMUA recognizes that we are well into the first compliance period and there is a need for regulatory certainty. Nothing can change that now. An additional reasonable period of time to review and comment on a revised version of the draft regulations will clearly be worthwhile if it results in a substantially improved set of regulations.

Further, the CPUC process is not a substitute for careful deliberation by the Commission on issues with specific application to publicly owned electric utilities (POUs). The CPUC process has been extensive and CMUA has taken the opportunity to participate by submitting comments on several substantive matters. However, as CMUA's members are not regulated by the CPUC, CMUA's comments are necessarily limited and cannot address the myriad of implementation details the CPUC must finalize with specific application to the CPUC-jurisdictional entities. CMUA is troubled that the draft regulations mirror the CPUC decisions in key areas, without independent examination of whether those decisions are reasonable when applied to the POU regulatory and business model. That is not reasoned decision-making, and has placed the POUs in an impossible position where they have limited influence before the CPUC, and no opportunity for independent examination and deliberation of those same issues before this Commission. This is particularly true of the interpretation of the portfolio content category requirements.

One of the primary reasons expressed for why Commission staff worked with the CPUC and ultimately followed the CPUC's decisions is the policy of uniformity in regulations between the CPUC-jurisdictional utilities and the POUs. However, the CPUC's role for implementing the new RPS requirements for the investor owned utilities (IOUs) is substantially different from the Commission's role regarding the POUs. Additionally, uniformity for the sake of uniformity is not a valid reason for adopting these regulations, nor is it consistent with the mandates of SB 2 (1X). As is demonstrated by the bifurcated structure of SB 2 (1X), the Legislature clearly did not seek to impose uniform regulatory requirements between the IOUs and the POUs.

[2] D.11-12-052 and D.11-12-020.

As Commission staff is aware, CMUA is in the process of developing proposed amendments to the draft regulation language to address our many concerns. This process is ongoing and CMUA hopes that the Commission staff will continue to provide opportunities for CMUA to share these proposed amendments.

These Comments address some of CMUA's most significant policy concerns. Additionally, Attachment 1 of this document provides CMUA's responses to *Attachment A: Questions to Stakeholders Concerning the 33 Percent Renewables Portfolio Standard Draft Regulations.*

DISCUSSION OF THE DRAFT REGULATIONS

A. The Commission's 33 Percent RPS Regulations Must Show Proper Deference to Local Governments.

As CMUA has stated in prior comments, it is essential that any regulations adopted by the Commission not overstep the jurisdictional limits set out in SB 2 (1X) and infringe on the authority of the governing boards of the POUs. California's electric utilities are regulated pursuant to a carefully crafted bifurcated system. As set out in the State Constitution, the CPUC is granted authority to regulate "private persons and Corporations."[3] In contrast, Article XI, Section 7 of the California Constitution provides certain POUs with the authority to make and enforce ordinances and regulations, and Section 9 provides these POUs with the general authority to establish public works, and provide for their operation and regulation.

This regulatory structure recognizes the fundamental differences between POUs and the privately-owned entities regulated by the CPUC, primarily the IOUs. The for-profit nature of the CPUC-regulated IOUs, combined with the largely monopoly structure of electric utility service, necessitates comprehensive regulation. This regulation is necessary to protect ratepayers from excessive rates and to ensure a reliable system. The CPUC's jurisdiction over IOUs is expansive, including contract approval and rate setting.

In contrast, POUs are non-profit, governmental agencies. As public agencies, POUs are subject to the open meeting requirement of the Brown Act.[4] These public meetings are held locally, and a POU ratepayer has easy access to participate in the POU decision-making process.

In recognition of this bifurcated system of regulation, the legislation commonly directs the CPUC to adopt regulations for the IOUs and for the local governing boards to implement the statutory requirements for the POUs. There are numerous examples of this statutory structure. AB 920 added a requirement to Section 2827 of the Public Utilities Code that directs electric utilities to compensate net metering

[3] Cal. Const. Art XII, § 3.
[4] Cal. Gov. Code §§ 54950-54963.

customers for surplus generation.[5] While the statute directs the CPUC to adopt the valuation methodology for the IOUs, the statute directs the governing boards of the POUs to adopt the valuation methodology for the POUs. Along similar lines, the Public Utilities Code directs the CPUC to adopt resource adequacy requirements for the IOUs, while the governing boards of the POUs are directed to adopt their own planning reserve margins. This structure is utilized for numerous matters including energy efficiency and smart grid deployment.[6]

It is instructive to review this history, because SB 2 (1X) clearly fits within this existing regulatory structure. Like the statutes listed above, SB 2 (1X) directs the CPUC to adopt regulations for the IOUs and directs the governing boards of the POUs to implement SB 2 (1X) for their respective POU. It is clear that the Legislature did not intend for the Commission to stand in the place of the CPUC for the POUs. However, the current version of the draft regulations appears to assume such a role for several aspects of the regulations. CMUA believes that it is crucial that the draft regulations conform to the statutory language, because it is only compliance with the statute that the Commission has only been given oversight of compliance with the statute.

No such expansion of the Commission's authority can be implied from the statutory language. Section 399.30(n) provides that the Commission must "adopt regulations specifying procedures for enforcement of this article." This authority is clarified by Section 399.30(o)(1): "Upon a determination by the Energy Commission that a local publicly owned electric utility has failed to comply with this article . . . ." The implication key of these two statutory provisions is that the Commission's authority under SB 2 (1X) is to determine whether the POU has complied with the statutory obligations. Where there is discretion to choose between various options, it is left to the governing boards of the POUs to make such a determination, and the Commission lacks the jurisdiction to evaluate the reasonableness of those decisions.

Along these lines, there appears to be an implicit assumption in the draft regulations that absent regulation and oversight by the Commission, the POUs would simply ignore the statutory obligations set forth in the statute. Such an assumption is clearly contrary to the history described above. POUs take the statutory mandates seriously and faithfully implement these obligations.

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[5] Cal. Pub. Util. Code § 2827(h)(4)(A).

[6] *See e.g.*, Cal. Pub. Util. Code § 2827(h)(4)(A) (directing the local governing board of each POU and the Commission to adopt their own valuation methodologies to compensate eligible customers for net surplus electricity generated.); Cal. Pub. Util. Code § 9620 (requiring the local governing board of each POU to adopt a planning reserve margin); Cal. Pub. Util. Code § 380 (directing the Commission to adopt resource adequacy requirements for the IOUs); Cal. Pub. Util. Code § 9615(b) (directing the local governing board of each POU to establish annual targets for energy efficiency savings); Cal. Pub. Util. Code § 454.55 (directing the Commission to establish energy efficiency targets for the IOUs); Cal. Pub. Util. Code § 8369 (directing the local governing board of POUs with more than 100,000 service connections to develop a smart grid deployment plan.); Cal. Pub. Util. Code § 8362 (directing the Commission to determine the requirements for the IOU smart grid deployment plans.).

B. The Draft Regulations' Treatment of Reasonable Progress Exceeds the Commission's Authority under SB 2 (1X).

Section 3204(d) of the draft regulations proposes to measure a POU's "reasonable progress" toward meeting the specific procurement goals by either requiring that the POU meet certain annual "safe harbor" procurement targets or make a qualitative showing to the Commission. CMUA has significant concerns with this proposal. First, it assumes that, absent direct oversight by the Commission, POUs would simply ignore the requirements of the statute and attempt to game the system. Second, this would represent an unprecedented expansion of Commission involvement into the operations of POUs. As proposed, the Commission would essentially be determining the reasonableness of POU procurement activities. Such a proposition is unsupported by SB 2 (1X) and counter to the well-established regulatory structure of the state.

C. The Draft Regulations' Treatment of the Flexible Compliance Mechanisms Must Be Consistent With SB 2 (1X).

The current language of Section 3206 is also troubling. The draft regulations must clarify that the POU authority to adopt flexible compliance mechanisms does not derive from the Commission's regulations, but is independently provided in SB 2 (1X). The Commission does not have the authority to limit a POU's ability to adopt a flexible compliance mechanism beyond what is provided in statute.

D. Renewable Energy Credits Should Be Eligible for Classification in Portfolio Content Categories 1 and 2.

One of the key CPUC determinations that the Commission must fully and openly consider in this proceeding is the CPUC's position to classify all renewable energy credits (RECs) as Portfolio Content Category 3 resources. This issue is primarily one of statutory construction. "As always, we begin with the words of a statute and give these words their ordinary meaning."[7] If the statutory language is clear and unambiguous, then we need go no further.[8]

Section 399.16 clearly contemplates that RECs may be associated with multiple portfolio content categories. Section 399.16(b)(3) includes in portfolio content category 3 "eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraphs (1) and (2)." This last phrase, "*that do not qualify under the criteria of paragraphs (1) and (2),*" applies to the entirety of the foregoing language "eligible renewable energy resource electricity products, or any

[7] Hoechst Celanese Corp. v. Franchise Tax Bd., 25 Cal. 4th 508, 519 (2001) (citing Wilcox *v. Birtwhistle,* 21 Cal.4th 973, 977 (1999)).
[8] *Id.* (citing Lungren v. Deukmejian, 45 Cal.3d 727, 735 (1988)).

fraction of the electricity generated, including unbundled renewable energy credits," and modifies it as such. It also clearly contemplates that there are types of unbundled renewable energy credits that ***do*** qualify for portfolio content categories 1 and 2, otherwise the final phrase would be superfluous. An interpretation of statutory language the renders a key phrase of the directly applicable statutory provision irrelevant is not favored by settled rules of statutory construction.[9] Supporting this interpretation, CPUC Commissioner Peevey stated in his concurrence to Decision 11-12-052 that "the statute is ambiguous as to whether all unbundled RECs must be placed in Category 3, and prohibiting the use of any unbundled RECs for Category 1 will increase compliance costs for no discernable purpose."[10]

Additionally, the CPUC's determination on RECs is clearly not mandated by the statutory language of section 399.16(b)(1)(A). If an RPS-eligible generator has "a first point of interconnection with a California balancing authority, [has] a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or [is] scheduled . . . into California without substituting electricity from another source," the generator's product falls within section 399.16(b)(1) without regard for whether the associated REC is subsequently sold with energy on a bundled basis or is sold apart from the energy on an unbundled basis.

As CMUA has stated previously, treating RECs as eligible for portfolio content categories 1 and 2 is consistent with the policy objectives of SB2 (1X) to increase renewable generation in the state.[11] Including unbundled as well as bundled RECs within section 399.16(b)(1) would promote the development of generation facilities in California by increasing the options that a California RPS-eligible generator would have for taking full economic advantage of its project. Conversely, excluding the generator's product from section 399.16(b)(1) if the associated REC were sold on an unbundled basis would diminish the economic value of the project. This would be inconsistent with the programmatic objective of increasing "the quantity of California's electricity generated by renewable electrical generation facilities located in this state. . . ."[12]

Concerns over verifying the portfolio content category of RECs have been greatly overstated. Each REC issued by WREGIS carries information on the name and location of the generating facility that generated the REC.[13] Accordingly it will be

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[9] Kulshrestha v. First Union Commercial Corp., 33 Cal. 4th 601, 611 (2004). "[C]ourts may not excise words from statutes. . . . We assume each term has meaning and appears for a reason." *Id.* (citing Delaney v. Superior Court, 50 Cal. 3d 785, 798 (1990)).

[10] Concurrence of Commissioner Michael R. Peevey on Item 47, Decision 11-12-052, at 3.

[11] Ca. Pub. Res. Code § 25740.5(c).

[12] Ca. Pub. Res. Code § 25740.5(c).

[13] *See* Appendix B-1 ("Data Fields on a Certificate") to the WREGIS Operating Rules, December 2010, *available at*

relatively straightforward to confirm whether a particular REC has been generated by a facility that meets the criteria of section 399.16(b)(1). This will pose no additional challenge compared to bundled resources, which will also involve the retirement of a REC in WREGIS.

E. The Adoption of the Draft Regulations Should Be Delayed until the Fifth Edition of the RPS Eligibility Guidebook is Adopted.

As the Commission is aware, the fifth Edition of the RPS Eligibility Guidebook has yet to be adopted. While Commission staff has informed CMUA that several substantial changes will be included in this version of the guidebook, CMUA has yet to see any draft language on a key issue, RPS-certification of pre-June 1, 2010 resources. There are significant unanswered questions as to how this process will function. CMUA is particularly concerned because the draft regulations make numerous references to "RPS-certified facilities."[14] The result is that stakeholders in this proceeding are in the unfortunate position of recommending changes to regulatory language where the underlying terms and key references are to portions of a document that has yet to be made public.

CMUA believes that, in light of these timing issues, stakeholders should be given at least one more opportunity to comment on the draft regulations after the RPS Eligibility Guidebook has been formally adopted. Furthermore, any additional changes to the RPS Eligibility Guidebook should be made through a full and open process with significant opportunity for input from stakeholders.

F. Applicability of Section 399.18 to POUs.

Section 399.18 provides:

> (a) This section applies to an electrical corporation that as of January 1, 2010, met either of the following conditions:
>
> > (1) Served 30,000 or fewer customer accounts in California and had issued at least four solicitations for eligible renewable energy resources prior to June 1, 2010.
> >
> > (2) Had 1,000 or fewer customer accounts in California and was not connected to any transmission system or to the California Independent System Operator.

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http://www.wregis.org/uploads/files/851/WREGIS%20Operating%20Rules%20v%2012%209%2010.pdf .

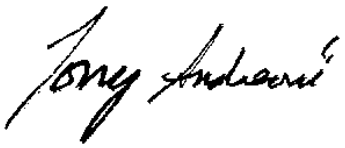
[14] *See e.g.,* Draft Regulations Sections 3201(c), 3201(h), 3201(i), 3201 (l), 3201(n), 3201(o), 3201(p), 3201(r), 3202(a), 3203(a), 3203(b), 3203(c), 3207(b), and 3207(c).

> (b) For an electrical corporation or its successor, electricity products from eligible renewable energy resources may be used for compliance with this article, notwithstanding any procurement content limitation in Section 399.16, provided that both of the following conditions are met:
>
> > (1) The electrical corporation or its successor participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.25.
> >
> > (2) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the requirements of Section 399.15.

As CMUA has stated in prior comments, this section should apply to POUs that are similarly situated to the electrical corporations covered by section 399.18(a)(1). Such an application, would allow these small POUs to adopt procurement requirements consistent with the exemption from section 399.16 found in section 399.18(b). This would provide significant relief to the smallest POUs consistent with the relief provided to the small IOUs.

CMUA appreciates the opportunity to provide these comments. As stated above, CMUA hopes to work with Commission staff to address our concerns with the draft regulations. We hope that we can continue the recent dialog and develop procedures for enforcement that are effective without overstepping the Commission's jurisdictional limits or posing unnecessary burdens on the POUs and their ratepayers.

Sincerely,



Tony Andreoni, P.E.
Director of Regulatory Affairs
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Attachment

Attachment 1

RESPONSES TO QUESTIONS POSED IN ATTACHMENT A OF THE COMMISSION'S 33 PERCENT RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT REGULATIONS

A. Consistency

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

CMUA Response: The respective roles of the POU governing boards and the Commission are clearly delineated in SB 2 (1X). The sole grant of authority to the Commission with respect to POUs or their governing boards is contained in section 399.30(n), which provides for the Commission to "adopt regulations specifying procedures for enforcement of this article." Those regulations "shall include a public process under which the Energy Commission may issue a notice of violation and correction" against a POU "for failure to comply" with SB 2 (1X) and "for referral of violations" to the ARB. The only standard the Commission should use in assessing whether or not a POU or its governing board has failed to comply with SB 2 (1X) should be the statute itself. SB 2 (1X) does not provide the Commission with any authority to evaluate the reasonableness of a POU's cost limitations or decision to delay timely compliance.

Question A.1 (part 2)	Should rules for excess procurement for POUs also be consistent with excess procurement rules for retail sellers? If not explain how the rules should differ.

CMUA Response: Section 399.30(d)(1) permits the governing boards of POUs to adopt rules permitting the use of excess procurement in one compliance period in a subsequent compliance period. The Commission's role is limited to determining if the governing board of the POU has adopted excess procurement rules consistent with the statute. The Commission's draft regulations overstep the Commission's authority by proposing one single calculation for determining excess procurement.

B. Timing/Seams Issues

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

CMUA Response: SB 2 (1X) provides several relevant restrictions on the use of RECs. The primary restriction is found in section 399.21(a)(6), which provides:

> A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity.

Additionally, section 399.21(a)(4) provides:

> Renewable energy credits shall not be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits.

Neither of these provisions provides any restriction against using RECs that are associated with energy generated prior to January 1, 2011 in the first compliance period. The Commission has no statutory authority with regards to a POU's pre SB 2 (1X) RPS program that was adopted pursuant to section 387. Therefore, the Commission has no authority to play any role in verifying that a REC generated prior to January 1, 2011 has

or has not already been claimed for RPS compliance. Any REC that meets the requirements of sections 399.20(a)(4) and (a)(6) is eligible for RPS compliance in the first compliance period.

Question B.2	Considering a 36-month timeframe for retiring RECs, can RECs generated under a contract approved prior to June 1, 2010, in accordance with PUC section 399.16 (d), be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?

CMUA Response: Section 399.16(d) provides:

> Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:
>
> (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
> (2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
> (3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

A REC that was purchased prior to June 1, 2010, could clearly meet the requirements of section 399.16(d) and is eligible to "count in full towards the procurement requirements" established by SB 2 (1X). A POU may elect to count a REC qualifying under section 399.16(d), either of the following to ways: (1) without regard for the quantitative requirements of the portfolio content categories; or (2) or for meeting the quantitative requirements of portfolio content category requirements specific in section 399.16(c), as summarized in section 3203 of the draft regulations.

Question B.3	Can RECs produced from contracts that were approved after June 1, 2010 be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?

CMUA Response: As stated in CMUA's response to Question B.1, SB 2 (1X) does not impose any additional restriction on the use of RECs that were generated prior to January 1, 2011. RECs generated after June 1, 2010, but prior to January 1, 2011, are still eligible for use in the first compliance period.

As stated above, CMUA strongly disagrees with the CPUC's D.11-12-052, which treats all RECs as portfolio content category 3 resources. Such an interpretation is contrary to the clear language of section 399.16. The Commission's regulations should take a different approach and treat RECs the same as other resources, such that they may qualify for any of the portfolio content categories.

Question B.4	Must electricity products be retired in the same compliance period as when they are procured to be used for compliance?

CMUA Response: Section 399.21(a)(6) provides the only relevant restrictions on the retirement of RECs. This statutory provision does not require that a REC be retired in the same compliance period that it was generated in, and the Commission has no authority to impose such a restriction. Beyond the clear statutory language on this issue, such a restriction would significantly restrict the flexibility that will be required to comply with SB 2 (1X) in a cost-effective manner. Unlike the previous RPS requirements applicable to the CPUC-jurisdictional entities where the procurement obligations were based on the prior year's retail sales, SB 2 (1X) imposes minimum procurement quantity requirements based on the current year's retail sales. This means that in the final months of each compliance period, a POU's procurement will be based on estimated retail sales. The Commission should not seek to punish a POU that has procured excess RECs to cover any variability in retail sales by rendering those RECs worthless.

C. Exemptions	
Question C.1	There are no provisions included in SB X1 2 that would exclude a POU from RPS requirements based on a POU's retail load or number of customers served. There are, however, provisions in the law that allow for the adoption of compliance measures, such as reasons for delay of timely compliance, cost limitations, and procurement category reductions. These measures may help reduce the impact of RPS compliance on POUs that would otherwise encounter significant impacts. Are there any additional alternatives that are available and that the Energy Commission should consider to limit the burden on very small POUs?

CMUA Response: As described in CMUA's comments above, applying section 399.18 to POUs would provide one significant protection for the smallest POUs. Section 399.18 would essentially relieve POUs with less than 30,000 customer accounts of the portfolio content category restrictions imposed by section 399.16.

D. Non-Compliance	
Question D.1	How should late reporting, failure to report, or late submittal of an approved enforcement plan or procurement plan be included in findings of RPS non-compliance for a POU? How should these items be evaluated when determining reasonable progress?

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

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

CMUA Response: Section 399.30(e) does not require POUs to submit their enforcement programs to the Commission, nor does it give the Commission the authority to set requirements for enforcement programs. Therefore, the requirement for a POU to revise its enforcement program to comply with the regulations within 90 days should be removed from the draft regulations.

CMUA understands, from discussions with Commission staff, that the 90 day requirement was intended to help any POU that had not met the January 1, 2012 deadline for adopting an enforcement program, and that the Commission does not want to treat a failure by a POU to adopt its program by that date as a violation. CMUA appreciates this position. However, the language in section 3205(c)(1) of the draft regulations does not achieve this goal, but instead imposes a new burden on POUs that is not required in SB 2 (1X). If not deleted, section 3205(c)(1) of the draft regulations should be amended to provide that if a POU did not adopt an enforcement program by January 1, 2012, a POU should adopt an enforcement program within 90 days of the effective date of the regulations.

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

	allowing these individuals and entities to file a complaint against the POU, if Energy Commission staff have already determined the POU to be in compliance?

CMUA Response: Section 399.30(n) provides:

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

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

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

CMUA Response: See response to Question E.2.