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INITIAL STATEMENT OF REASONS

Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

California Code of Regulations
Title 20, Division 2, Chapter 13, Sections 3201, 3202, 3204 - 3208, and
Chapter 2, Article 5, Section 1240

California Energy Commission
Docket No. 16-RPS-03
May 2020

I. PROBLEM STATEMENT AND ANTICIPATED BENEFITS (Government Code section 11346.2 (b)(1))

INTRODUCTION

California's Renewables Portfolio Standard (RPS), codified in Article 16 of the Public Utilities Code, establishes increasingly progressive renewable energy procurement requirements for the state's load-serving entities, including retail sellers of electricity and local publicly owned electric utilities (POUs). To meet the RPS procurement requirements, load-serving entities must generally demonstrate that they procured specified types and quantities of electricity products from eligible renewable energy resources. Compliance with the RPS procurement requirements is evaluated over multiyear compliance periods, where the procurement in each of the intervening years of the compliance period reflects reasonable progress in meeting the specified procurement target by the end of the compliance period. The RPS includes specific exemptions and exclusions for certain types of procurement, and also establishes optional measures through which a load-serving entity's procurement deficits may be excused.

The California Energy Commission's (CEC) responsibilities under the RPS include overseeing compliance and adopting enforcement regulations for POUs, while the California Public Utilities Commission (CPUC) oversees RPS compliance and enforcement for retail sellers.

The CEC's oversight authority for POUs differs from the CPUC's oversight authority for retail sellers. The CPUC has the authority to fix rates and establish rules for all public

utilities¹ subject to its jurisdiction.² POU, on the other hand, are public entities granted statutory authority over their own operations and are subject to public oversight through their own governance procedures.³ Under the original RPS statutes enacted by Senate Bill (SB) 1078 (Stats. 2002, ch. 516), retail sellers were mandated to meet the statutorily established requirements of the RPS. POU were required to implement and enforce a renewable portfolio standard that recognized the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. SB X1-2 (Stats. 2011, 1st Ex. Sess., ch. 1) generally made the requirements of the statewide RPS program applicable to POU, except that a POU's governing board maintains responsibility for implementation of the RPS requirements and certain enforcement authorities were given to the CEC and the California Air Resources Board (CARB).⁴ The RPS statutes reflect differences in the respective authorities of POU and retail sellers. For example, where the law prescribes certain requirements for retail sellers or requires the CPUC to establish requirements for retail sellers, it often directs POU governing boards to adopt procurement requirements consistent with the requirements for retail sellers.⁵ The CEC's regulations establish the rules and procedures by which the CEC will assess a POU's procurement actions, including the adoption of procurement rules by a POU's governing board, and determine whether those actions meet the RPS procurement requirements. The regulations determine what POU action is required by the law; so when the CEC evaluates a POU's actions, it may determine whether the POU complied with the law.

The CEC proposes to modify its existing regulations specifying procedures for the enforcement of the RPS for POU under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The CEC's regulations are codified in the California Code of Regulations, Title 20, sections 1240 and 3200 – 3208. The CEC

¹ As defined in Public Utilities Code section 216 (a)(1), a "public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof. This definition does not include a "local publicly owned electric utility" as defined in Public Utilities Code section 224.3.

² Article XII, section 6 of the California Constitution.

³ See Article XI of the California Constitution; Public Utilities Code, section 224.3; Public Utilities Code, Division 6, section 11501 et seq.; Public Utilities Code, Division 7, section 15501 et seq; Water Code, Division 11, section 20500 et seq.

⁴ See the SB X1-2 Legislative Counsel's Digest, subsection (3).

⁵ For example, see the respective Public Utilities Code requirements for the portfolio balance requirements in sections 399.16 and 399.30 (c)(3); the long-term procurement in sections 399.13 (b) and 399.30 (d)(1); excess procurement in sections 399.13 (a)(4)(B) and 399.30 (d)(1); delay of timely compliance in sections 399.15 (b)(5) and 399.30 (d)(2)(A); and cost limitations in sections 399.15 (c) and 399.30 (d)(2)(B).

adopted these regulations in 2013 in accordance with Public Utilities Code section 399.30 (n),⁶ as enacted by SB X1-2. Section 399.30 (n) directs the CEC to adopt regulations specifying procedures for the enforcement of the RPS for POU's and requires that the regulations include a public process under which the CEC may issue a notice of violation and correction against a POU for failure to comply with the RPS, and for referral of violations to CARB for penalties. In October 2015, the CEC adopted amendments to these regulations to implement statutory changes required by SB 591 (Stats. 2013, ch. 520) and to clarify existing provisions in the regulations. The amended regulations took effect April 12, 2016.

On October 9, 2015, SB 350 (Stats. 2015, ch. 547) was signed into law. This bill changes multiple aspects of California's RPS program for POU's:

- Establishes new multiyear compliance periods beginning on and after January 1, 2021, and new procurement targets for the final year of each compliance period equal to 40 percent of retail sales by December 31, 2024, 45 percent by December 31, 2027, and 50 percent by December 31, 2030. (Public Utilities Code section 399.30 (b) and (c).)
- Establishes a new long-term procurement requirement beginning January 1, 2021, that at least 65 percent of the procurement counted toward a POU's RPS procurement requirement each compliance period must come from contracts of 10 years or more in duration, or through ownership or ownership agreements for eligible renewable energy resources. (Public Utilities Code sections 399.13 (b) and 399.30 (d)(1).)
- Revises rules for excess procurement for compliance periods beginning on and after January 1, 2021, such that a POU may accrue as excess procurement electricity products meeting the criteria of portfolio content category (PCC) 1 procured from contracts of any duration, but may not accrue electricity products meeting the criteria of PCC 2 or PCC 3. Under certain conditions, the revised rules may be used for the 2017-2020 compliance period. (Public Utilities Code sections 399.13 (a)(4) and 399.30 (d)(1).)
- Revises conditions for delaying timely compliance with RPS procurement requirements to include unanticipated increases in retail sales due to transportation electrification and unanticipated curtailment of eligible renewable energy resources if the delay of timely compliance would not result in an increase in greenhouse gas emissions. (Public Utilities Code sections 399.15 (b) and 399.30 (d)(2)(A).)
- Revises requirements for establishing cost limitations for RPS procurement

⁶ This subdivision was enacted as (l) under SB X1-2, subsequently renumbered to (m) under SB 591 (Stats. 2013, ch. 520, sec. 1), amended and renumbered to (o) under SB 350 (Stats. 2015, ch. 547, sec. 24), and again renumbered to (n) under SB 100 (Stats. 2018, ch. 312, sec. 4).

expenditures, removing previous requirements and requiring only that the limitation be set at a level that prevents disproportionate rate impacts. (Public Utilities Code sections 399.15 (c) and 399.30 (d)(2)(B).)

- Establishes requirements under which, beginning January 1, 2014, a POU may exclude from its total retail sales used to calculate its RPS procurement requirements the qualifying generation from an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program, subject to specified conditions. (Public Utilities Code section 399.30 (c)(4).)
- Creates a partial procurement target exemption for a POU that receives greater than 50 percent of its retail sales from qualifying large hydroelectric generation in any given year of a compliance period, by requiring the POU to procure eligible renewable energy resources for that year that exceed either the portion of retail sales unsatisfied by the qualifying large hydroelectric generation or the soft procurement target for that year adopted by the CEC, whichever is less. (Public Utilities Code section 399.30 (l), as amended by SB 350.)
- Creates a partial procurement target exemption for POUs that have qualifying unavoidable long-term contracts or ownership agreements for electricity from coal-fired power plants that are located outside of the state. If the conditions are satisfied, a POU may adjust its RPS procurement target for the 2021-2024 compliance period so that its total procurement of electricity from eligible renewable energy resources and coal-fired power plants under qualifying unavoidable long-term contracts and ownership agreements does not exceed its retail sales for this compliance period. (Public Utilities Code section 399.30 (m), as amended by SB 350.)
- Modifies the criteria in Public Utilities Code section 399.18 by which an electrical corporation or its successor meeting certain conditions as of January 1, 2010, may use electricity products from eligible renewable resources notwithstanding the portfolio balance requirement. An electrical corporation or its successor is now required to meet the conditions on an ongoing basis to be exempt from the portfolio balance requirement. (Public Utilities Code section 399.18.)

On January 13, 2016, the CEC adopted an Order Instituting Rulemaking (OIR) to initiate a rulemaking proceeding to consider modifications to the regulations to implement changes in law under SB 350. Since the adoption of the OIR, three additional bills have been enacted into law which modify the RPS program for POUs: SB 1393 (Stats. 2016, ch. 677), SB 100 (Stats. 2018, ch. 312), and SB 1110 (Stats. 2018, ch. 605).

SB 1393 makes the following changes:

- Modifies requirements for the partial procurement target exemption established for large hydroelectric generation by SB 591. (Public Utilities Code section 399.30

(k.)

- Revises POU reporting requirements, including for RPS procurement plans. (Public Utilities Code section 399.30 (f).)

SB 100 makes the following changes:

- Accelerates and increases the final-year RPS targets for the compliance periods established by SB 350 to 44 percent by 2024, 52 percent by 2027, and 60 percent by 2030, and requires no less than an average of 60 percent for each subsequent multiyear compliance period. (Public Utilities Code section 399.30 (b) and (c).)
- Modifies requirements for the partial procurement target exemption established by SB 350 for qualifying large hydroelectric generation. (Public Utilities Code section 399.30 (k), as amended by SB 100.)
- Repeals the partial procurement target exemption established by SB 591 and amended by SB 1393. (Public Utilities Code section 399.30 (k), as amended by SB 100.)

SB 1110 makes the following changes:

- Creates a partial procurement target exemption for generation from a qualifying gas-fired power plant that is owned by and serves only one POU, is associated with the POU's outstanding public indebtedness, and satisfies other specified requirements and conditions. Under the exemption, a POU with qualifying generation may adjust its RPS procurement target by a specified amount. (Public Utilities Code section 399.33.)

The proposed regulations implement the changes to the RPS program for POU's from all four pieces of legislation. The CEC conducted pre-rulemaking activities to solicit public input on the changes. In 2016, CEC staff issued initial draft express terms to implement SB 350 and solicited public comment at a public workshop on August 18, 2016. The CEC resumed pre-rulemaking activities in 2019 to address the changes required by SB 350 and the subsequent three pieces of enacted legislation. CEC staff published an implementation proposal for the long-term procurement requirement in August 2019 and obtained public comment on the proposal at a pre-rulemaking workshop conducted by the CEC Lead Commissioner for Renewable Energy, Karen Douglas, on September 10, 2019. CEC staff subsequently published draft express terms implementing the changes from all four pieces of legislation and a guide to the key topics in December 2019, to obtain public comment at a pre-rulemaking workshop conducted on January 10, 2020. Pre-rulemaking documents, including public comments received, may be found at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-RPS-03>.

In evaluating modifications to the existing RPS regulations, CEC staff considered legislative

intent and requirements of the RPS statutes for POU, public comment received during pre-rulemaking activities, and the CPUC's implementation of RPS requirements for retail sellers. The CPUC has issued decisions implementing the statutory changes from this legislation that affect retail sellers.⁷

The CEC and the CPUC work collaboratively to implement the RPS but maintain separate roles in administering their respective responsibilities under the law. As discussed previously, while the RPS is a statewide program applicable to both retail sellers and POU, the RPS recognizes the local authority of POU governing boards and does not subject POU to the oversight of the CPUC, but preserves local authority with certain enforcement oversight given to the CEC and CARB. When POU were added to the statewide RPS, they were not added as an additional retail seller subject to the existing retail seller provisions in the law; rather, additional statutory provisions applicable to POU were added and generally call for consistency with those statutory provisions applicable to retail sellers. In addition, the RPS provides a number of statutory exclusions and exemptions specific to POU.⁸ Finally, the CEC and CPUC are subject to different requirements in establishing regulations, and the respective processes may at times lead to different outcomes for POU and retail sellers.

PROBLEM STATEMENT

In establishing the RPS, the Legislature identified unique benefits the program would provide to California in Public Utilities Code section 399.11 (b). The Legislature has modified the RPS numerous times since it was initially enacted to support achievement of these benefits. As previously described, modifications affecting the RPS were enacted through SB 350, SB 1393, SB 100, and SB 1110.

The problem the CEC is seeking to address is implementing the statutory changes from these pieces of legislation and ensuring that these changes address a diverse set of locally controlled POU, which vary widely by service territory area, geography, and the size, demographics, and distribution of the customer base. In aggregate, POU represent roughly 25 percent of the state's total retail sales, with two larger POU accounting for the majority of this proportion. Accordingly, many POU face the added challenge of a small customer base which further limits their ability to adjust procurement, rely on multiple resources, or find parties willing to contract for very small amounts of generation. Furthermore, some smaller POU may have a significant

⁷ See CPUC Decision D.16-12-040, Decision D.17-06-026, Decision D.18-05-026, and Decision D.19-06-023. Information on these documents is provided in Section III of this Initial Statement of Reasons (ISOR).

⁸ See, for example, the exclusion in Public Utilities Code section 399.30 (c)(4) and the exemptions in sections 399.30 (g), (h), (i), (j), (k), and (l), and section 399.33.

amount of their electrical load come from a small number of large customers.^{9,10} POU also face certain unique challenges that limit their ability to adjust procurement decisions. For example, POU typically have limited abilities to raise rates, which are set by the local governing board or city council in a public forum at a level to recover costs, maintain bond ratings, and invest in new facilities. POU operated by municipal governments may face additional challenges adjusting budgets through government approval processes.

Through the regulations, the CEC seeks to implement the statutory changes in a manner that supports the achievement of the underlying RPS benefits, is consistent with statute, is consistent to the extent possible with the implementation of parallel requirements for retail sellers, and reasonably applies to all POU. The CEC is also seeking to provide clarity in the existing regulations.

As previously noted, the statutory changes to the RPS program include new and revised RPS procurement requirements, changes to excess procurement accrual, updated requirements for the use of optional compliance measures, and additions and changes to special exemptions and exclusions. These changes affect POU compliance obligations under the RPS and the available methods by which POU may satisfy their compliance obligations. In addition to the statutory changes, with program implementation experience, the CEC has identified opportunities to improve current language in the RPS regulations, clarifying calculations, reporting requirements and process, necessary definitions, and elements of the enforcement process. These clarifications are intended to improve clarity for POU and streamline compliance reporting.

The modifications to the regulations proposed in this rulemaking will help California realize the intended benefits of the RPS declared in Public Utilities Code section 399.11 (b) by ensuring POU are subjected to a uniform set of rules for satisfying and enforcing the RPS requirements that are consistent with statute. The proposed regulations will be codified in the California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3201, 3202, 3204, 3205, 3206, 3207, and 3208 and in Title 20, Division 2, Chapter 2, Article 5, section 1240.

BENEFITS

The benefits anticipated from this regulatory action are improved direction and guidance on how the CEC will interpret, apply and enforce the law, which will enable

⁹ See Joint Associations, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 7. As referenced in the ISOR, "Joint Associations" refers collectively to the California Municipal Utilities Association, Northern California Power Agency, and Southern California Public Power Authority. Information on this document is provided in Section III of the ISOR.

¹⁰ See Port of Stockton, "Comments on Committee Proposed Decision" at p. 5. Information on this document is provided in Section III of the ISOR.

POUs to plan procurement of renewable electricity to meet the RPS requirements, contribute to the state's accomplishment of its clean energy and climate goals, and help realize the intended benefits of the RPS.

Specifically, POUs will now have better guidance on how compliance with the long-term procurement requirement and the RPS procurement targets for compliance periods after 2020 will be enforced. POUs will have updated rules implementing the requirements for accrual and use of excess procurement, use of a qualifying green pricing or shared renewable generation program to adjust retail sales, and use of the delay of timely compliance and cost limitation measures. In addition, POUs will have clear rules for RPS procurement target exemptions for qualifying large hydroelectric generation, unavoidable long-term coal contracts, and qualifying gas-fired generation.

Clarifying the requirements in the regulations will result in a uniform and consistent application of the RPS to POUs. This in turn will help promote the underlying benefits of the RPS declared in Public Utilities Code section 399.11 (b). These benefits include:

- Displacing fossil fuel consumption within the state.
- Adding new electrical generating facilities in the western interconnection.
- Reducing air pollution.
- Meeting the state's climate change goals by reducing greenhouse gas emissions associated with electricity generation.
- Promoting stable electricity rates.
- Meeting the state's need for a diversified and balanced portfolio.
- Assisting with meeting resource adequacy requirements.
- Contributing to the safe and reliable operation of the electrical grid.
- Implementing the state's transmission and land use planning activities related to development of eligible renewable energy resources.

II. STATEMENT OF SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION OF THE PROPOSED REGULATIONS (Government Code section 11346.2(b)(1))

SECTION 3201 – DEFINITIONS

Section 3201 includes definitions for various terms used in the regulations. These definitions are necessary to understand how the terms are used in the regulations. Modifications are proposed to select terms used in the regulations for the reasons discussed below. In general, these modifications are needed to help clarify the terms used in the regulations and avoid ambiguity and will benefit POUs by providing additional clarity and guidance.

Section 3201 (h) – Compliance period. This subdivision was modified to update the

reference to Public Utilities Code section 399.30 (b) defining compliance periods and add a reference to Public Utilities Code section (c) requiring the CEC to establish multiyear compliance periods beginning on and after January 1, 2021. These modifications are needed to ensure that “compliance period,” as used throughout the regulations, refers to both the statutorily defined compliance periods and the compliance periods established by the CEC.

Section 3201 (i) – Compliance report. This subdivision was modified to remove “by July 1 of the calendar year” in accordance with the modification of the compliance report deadline in section 3207 from a specified date to 90 days after the POU receives draft verification results from the CEC.

Section 3201 (j) – Contract end date. This definition was added as a new subdivision to clarify how contract duration will be measured in determining whether a contract is long-term or short-term in accordance with section 3204 (d). This definition is necessary to determine whether procurement counts toward the long-term procurement requirement.

Section 3201 (k) – Contract execution date. This definition was added as a new subdivision to clarify what date will be used when determining whether a contract was executed prior to June 1, 2010, and the duration of a contract in accordance with section 3206 (a)(1)(C)4. This is definition is necessary to determine whether electricity products meet the criteria of section 3202 (a)(2) and to determine excess procurement eligibility under the rules in place through December 31, 2020. The contract execution date is based on the date of completion of the last action needed to execute the contract. Such actions may include, but are not limited to, contract signatures or a governing board’s vote to approve the contract.

Section 3201 (l) – Contract start date. This definition was added as a new subdivision to clarify how contract duration will be measured in determining whether a contract is long-term or short-term in accordance with section 3204 (d). This definition is necessary to determine whether procurement counts toward the long-term procurement requirement.

Section 3201 (m) – Electricity product. This subdivision was renumbered from current (j) to accommodate the addition of new subdivisions in this section.

Section 3201 (n) – Eligible renewable energy resource. This subdivision was renumbered from current (k) to accommodate the addition of new subdivisions in this section.

Section 3201 (o) – Executive Director. This subdivision was renumbered from current (l) to accommodate the addition of new subdivisions in this section.

Section 3201 (p) – Historic Carryover. This subdivision was renumbered from current (m) to accommodate the addition of new subdivisions in this section.

Section 3201 (q) – Joint Powers Authority or Joint Powers Agency. This definition was added as a new subdivision and is necessary to explain the applicability of long-term contract requirements for purposes of the long-term procurement requirement, ownership requirements for special exemptions for large hydroelectric generation, and eligibility for a special retail sales calculation.

Section 3201 (r) – Long-term procurement requirement. This definition was added as a new subdivision to address the minimum amount of procurement from contracts of 10 years or more in duration, ownership, or ownership agreements that POUs are required to meet pursuant to Public Utilities Code sections 399.13 (b) and 399.30 (d)(1) when applying procurement toward the RPS procurement target of a compliance period beginning on or after January 1, 2021.

Section 3201 (s) – Megawatt-hour or MWh. This subdivision was renumbered from current (n) to accommodate the addition of new subdivisions in this section.

Section 3201 (t) – NERC e-Tag. This subdivision was renumbered from current (o) to accommodate the addition of new subdivisions in this section.

Section 3201 (u) – Ownership agreement. This subdivision was renumbered from current (p) to accommodate the addition of new subdivisions in the section. In addition, the definition was modified to remove the text pertaining to the execution date of an ownership agreement. A definition for “ownership agreement execution date” was added as a new subdivision, which is where the execution date is now discussed. Finally, the definition was updated to use consistent terms throughout and “part or all” was added to clarify that ownership agreements may be for an ownership interest that is less than the full share. These modifications are necessary for clarity.

Section 3201 (v) – Ownership agreement execution date. This definition was added as a new subdivision to address the execution date for a full range of ownership agreement scenarios. This definition is necessary to determine whether an ownership agreement was executed prior to June 1, 2010.

Section 3201 (w) – Portfolio balance requirement. This subdivision was renumbered from current (q) to accommodate the addition of new subdivisions in this section. In addition, the definition was updated to clarify the Portfolio Content Category 3 maximum component of the portfolio balance requirement is a limit that cannot be exceeded, rather than a requirement that must be met. This modification is necessary for consistency and clarity.

Section 3201 (x) – Portfolio content category. This subdivision was renumbered from current (r) to accommodate the addition of new subdivisions in this section.

Section 3201 (y) – POU or Local publicly owned electric utility. This subdivision was renumbered from current (s) to accommodate the addition of new subdivisions in this section.

Section 3201 (z) – Procure. This subdivision was renumbered from current (t) to accommodate the addition of new subdivisions in this section.

Section 3201 (aa) – Renewable electrical generation facility. This subdivision was renumbered from current (u) to accommodate the addition of new subdivisions in this section.

Section 3201 (bb) – Renewable energy credit or REC. This subdivision was renumbered from current (v) to accommodate the addition of new subdivisions in this section.

Section 3201 (cc) – Renewables Portfolio Standard or RPS. This subdivision was renumbered from current (w) to accommodate the addition of new subdivisions in this section.

Section 3201 (dd) – RPS-certified facility. This subdivision was renumbered from current (x) to accommodate addition of new subdivisions in this section.

Section 3201 (ee) – RPS Guidelines. This subdivision was renumbered from current (y) to accommodate the addition of new subdivisions in this section.

Section 3201 (ff) – RPS procurement requirements. This subdivision was renumbered from current (z) to accommodate the addition of new subdivisions in this section. In addition, the definition of “RPS procurement requirements” was modified to add the long-term procurement requirement.

Section 3201 (gg) – RPS procurement target. This subdivision was renumbered from current (aa) to accommodate the addition of new subdivisions in this section. In addition, unnecessary text was removed. RPS procurement targets, including special calculations, are addressed in section 3204.

Section 3201 (hh) – Resale or resold. This subdivision was renumbered from current (bb) to accommodate the addition of new subdivisions in this section.

Section 3201 (ii) – Retail sales. This subdivision was renumbered from (cc) to

accommodate the addition of new subdivisions in this section. In addition, the definition of “retail sales” was modified to clarify the existing provisions for excluding electricity used by a POU for water pumping from a POU’s retail sales. This modification is necessary to avoid ambiguity to provide better guidance to POUs on allowable retail sales exclusions.

Section 3201 (jj) – Retire. This subdivision was renumbered from current (dd) to accommodate the addition of new subdivisions in this section. In addition, the definition of “retire” was modified to clarify that retiring a REC for the benefit of a participating customer in a voluntary green pricing or shared renewable program does not constitute claiming the REC for RPS compliance.

Section 3201 (kk) – Soft target. This subdivision was renumbered from current (ee) to accommodate the addition of new subdivisions in this section.

Section 3201 (ll) – Unbundled REC. This subdivision was renumbered from current (ff) to accommodate the addition of new subdivisions in this section.

Section 3201 (mm) – Western Electricity Coordinating Council or WECC. This subdivision was renumbered from current (gg) to accommodate the addition of new subdivisions in this section.

Section 3201 (nn) – Western Renewable Energy Generation Information System or WREGIS. This subdivision was renumbered from current (hh) to accommodate the addition of new subdivisions in this section.

SECTION 3202 – QUALIFYING ELECTRICITY PRODUCTS

Section 3202 specifies the requirements for electricity products from eligible renewable energy resources to be counted for a POU’s RPS compliance, including which electricity products must be classified under a portfolio content category (PCC), which must be included in the portfolio balance requirement, which must be counted in full without being classified under a PCC, and which are included in the calculation of different RPS procurement requirements. Section 3202 also specifies the deadlines for retiring renewable energy credits (RECs) associated with an electricity product. The information in this section is necessary to describe how the CEC will apply the requirements for qualifying electricity products to determine a POU’s RPS compliance.

SB 350 established an additional RPS procurement requirement in Public Utilities Code section 399.13 (b), the long-term procurement requirement, which takes effect beginning January 1, 2021. This requirement is applicable to POUs through Public Utilities Code section 399.30 (d)(1).

Modifications are proposed to select provisions in this section for the reasons discussed below, including to implement changes in law under SB 350. In general, the modifications are needed to help clarify the select provisions, to help avoid ambiguity, and to benefit POUs by providing additional clarity and guidance.

Section 3202 (a)(1)(B) – This subparagraph was modified to update internal references to special exemptions to the RPS procurement requirements that have been renumbered.

Section 3202 (a)(1)(C) – This subparagraph was added to explain that qualifying electricity products must be classified as long-term or short-term, consistent with the explanation in subparagraph (A) specifying how these electricity products must be classified into a portfolio content category.

Section 3202 (a)(1)(D) – This subparagraph was added to explain how qualifying electricity products will be included in the calculation of the long-term procurement requirement, consistent with the explanation in subparagraph (B) specifying how these electricity products must be included in the calculation of the portfolio balance requirement. The qualifying electricity products will be included in the calculation of the long-term procurement requirement starting with the compliance period beginning January 1, 2021, unless a POU voluntarily elects to comply early with the long-term procurement requirement starting with the compliance period beginning January 1, 2017, in which case electricity products will be included in the calculation beginning January 1, 2017.

Section 3202 (a)(2)(A)1 – This subparagraph was modified to explain how certain electricity products that meet the requirements to count in full toward the RPS procurement requirements are counted toward the long-term procurement requirement. The RPS procurement requirements include the long-term procurement requirement, so electricity products must count in full toward the long-term procurement requirement in addition to the RPS procurement targets. This is consistent with the CPUC’s implementation for retail sellers in D.17-06-026.¹¹

Section 3202 (a)(2)(A)3 – This subparagraph was modified to clarify that “contracts of less than 10 years in duration” refers to a previous contract duration calculation that was specific to excess procurement for the compliance periods between January 1, 2011, and December 31, 2020. In addition, this subparagraph was modified to update the relevant section reference to the requirements for excess procurement in section 3206. These modifications are necessary to avoid ambiguity because there is a different

¹¹ See CPUC Decision D.17-06-026, Ordering Paragraph 7. Information on this document is provided in Section III of the ISOR.

contract duration calculation for purposes of the long-term procurement requirement and different requirements for excess procurement that do not depend on contract duration beginning January 1, 2021.

Section 3202 (a)(2)(B) – This subparagraph was modified to clarify that procurement that is additional from a contract amended after June 1, 2010 must be classified into a portfolio content category and as long-term or short-term and follow the portfolio balance requirements and long-term procurement requirement. This modification is necessary to avoid ambiguity. This subparagraph was also modified to update the language used to reference section 3202 (a)(2)(C) for consistency.

If, as part of the public comments received on the 45-day language Express Terms, the CEC determines that additional modifications are needed to this subparagraph to further clarify the eligibility of contract amendments or modifications made after June 1, 2010, that revise the contracting parties' financial arrangements, modifications to the regulations will be proposed in 15-day language Express Terms.

Section 3202 (a)(3)(C) – This subparagraph was added to explain that qualifying electricity products must be classified as long-term or short-term, consistent with the explanation in subparagraph (A) specifying how these electricity products must be classified into a portfolio content category.

Section 3202 (a)(3)(D) – This subparagraph was added to explain how certain qualifying electricity products are included in the calculation of the long-term procurement requirement, consistent with the explanation in subparagraph (B) specifying how these electricity products must be included in the calculation of the portfolio balance requirement. The qualifying electricity products will be included in the calculation of the long-term procurement requirement starting with the compliance period beginning January 1, 2021, unless a POU voluntarily elects to comply early with the long-term procurement requirement starting with the compliance period beginning January 1, 2017, in which case electricity products will be included in the calculation beginning January 1, 2017.

Section 3202 (a)(3)(E) – This subdivision was renumbered from current (a)(3)(C) to accommodate the addition of new subparagraphs.

Section 3202 (b) – This subdivision was modified to update internal references to special exemptions to the RPS procurement requirements that have been renumbered.

Section 3202 (c) – This subdivision was modified for clarity to move a REC eligibility requirement to a new subdivision, section 3202 (d).

Section 3202 (d) – This subdivision was added to create a separate, new location for

the REC eligibility requirement moved from section 3202 (c), and to provide an example illustrating how the requirement applies. This addition is necessary for clarity and consistency.

Section 3202 (e) – This subdivision was renumbered from current (d) to accommodate the addition of a new subdivision in this section.

Section 3202 (f) – This subdivision was renumbered from current (e) to accommodate the addition of a new subdivision in this section.

SECTION 3204 – RPS PROCUREMENT REQUIREMENTS

Section 3204 specifies how a POU's RPS procurement requirements will be calculated for each compliance period, including the POU's procurement target, portfolio balance requirement, and new long-term procurement requirement. Section 3204 also specifies the requirements for the various RPS exclusions and exemptions that are available to POUs and how these exclusions and exemptions will be applied in calculating a POU's RPS procurement requirements.

Modifications are proposed to various provisions in this section for the reasons discussed below, including to implement changes in law under SB 350, SB 1393, SB 100, SB 1110. In general, the modifications are needed to help clarify the select provisions, will help avoid ambiguity, and will benefit POUs by providing additional clarity and guidance regarding RPS procurement requirements.

Section 3204 (a)(1) – This subdivision was modified to update internal references to the portfolio balance requirements in section 3204 (c) that have been renumbered and to use consistent terminology in referencing sections. These modifications are necessary for consistency.

Section 3204 (a)(2) – This subdivision was modified to update internal references to the portfolio balance requirements in section 3204 (c) that have been renumbered and to use consistent terminology in referencing sections. These modifications are necessary for consistency.

Section 3204 (a)(3) – This subdivision was modified to update internal references to the portfolio balance requirements in section 3204 (c) that have been renumbered, to use consistent terminology in referencing sections, and to clarify the terms in the equation used to calculate a POU's RPS procurement target beginning with the 2017-2020 compliance period.

Specifically, the definition of the term “EP_x” was modified to better differentiate between procurement that is retired for a compliance period and procurement that is applied and counted toward the RPS procurement target for a compliance period. Not all procurement that is retired for purposes of a compliance period is necessarily applied toward the RPS procurement target; for example, procurement retired in excess of the RPS procurement target and newly accrued as excess procurement is retired for the compliance period but not applied toward the RPS procurement target. Similarly, while all procurement applied toward the RPS procurement target must have been retired, previously-acquired excess procurement and historic carryover were retired for earlier RPS compliance periods.

In addition, the definition of the term “RS_x” was copied from section 3204 (a)(1) for clarity so that both variables in the equation would be listed in the same place, but no modifications were made to the definition.

These modifications are necessary to provide better guidance to POU's on the calculation of the RPS procurement target and avoid ambiguity, but do not change the fundamental determination of a POU's RPS procurement target as used for the 2011-2013 and 2014-2016 compliance periods.

Section 3204 (a)(4) (Deleted) – This subdivision, as it currently exists in the regulations, was removed because it is now unnecessary. As modified by SB 350 and SB 100, Public Utilities Code section 399.30 (b) and (c) require multiyear compliance periods beginning on and after January 1, 2021. These new compliance periods are addressed in new sections 3204 (a)(4)-(6).

Section 3204 (a)(4) – This subdivision was added to explain the method the CEC will use to calculate a POU's RPS procurement target and determine whether a POU's claimed procurement meets its RPS compliance obligation for the compliance period beginning January 1, 2021. CEC staff determined that a total RPS procurement target based on linearly increasing annual soft targets would demonstrate reasonable progress while still allowing POU's the discretion to appropriate their resources in a manner that best meets their budgets and long-term goals.

The method of using linear soft targets to demonstrate reasonable progress is well established for the RPS program. This method was adopted by the CPUC for retail sellers beginning with the 2014-2016 compliance period and the CEC for POU's beginning with the 2017-2020 compliance period, after a transition period for POU's to become accustomed to annually increasing soft targets. As noted by the CPUC in D.19-06-023 and the Joint Associations, SB 100 increased the RPS targets for compliance periods beginning in 2021 but did not change the overall structure of the RPS program,

which uses a linear method for determining progress toward the targets.¹² Thus, it is reasonable to continue using linear soft targets as the basis for reasonable progress for the new multiyear compliance periods and procurement targets established in Public Utilities Code section 399.15 (b) for retail sellers and in Public Utilities Code section 399.30 (b) and (c) for POU's. This calculation is consistent with the requirements for retail sellers established by the CPUC in Decision D.19-06-023.¹³

POUs may not apply surplus PCC 3 toward their RPS procurement targets because that would violate the maximum limit for PCC 3 established in statute. This is consistent with the CEC's implementation of the RPS procurement targets for the compliance periods between January 1, 2011, and December 31, 2020.

Section 3204 (a)(5) – This subdivision was added to explain the method the CEC will use to calculate a POU's RPS procurement target and determine whether a POU's claimed procurement meets its RPS compliance obligation for the compliance period beginning January 1, 2025.

CEC staff determined that a total RPS procurement target based on soft targets of 46 percent of retail sales in 2025, 50 percent in 2026, and 52 percent in 2027, would harmonize the reasonable progress requirement in Public Utilities Code section 399.30 (c) with the legislative intent of Public Utilities Code section 399.11 (a), as amended by SB 100, which refers to a statewide goal of achieving 33 percent of retail sales from eligible renewable energy resources by 2020, 50 percent by 2026, and 60 percent by 2030. These soft targets still allow POU's the discretion to appropriate their resources in any intervening year of the compliance period in a manner that best meets their budgets and long-term goals.

While not identical, the total procurement target based on these soft targets is generally consistent, to the extent possible, with the total procurement target established by the CPUC for retail sellers in CPUC Decision D.19-06-023.¹⁴ The soft target for 2025 is set at a level to ensure that, should a POU's retail sales remain constant over the compliance period, the procurement target for the compliance period would be the same as if linear soft targets were established.

POUs may not apply surplus PCC 3 toward their RPS procurement targets because that would violate the maximum limit for PCC 3 established in Public Utilities Code section

¹² See CPUC Decision D.19-06-023 at p. 9; Joint Associations, "Initial Comments on Pre-Rulemaking Draft Amendments" at p. 2. Information on these documents is provided in Section III of the ISOR.

¹³ See CPUC Decision D.19-06-023, Ordering Paragraph 1. Information on this document is provided in Section III of the ISOR.

¹⁴ See CPUC Decision D.19-06-023, Ordering Paragraph 2. Information on this document is provided in Section III of the ISOR.

399.16 (c)(2), which applies to POU's via Public Utilities Code section 399.30 (c)(3). This is consistent with the CEC's implementation of the RPS procurement targets for the compliance periods between January 1, 2011, and December 31, 2020.

These soft targets are necessary for POU's to understand how compliance with the RPS procurement target will be enforced for the 2025-2027 compliance period based on the harmonization of statutory objectives and requirements.

Section 3204 (a)(6) – This subdivision was added to explain the method the CEC will use to calculate a POU's RPS procurement target and determine whether a POU's claimed procurement meets its RPS compliance obligation for the compliance period beginning January 1, 2028. Staff determined that a total RPS procurement target based on linearly increasing annual soft targets would demonstrate reasonable progress while still allowing POU's the discretion to appropriate their resources in a manner that best meets their budgets and long-term goals, for the same reasons discussed for the 2021-2024 compliance period. This calculation is consistent with the requirements for retail sellers established by the CPUC in Decision D.19-06-023.¹⁵

POU's may not apply surplus PCC 3 toward their RPS procurement targets because that would violate the maximum limit for PCC 3 established in in Public Utilities Code section 399.16 (c)(2), which applies to POU's via Public Utilities Code section 399.30 (c)(3). This is consistent with the CEC's implementation of the RPS procurement targets for the compliance periods between January 1, 2011, and December 31, 2020.

Section 3204 (a)(7) – This subdivision was added to specify the multiyear compliance periods beginning on and after January 1, 2031, to require POU's to procure not less than 60 percent of retail sales of electricity products from eligible renewable energy resources, in accordance with Public Utilities Code section 399.30 (c)(2). These compliance periods will be three years in length to remain consistent with the statutorily established three-year compliance periods for retail sellers.

POU's may not apply surplus PCC 3 toward their RPS procurement targets because that would violate the maximum limit for PCC 3 established in Public Utilities Code section 399.16 (c)(2), which applies to POU's via Public Utilities Code section 399.30 (c)(3). This is consistent with the CEC's implementation of the RPS procurement targets for the compliance periods between January 1, 2011, and December 31, 2020.

Section 3204 (b) – Current subdivision (b) was moved verbatim and added as a new subdivision 3204 (e) to make room for new subdivisions in this section. New subdivision (b) was added to create a location for all special exemptions and adjustments to RPS

¹⁵ See CPUC Decision D.19-06-023, Ordering Paragraph 3. Information on this document is provided in Section III of the ISOR.

procurement to be grouped together. This modification is necessary to improve organizational clarity.

The procurement requirement exemptions in current subdivisions 3204 (a)(5)-(a)(10) were renumbered and moved to new subparagraphs under subdivision 3204 (b).

Section 3204 (b)(1) – This subdivision was renumbered from current 3204 (a)(5) because it addresses a special exemption to the RPS procurement requirements. This subdivision was also modified to update the internal reference to RPS procurement targets in section 3204 (a) to reflect the addition of new compliance periods and targets in that subdivision in accordance with Public Utilities Code section 399.30 (b) and (c).

Section 3204 (b)(2) – This subdivision was renumbered from current 3204 (a)(6) because it addresses a special exemption to the RPS procurement requirements. This subdivision was also modified to update internal references to the RPS procurement targets in section 3204 (a) to reflect the addition of new compliance periods and targets within that subdivision, and to the portfolio balance requirements in section 3204 (c) to reflect renumbering within that subdivision. Finally, a reference to the long-term procurement requirement was added and the text “this section” was replaced with “RPS procurement requirements” to be clearer and more specific about the requirements for which a POU meeting criteria of this exemption is deemed in compliance. This modification is necessary to provide guidance to POU’s and avoid ambiguity.

Section 3204 (b)(3) – This subdivision was renumbered from current 3204 (a)(7) because it addresses a special exemption to the RPS procurement requirements. This subdivision was also modified to update internal references to this special exemption, to the RPS procurement targets in section 3204 (a) to reflect the addition of new compliance periods and targets within that subdivision, and to the portfolio balance requirements in section 3204 (c) to reflect renumbering within that subdivision.

In addition, a reference to the long-term procurement requirement was added and the language was clarified to be more specific about the RPS procurement requirements for which a POU will be deemed in compliance if all of its electricity demand in a calendar year is satisfied by its own qualifying hydroelectric generation. If a POU has all of its electricity demand for a given year satisfied by its own qualifying hydroelectric generation, the POU has no procurement target upon which the long-term procurement requirement may be assessed. However, if a POU has some electricity demand for a given calendar year unsatisfied by its own retail sales, the POU is still required to comply with the long-term procurement requirement based on the POU’s RPS procurement target calculated for that calendar year.

Section 3204 (b)(3)(A) – The internal reference to this special exemption was updated to reflect its renumbering.

Section 3204 (b)(3)(B) – The internal reference to this special exemption was updated to reflect its renumbering.

Section 3204 (b)(3)(D)2 – The internal reference to the RPS procurement targets in section 3204 (a) was updated to reflect the addition of new compliance periods and targets within that subdivision.

Section 3204 (b)(4) – This subdivision was renumbered from current 3204 (a)(8) because it addresses a special exemption to the RPS procurement requirements. In addition, the internal reference to the portfolio balance requirements in section 3204 (c) was updated to reflect renumbering within that subdivision.

Section 3204 (b)(5) – This subdivision was renumbered from current 3204 (a)(9) because it addresses a special exemption to the RPS procurement requirements. In addition, this subdivision was modified to address statutory changes to Public Utilities Code section 399.18 pursuant to SB 350, which updated eligibility criteria for the exemption. Finally, the internal reference to the portfolio balance requirements in section 3204 (c) was updated to reflect renumbering within that subdivision.

Section 3204 (b)(6) – This subdivision was renumbered from current 3204 (a)(10) because it addresses a special exemption to the RPS procurement requirements. In addition, this subdivision was modified to address statutory changes from SB 1393, which modified the special exemption in former Public Utilities Code section 399.30 (k), and SB 100, which repealed the exemption in former section 399.30 (k). The modifications from SB 1393 create a second set of exemption requirements that retain most of the requirements for qualifying hydroelectric generation.

Specifically, this subdivision was modified to replace all references to Public Utilities Code section 399.30 (k), move the previously-adopted exemption requirements specific to SB 591 to a new location for organizational clarity, and to specify an end date based on the effective date of SB 100. Finally, the internal references to the RPS procurement targets in section 3204 (a) were updated to reflect only the applicable compliance periods during which the exemption is effective.

Section 3204 (b)(6)(A) – This subdivision was modified to update the internal reference to this special exemption.

Section 3204 (b)(6)(A)6 – This subdivision was added to specify the eligibility requirement of former Public Utilities Code section 399.30 (k), as enacted by SB 591, that qualifying hydroelectric generation does not include an eligible renewable energy resource. This change is necessary because the current regulations refer to the eligibility criteria of Public Utilities Code section 399.30 (k), which was subsequently

modified by SB 1393 and repealed by SB 100. The criterion of this section 3204 (b)(6)(A)6. applies only for the 2014-2016 compliance period because the requirement that a qualifying hydroelectric generation facility is not an eligible renewable energy resource was removed in the modifications of SB 1393.

Section 3204 (b)(6)(A)7 – This subdivision was added to specify the eligibility requirement of former Public Utilities Code section 399.30 (k), as enacted by SB 591, that qualifying hydroelectric generation does not include an eligible renewable energy resource. This change is necessary because the current regulations refer to the eligibility criteria of Public Utilities Code section 399.30 (k), which was subsequently modified by SB 1393 and repealed by SB 100. The criterion of this section 3204 (b)(6)(A)7. applies only for the 2014-2016 compliance period because the requirement that a qualifying hydroelectric generation facility is not an eligible renewable energy resource was removed in the modifications of SB 1393.

Section 3204 (b)(6)(B) – This subdivision was added to create a new location for the previously-adopted exemption criteria specific to SB 591. This organizational change is necessary to differentiate between the two sets of exemption requirements. The previously-adopted exemption criteria are applicable to the 2014-2016 compliance period, prior to the amendments of SB 1393, which took effect January 1, 2017, and are based on the requirements in current paragraph (a)(10).

Section 3204 (b)(6)(B)1 – This subdivision was renumbered from current paragraph (B) based on the organizational changes needed to address the two sets of exemption requirements. It was also modified to replace references to former Public Utilities Code section 399.30 (k) and to clarify requirements as specific to the 2014-2016 compliance period.

Section 3204 (b)(6)(B)2 – This subdivision was renumbered from current paragraph (C) to accommodate the organizational changes needed to address the two sets of exemption requirements. This subdivision was also modified to replace references to former Public Utilities Code section 399.30 (k) and to clarify requirements as specific to the 2014-2016 compliance period.

Section 3204 (b)(6)(B)2.i – This subdivision was renumbered from current subparagraph (B)(1) to accommodate the organizational changes needed to address the two sets of exemption requirements.

Section 3204 (b)(6)(B)2.ii – This subdivision was renumbered from current subparagraph (B)(2) to accommodate the organizational changes needed to address the two sets of exemption requirements. In addition, this subdivision was modified to clarify a requirement as specific to the 2014-2016 compliance period.

Section 3204 (b)(6)(B)2.iii – This subdivision was added for clarity, so all factors that may affect a POU’s procurement target pursuant to this exemption are listed in the same location.

Section 3204 (b)(6)(C) – This subdivision was added to address the exemption requirements as modified by SB 1393, which changed the exemption calculation from a compliance period to an annual basis. These exemption requirements apply for the period between January 1, 2017 and December 31, 2018; from the effective date of SB 1393 until the effective date of SB 100, which repealed the exemption.

Section 3204 (b)(6)(C)1 – This subdivision was added to identify the first of three alternative criteria used to adjust annual procurement if the exemption applies. All three criteria were specified in SB 1393.

Section 3204 (b)(6)(C)2 – This subdivision was added to address the second of three alternative criteria used to adjust annual procurement if the exemption applies.

Section 3204 (b)(6)(C)3 – This subdivision was added to address the third of three alternative criteria used to adjust annual procurement if the exemption applies.

Section 3204 (b)(6)(D) – This subdivision was modified to replace references to former Public Utilities Code section 399.30 (k) and to update internal references to the portfolio balance requirements consistent with changes in that section. No internal reference to the long-term procurement was added because the requirement takes effect beginning January 1, 2021, after the applicable dates of this exemption.

Section 3204 (b)(7) – This subdivision was added to address a partial procurement target exemption established under former Public Utilities Code section 399.30 (I). The exemption is applicable for the calendar years between 2016 and 2018, based on the effective dates of SB 350, which established the exemption, and SB 100, which modified the criteria for the exemption.

This addition is necessary to provide direction on how the CEC will apply the provisions of former Public Utilities Code section 399.30 (I), as established by SB 350.

Section 3204 (b)(7)(A) – This subdivision was added to define large hydroelectric generation based on the criteria of former Public Utilities Code section 399.30 (I). This addition is necessary to clarify terms used throughout this section and because the requirements of former Public Utilities Code section 399.30 (I) were subsequently amended by SB 100.

Section 3204 (b)(7)(A)1 – This subdivision was added to address the eligibility requirement of former Public Utilities Code section 399.30 (I) that qualifying

hydroelectric generation does not include an eligible renewable energy resource. This addition is necessary because the requirements of former Public Utilities Code section 399.30 (I) were subsequently amended by SB 100.

Section 3204 (b)(7)(A)2 – This subdivision was added to address the eligibility requirement of former Public Utilities Code section 399.30 (I) that qualifying hydroelectric generation does not include an eligible renewable energy resource. Eligible renewable energy resources may include incremental generation relating to efficiency improvements of a large hydroelectric generation facility.

This addition is necessary because the requirements of former Public Utilities Code section 399.30 (I) were subsequently amended by SB 100.

Section 3204 (b)(7)(A)3 – This subdivision was added to address the ownership requirements for qualifying large hydroelectric generation required by former Public Utilities Code section 399.30 (I). This addition is necessary because the requirements of former Public Utilities Code section 399.30 (I) were subsequently amended by SB 100.

Section 3204 (b)(7)(A)3.i – This subdivision was added to specify the first of two allowable ownership scenarios specified in former Public Utilities Code section 399.30 (I). This addition is necessary because the requirements of former Public Utilities Code section 399.30 (I) were subsequently amended by SB 100.

Section 3204 (b)(7)(A)3.ii – This subdivision was added to specify the second of two allowable ownership scenarios specified in former Public Utilities Code section 399.30 (I). This addition is necessary because the requirements of former Public Utilities Code section 399.30 (I) were subsequently amended by SB 100.

Section 3204 (b)(7)(A)4 – This subdivision was added to address the ownership requirements for large hydroelectric generation, in accordance with the requirements of Public Utilities Code section 399.30 (I)(1)(A) as amended by SB 350. This statutory provision required large hydroelectric generation to provide electricity to a POU from facilities owned by the federal government as part of the federal Central Valley Project or a joint powers agency.

Section 3204 (b)(7)(A)4.i – This subdivision was added to address limitations on new procurement agreements for large hydroelectric generation in accordance with Public Utilities Code section 399.30 (I)(1)(B)(3). This statutory provision limited qualifying large hydroelectric generation to procurement from agreements effective as of January 1, 2015, and renewals or extensions of those agreements.

Although statute limits the use of qualifying generation from renewals or extensions to agreements for qualifying generation in effect as of January 1, 2015, between POUs

and the federal government as part of the Central Valley Project, these contracts do not expire until December 31, 2024. Because the terms of this specific exemption apply only for the calendar years between 2016 and 2018, the CEC does not believe it is necessary to address the issue of contract renewals and extensions in the proposed regulations. However, if, as part of the public comments received on the 45-day language Express Terms, the CEC determines that the issue of contract renewals and extensions does need to be addressed in the proposed regulations, modification to the regulations will be proposed in 15-day language Express Terms.

Section 3204 (b)(7)(A)4.ii – This subdivision was added to address renewals or extensions that also result in an increase in the quantity procurement relative to the terms of the original agreement.

A renewal is generally understood to mean a re-creation of the legal relationship or the replacements of an old contract with a new contract, whereas an extension is generally understood to mean an increase in the length of time specified in a contract. The limitations on contract renewals or extensions in former Public Utilities Code section 399.30 (l), as enacted by SB 350, suggests that the Legislature’s intent was to limit qualifying generation to only that procurement quantity or allocation available under the terms of the contract in effect as of January 1, 2015.

Section 3204 (b)(7)(B) – This subdivision was added to address specific scenarios in which some or all of a POU’s procured hydroelectric generation does not meet the requirements for qualifying hydroelectric generation. For example, if a POU procures both qualifying and non-qualifying large hydroelectric generation pursuant to the same contract or ownership agreement or scenarios, or if some or all of a POU’s qualifying hydroelectric generation no longer qualifies in future years, only the generation qualifying in a given year may be counted for purposes of the exemption that year. This addition is necessary for clarity and consistency.

This subdivision also clarifies that qualifying generation must be applied to POU’s retail sales for purposes of this exemption. As noted by The Utility Reform Network (TURN), the statutory language limits this procurement target exemption to the portion of a POU’s retail sales not supplied by its own hydroelectric generation, and any resale of this hydroelectric generation would necessarily increase the portion of a POU’s retail sales unsatisfied by its own hydroelectric generation.¹⁶

This addition is necessary to clarify the meaning of “unsatisfied” retail sales. The CEC previously considered similar statutory language when previously implementing SB 591 in the regulations. SB 591 created a partial procurement target exemption with such

¹⁶ See TURN, “Comments on Pre-Rulemaking Draft Amendments” at pp. 16-17. Information on this document is provided in Section III of the ISOR.

narrow eligibility criteria that, in practice, it affected only one POU. Based on the specific circumstances of that POU and the eligibility criteria for the exemption, the CEC determined that the POU did not need to apply hydroelectric generation to its own retail sales to avail itself of the exemption for purposes of that exemption. However, those special circumstances do not apply to this exemption established by SB 350 for qualifying large hydroelectric generation, so staff determined it reasonable to require that qualifying hydroelectric generation be applied to retail sales, based on a fair reading of the statutory language.

Section 3204 (b)(7)(C) – This subdivision was added to specify this exemption applies to a POU that calculates its retail sales based on a seven-year average. As this exemption is based on a threshold percent of annual large hydroelectric generation, staff determined it was necessary for a qualifying POU to use actual annual retail sales, not the seven-year average, for purposes of determining eligibility and calculating the annual soft target adjustment.

Section 3204 (b)(7)(D) – This subdivision was added to specify how a POU’s annual soft target will be adjusted pursuant to this exemption, as enacted by SB 350.

Portions of former Public Utilities Code section 399.30 (l)(2), (l)(2)(A) and (l)(2)(B), as enacted by SB 350, are repeated or rephrased in section 3204 (b)(7)(D), (b)(7)(D)1. and (b)(7)(D)2., because former Public Utilities Code section 399.30 (l), as enacted by SB 350, is no longer codified in the law.

Section 3204 (b)(7)(D)1 – This subparagraph was added to identify the first of two alternative criteria used to adjust annual soft target if the exemption applies. Both criteria were specified in SB 350.

Section 3204 (b)(7)(D)2 – This subparagraph was added to address the second of two alternative criteria used to adjust determine annual soft target if the exemption applies.

Section 3204 (b)(7)(E) – This subdivision was added to clarify that a POU qualifying for this exemption is still subject to the portfolio balance requirements, consistent with former Public Utilities Code section 399.30 (l)(5). The long-term procurement requirement was not addressed because it takes effect beginning January 1, 2021, after the applicable dates of this exemption. This addition is necessary to provide clarity and guidance on a POU’s RPS compliance obligations.

Section 3204 (b)(8) – This subdivision was added to address a partial procurement target exemption in Public Utilities Code section 399.30 (k), as modified by SB 100. The exemption is applicable for the calendar years between 2019 and 2030, based on the effective dates of SB 100, which established the exemption, and the end of the last

compliance period specified in Public Utilities Code section 399.30 (b), consistent with statute.

In comments, the Joint POU's argue that this exemption should be applied to compliance periods after 2030, consistent with the CEC's authority to establish multiyear compliance periods after 2030 in accordance with Public Utilities Code section 399.30 (c). The Joint POU's argue that limiting the exemption through 2030 would have a nonsensical result because the duration of contracts under which the qualifying hydroelectric generation is procured last more than 20 years, and would extend past 2030.¹⁷ However, Public Utilities Code section 399.30 (k)(2) clearly provides that the exemption applies "during a year within a compliance period set forth in subdivision (b)" of section 399.30. The multiyear compliance periods established by the CEC after 2030 are based on Public Utilities Code section 399.30 (c), not (b). Based on a fair reading of the statute it is appropriate to limit the exemption through 2030. The Legislature was very selective in establishing the different RPS exemptions for hydroelectric generation under SB 571, SB 350, SB 1393, and SB 100. Based on a review of the legislative history, there is no reason to conclude the Legislature was not purposefully selective and deliberate in limiting the scope of the RPS exemption here through 2030. The Legislature may well have intended to limit the scope of the exemption at this time, while it further considered the state's broader renewable energy and zero-carbon policy post-2030.

This addition is necessary to provide direction on how the CEC will apply the provisions of Public Utilities Code section 399.30 (k), as amended by SB 100.

Section 3204 (b)(8)(A) – This subdivision was added to define large hydroelectric generation. This definition refers to the definition in Public Utilities Code section 399.30 (k)(1) and is necessary to clarify terms used throughout this section.

Section 3204 (b)(8)(A)1 – This subparagraph was added to address the eligibility requirement that large hydroelectric generation does not qualify as an eligible renewable energy resource. Eligible renewable energy resources may include incremental generation relating to efficiency improvements of a large hydroelectric generation facility.

Section 3204 (b)(8)(A)2 – This subparagraph was added to address the contract and ownership requirements for qualifying large hydroelectric generation, including the requirements for renewals or extensions of contracts between a POU and the Western

¹⁷ See Joint POU's, "Comments on Pre-Rulemaking Draft Amendments" at pp. 7-9. As used in this ISOR, "Joint POU's" refers collectively to the California Municipal Utilities Association, Imperial Irrigation District, Modesto Irrigation District, M-S-R Public Power Agency, Northern California Power Agency, Sacramento Municipal Utility District, Southern California Public Power Authority, and Turlock Irrigation District. Information on this document is provided in Section III of the ISOR.

Area Power Administration or the federal government as part of the federal Central Valley Project.

Public Utilities Code section 399.30 (k) restricts eligibility to contracts executed prior to January 1, 2018, and expressly prohibits procurement from renewals or extensions of contracts from counting as qualifying large hydroelectric generation, except for contracts in effect as of January 1, 2015, between a POU and the Western Area Power Administration or federal government as part of the Central Valley Project. The Western Area Power Administration is one of four power marketing administrations within the U.S. Department of Energy whose role is to market and transmit federal wholesale electricity from multi-use water projects, such as the Central Valley Project. The Central Valley Project is a federal water development project, consisting of a complex, multi-purpose network of dams, reservoirs, canals, hydroelectric powerplants and other facilities extending from the Cascade Range in northern California to the plains along the Kern River, south of the City of Bakersfield. The Central Valley Project is supervised by the U.S. Bureau of Reclamation and, among other things, provides flood protection for California's Central Valley, supplies domestic and industrial water in the valley, and produces electrical power.

A renewal is generally understood to mean a re-creation of the legal relationship or the replacement of an old contract with a new contract, whereas an extension is generally understood to mean an increase in the length of time specified in a contract. The limitations on contract renewals or extensions in Public Utilities Code section 399.30 (k) suggest that the Legislature's intent was to limit qualifying generation to only that procurement quantity or allocation available under the terms of the contract in effect as of January 1, 2015.

The Western Area Power Administration's *2025 Power Marketing Plan* proposes allowing existing customers to purchase 98 percent of their current base resource allocation in Section IV.A ("Extension for Existing Customers").¹⁸ Separately, new and existing customers may apply for a resource pool consisting of 2 percent of the power available after 2024. Applicants must submit an application in response to the *Call for 2025 Resource Pool Applications* issued by Western Area Power Administration in a separate Federal Register notice.¹⁹

Under the *2025 Power Marketing Plan's* "Extension for Existing Customers" process, the reduction of the power allocation relative to the original contract terms is determined by Western Area Power Administration, not the existing customers. Therefore, staff

¹⁸ See Federal Register, Western Area Power Administration *2025 Power Marketing Plan* (pp. 38675-38685). Information on this document is provided in Section III of the ISOR.

¹⁹ See Federal Register, Western Area Power Administration *Call for 2025 Resource Pool Applications* (pp. 9851-9852). Information on this document is provided in Section III of the ISOR.

determined it is reasonable to consider a decrease in the power allocation, as well as other changes in contract that are contemplated in Western Area Power Administration's administration of these contracts, as part of a contract renewal or extension for purposes of this exemption. However, as the option to increase procurement allocation above the 98 percent requires an additional application process, staff determined that this falls outside the bounds of a renewal or extension as contemplated for this exemption.

Section 3204 (b)(8)(B) – This subdivision was added to address specific scenarios in which some or all of a POU's procured hydroelectric generation does not meet the requirements for qualifying hydroelectric generation. For example, if a POU procures both qualifying and non-qualifying large hydroelectric generation pursuant to the same contract or ownership agreement or scenarios, or if some or all of a POU's qualifying hydroelectric generation no longer qualifies in future years, only the generation qualifying in a given year may be counted for purposes of the exemption that year.

This subdivision also clarifies that qualifying generation must be applied to POU's retail sales for purposes of this exemption. As noted by TURN, the statutory language limits this procurement target exemption to the portion of a POU's retail sales not supplied by its own hydroelectric generation, and any resale of this hydroelectric generation would necessarily increase the portion of a POU's retail sales unsatisfied by its own hydroelectric generation.²⁰

This addition is necessary to clarify the meaning of "unsatisfied" retail sales. The CEC previously considered similar statutory language when implementing SB 591 in the regulations. SB 591 created a partial procurement target exemption with such narrow eligibility criteria that, in practice, it affected only one POU. Based on the specific circumstances of that POU and the eligibility criteria for the exemption, the CEC determined that the POU did not need to apply the hydroelectric generation to its own retail sales to avail itself of the exemption for purposes of that exemption. However, those special circumstances do not apply to this exemption amended by SB 100 for qualifying large hydroelectric generation, so staff determined it is reasonable to require that qualifying hydroelectric generation be applied to retail sales, based on a fair reading of the statutory language.

Section 3204 (b)(8)(C) – This subdivision was added to specify this exemption applies to a POU that calculates its retail sales based on a seven-year average. As this exemption is based on a threshold percent of annual large hydroelectric generation, staff determined it was necessary for a qualifying POU to use actual annual retail sales,

²⁰ See TURN, "Comments on Pre-Rulemaking Draft Amendments" at pp. 16-17. Information on this document is provided in Section III of the ISOR.

not the seven-year average, for purposes of determining eligibility and calculating the annual soft target adjustment.

Section 3204 (b)(8)(D) – This subdivision was added to specify how a POU’s annual soft target will be adjusted pursuant to this exemption.

Portions of Public Utilities Code section 399.30 (k)(2)(A) and (B) are repeated or rephrased in section 3204 (b)(8)(D)1. and (D)2. for organizational and consistency purposes, so statutory and regulatory requirements for the partial procurement target exemption could be identified in one subdivision of the regulation and thereby be easily accessible to POUs.

Section 3204 (b)(8)(D)1 – This subparagraph was added to identify the first of two alternative criteria used to adjust annual procurement if the exemption applies. Both criteria are specified in Public Utilities Code section 399.30 (k), as amended by SB 100.

Section 3204 (b)(8)(D)2 – This subparagraph was added to identify the second of two alternative criteria used to adjust annual procurement if the exemption applies.

Section 3204 (b)(8)(E) – This subdivision was added to clarify that a POU qualifying for this exemption is still subject to the portfolio balance requirements, consistent with former Public Utilities Code section 399.30 (l), and the long-term procurement requirement of section 3204 (d). This addition is necessary to clarify and provide guidance on a POU’s RPS compliance obligations.

Section 3204 (b)(9) – This subdivision was added to address a retail sales exclusion established by SB 350 in Public Utilities Code section 399.30 (c)(4) for POUs with qualifying generation from a voluntary green pricing program or shared renewable generation program. This addition is necessary to provide direction on how the CEC will apply the provisions of Public Utilities Code section 399.30 (c)(4).

Section 3204 (b)(9)(A) – This subdivision was added to define a voluntary green pricing or shared renewable generation program for purposes of this exemption consistent with Public Utilities Code section 399.30 (c)(4), which establishes specific requirements for generation procured for these programs and excluded from RPS retail sales but does not restrict the structure of the programs themselves. This definition would not preclude participation in a community solar program pursuant to Title 24, Part 1, section 10-115, of the California Code of Regulations, as those regulations currently exist, assuming all other requirements are satisfied.

This addition is necessary to clarify the terms used throughout this section and to provide guidance on what programs qualify as voluntary green pricing or shared renewable generation programs for purposes of this exemption.

Section 3204 (b)(9)(B) – This subdivision was added to specify the requirements for qualifying generation that may be excluded from a POU’s retail sales. This addition is necessary for clarity, so that requirements for qualifying generation are easily identified within the same subparagraph.

Section 3204 (b)(9)(B)1 – This subdivision was added to address the statutory requirement that excluded electricity products must be generated from eligible renewable energy resources, as required by Public Utilities Code section 399.30 (c)(4). This addition is necessary for clarity.

Section 3204 (b)(9)(B)2 – This subdivision was added to address the statutory requirement that qualifying generation must not meet the criteria of PCC 2 or PCC 3. This addition is necessary for clarity.

Section 3204 (b)(9)(B)2.i – This subdivision was added to provide a limited exception to the PCC 1 requirement for POUs that are not interconnected to a California balancing authority to allow these POUs to take advantage of this retail sales reduction. As noted by the Joint POUs, these POUs cannot meet the requirements of procuring PCC 1 electricity products to serve customers in their balancing authority.²¹ Procuring electricity products that meet the criteria of PCC 1 would require these POUs to schedule electricity away from their customer loads, which is counter to the direction that POUs seek to procure, to the extent possible, from resources in “reasonable proximity” to program participants.

This limited exemption requires a POU to meet the same scheduling or resource interconnection requirements for PCC 1 electricity products, except that they apply to the balancing authority area in which the POU is located, not a California balancing authority. This addition is necessary to clarify the applicability of requirements for qualifying generation to POUs not interconnected to a California balancing authority.

Section 3204 (b)(9)(B)3 – This subdivision was added to address the statutory requirement that the associated RECs be retired on behalf of the participating customers and must not be used for RPS compliance or further sold or monetized. Requiring that associated RECs are retired in a WREGIS account designated for the benefit of participating customers prevents the RECs from being used for RPS compliance and from being sold or transferred. This is consistent with the requirements in Public Utilities Code section 399.30 (c)(4) and is the same as the CPUC’s implementation of a separate but identical statutory requirement for electrical

²¹ See Joint POUs, “Comments on Pre-Rulemaking Draft Amendments” at p. 7. Information on this document is provided in Section III of the ISOR.

corporations' green tariff/shared renewable generation programs in CPUC Decision D.15-05-051.²²

Section 3204 (b)(9)(B)3.i – This subdivision was added to clarify the definition of “monetized” for purposes of this RPS retail sales reduction and is based on the plain meaning of “monetize.” This definition does not preclude the use of the RECs retired on behalf of participating customers in CARB’s Voluntary Renewable Electricity Program, as the program currently exists, to substantiate emissions reductions claims on behalf of those customers. This definition also would not preclude participation in a community solar program pursuant to Title 24, Part 1, section 10-115, of the California Code of Regulations, as the regulations currently exist, assuming all other requirements are satisfied.

This definition would preclude a POU from retiring RECs on behalf of the participating customer for both the RPS retail sales reduction and participation in CARB’s Low Carbon Fuel Standard (LCFS) program, as it currently exists. RECs retired for purposes of the current LCFS are used to substantiate claims of low-carbon electricity and factor into the determination of LCFS credits, which have a monetary value accrued to a specific entity and represent a further monetization of retired RECs.

This addition is necessary to clarify and provide guidance to POUs on how the CEC will interpret “monetized” when assessing a POU’s procurement actions to reduce its retail sales.

Section 3204 (b)(9)(B)4 – This subdivision was added to define “reasonable proximity” for purposes of this retail sales exclusion for voluntary green pricing or shared renewable generation programs.

TURN recommended that the “reasonable proximity” obligation be understood to prioritize projects providing tangible and local economic and environmental benefits, so POUs should be required to demonstrate they undertook all reasonable efforts to procure from within their own service territory.²³ However, as noted by other stakeholders, there is significant variation between POU service areas, geography, demographics, and resource availability, particularly when compared to the service area of electrical corporations.²⁴ Requiring POUs to seek to procure within their own service

²² See CPUC Decision D.15-05-051, discussion at pp. 50-51 and Ordering Paragraph 12. Information on this document is provided in Section III of the ISOR.

²³ See TURN, “Comments on Pre-Rulemaking Draft Amendments” at p. 15. Information on this document is provided in Section III of the ISOR.

²⁴ See Joint Associations, “Initial Comments on Pre-Rulemaking Draft Amendments” at pp. 7-8; Sacramento Municipal Utility District, “Comments on Pre-Rulemaking Draft Amendments” at p. 7; City of Pasadena, “Comments on Pre-Rulemaking Draft Amendments” at p. 2; City and County of San Francisco,

territories would in effect establish a far more restrictive standard for many POUs than for electrical corporations that are generally required to procure within their service area when offering comparable Green Tariff/Shared Renewables programs.²⁵ In addition, the RPS is a utility procurement program and local generation is not required.

CEC staff determined that “located in a California balancing authority” was the best implementation of “reasonable proximity” for purposes of this utility retail sales reduction because it provides equal treatment for all POUs regardless of service area, generally comparable treatment with electrical corporations for a separate but identical statutory requirement, flexibility for POU governing boards in determining what resources are appropriate and cost-effective for their customers, and may also provide locational benefits to California ratepayers. However, this definition does not prevent a POU from procuring from resources outside of a California balancing authority if the POU was unable to procure, to the extent possible, within that location.

This addition is necessary for clarity and to provide guidance to POUs on how the CEC will interpret “reasonable proximity” in assessing their procurement actions for purposes of this retail sales exclusion.

Section 3204 (b)(9)(B)4.i – This subdivision was added to provide a limited exception to the CEC’s definition of reasonable proximity for POUs not interconnected to a California balancing authority. This limited exception requires these POUs to seek to procure from resources located within the balancing authority area in which a POU is located, rather than a California balancing authority. Requiring these POUs to procure from resources located within a California balancing authority area would prevent POUs procuring from resources in the same balancing authority as their customer loads, which is counter to the idea of “reasonable proximity.”

This addition is necessary to clarify how the CEC will interpret “reasonable proximity” when assessing the procurement actions for purposes of this retail sales reduction of a POU not interconnected to a California balancing authority.

Section 3204 (b)(9)(C) – This subdivision was added to specify how this retail sales reduction will be considered in calculating a POU’s RPS procurement requirements. This addition is necessary for clarity.

“Comments on Pre-Rulemaking Draft Amendments” at pp. 2-3. Information on these documents is provided in Section III of the ISOR.

²⁵ See CPUC Decision D.15-05-051, Conclusions of Law 13 and 14. Information on this document is provided in Section III of the ISOR.

Section 3204 (b)(10) – This subdivision was added to address a partial procurement target exemption in Public Utilities Code section 399.30 (l)²⁶ for POU's that have qualifying unavoidable long-term contracts or ownership agreements for electricity from coal-fired power plants located outside of California. This exemption applies to the 2021-2024 compliance period only.

This addition is necessary to provide direction on how the CEC will apply the provisions of Public Utilities Code section 399.30 (l).

Section 3204 (b)(10)(A) – This subdivision was added to define qualifying procurement of coal-fired generation for purposes of this exemption. This definition is based on the definition in Public Utilities Code section 399.30 (l)(1)(A). This addition is necessary to clarify terms used throughout this section..

Section 3204 (b)(10)(B) – This subdivision was added to specify the requirements a POU must address in its RPS procurement plan for purposes of this exemption, in order to demonstrate it satisfies the requirements of Public Utilities Code section 399.30 (l)(1)(B). This addition is necessary for clarity.

Section 3204 (b)(10)(B)1 – This subparagraph was added to identify the first of three requirements that must be addressed in the POU's RPS procurement plan. To show that a POU cannot divest itself of the qualifying coal-fired procurement, as required by Public Utilities Code section 399.30 (l)(1)(B), the POU must first show that it has an obligation for coal-fired generation that meets the requirements of Public Utilities Code section 399.30 (l)(1)(A). The requirements in this subparagraph pertain to the requirements for the facility supplying the coal-fired generation. This addition is necessary for clarity.

Section 3204 (b)(10)(B)2 – This subparagraph was added to identify the second of the three requirements that must be addressed in the POU's RPS procurement plan. To show that a POU cannot divest itself of the qualifying coal-fired procurement as required by Public Utilities Code section 399.30 (l)(1)(B), the POU must first show that it has an obligation for coal-fired generation that meets the requirements of Public Utilities Code section 399.30 (l)(1)(A). The requirements in this subparagraph pertain to the requirements for procurement agreement. This addition is necessary for clarity.

Section 3204 (b)(10)(B)3 – This subparagraph was added to identify the third of the three requirements that must be addressed in the POU's RPS procurement plan. The POU must show that it cannot divest itself of the qualifying coal-fired generation as

²⁶ This exemption was established in Public Utilities Code section 399.30 (m) by SB 350 and subsequently renumbered to (l) by SB 100.

required by Public Utilities Code section 399.30 (I)(1)(B). This addition is necessary for clarity.

Section 3204 (b)(10)(C) – This subdivision was added to specify how a qualifying POU’s RPS procurement target will be calculated consistent with Public Utilities Code section 399.30 (I)(2), which provides a procurement target adjustment to ensure that the combination of procurement of additional RPS-eligible generation and generation from unavoidable long-term contracts and ownership agreements does not exceed the POU’s total retail sales for the compliance period but does not allow a POU’s procurement to be reduced below an average of 33 percent for the compliance period.

Portions of Public Utilities Code section 399.30 (I)(2) are repeated or rephrased in section 3204 (b)(10)(C), (C)1., and (C)2., for organizational and consistency purposes, so statutory and regulatory requirements for the partial procurement target exemption could be identified in one subdivision of the regulations and thereby be easily accessible to POUs.

Section 3204 (b)(10)(C)1 – This subparagraph was added to identify the first of two alternative criteria used to adjust the procurement target for the compliance period if the exemption applies and to provide a calculation illustrating the adjustment based on the first criterion. Both criteria are specified in Public Utilities Code section 399.30 (I)(2). This addition is necessary for clarity.

Section 3204 (b)(10)(C)2 – This subparagraph was added to identify the second of two alternative criteria used to adjust the procurement target for the compliance period if the exemption applies and to provide a calculation illustrating the adjustment based on the second criterion. Both criteria are specified in Public Utilities Code section 399.30 (I)(2).

Section 3204 (b)(10)(D) – This subdivision was added to specify what information will be used to calculate a qualifying POU’s procurement target pursuant to this exemption. This addition is necessary for clarity.

Section 3204 (b)(11) – This subdivision was added to address Public Utilities Code section 399.33, as enacted by SB 1110, which creates a partial procurement target exemption for a POU with qualifying procurement from gas-fired power plant with outstanding public indebtedness. This exemption takes effect beginning January 1, 2025, based on the condition in Public Utilities Code section 399.33 that the RPS statute must require more than 50 percent of retail sales of electricity to come from eligible renewable energy resources. The compliance period beginning January 1, 2025, is the first compliance period with an annual soft target percent greater or equal to 50 percent of retail sales.

This addition is necessary to clarify and provide direction on how the CEC will apply the provisions of Public Utilities Code section 399.33.

Section 3204 (b)(11)(A) – This subdivision was added to define a qualifying gas-fired power plant for purposes of the exemption. The definition is based on the requirements for gas-fired power plants specified in Public Utilities Code section 399.33 (a). This addition is necessary to clarify terms used throughout this section.

Section 3204 (b)(11)(B) – This subdivision was added to specify how a POU demonstrates its qualifying gas-fired power plant was operating below 20 percent of its total capacity on an annual average on a yearly basis during a compliance period in accordance with Public Utilities Code section 399.33 (a)(2) and (b). The use of “during a compliance period” could be interpreted to mean that the 20 percent average must be satisfied “over the multiyear compliance period,” “each year of a compliance period,” or “in any given year of a compliance period.”

Capacity factor is typically calculated on an annual basis, rather than over a multiyear period, and the statute repeatedly refers to “annual average” or “average annual basis”, suggesting the 20 percent capacity factor was intended to be an annual evaluation rather than evaluated over a compliance period.

In addition, this exemption is structured as a procurement target reduction that is actually calculated on a compliance period basis, rather than a soft target reduction calculated on annual basis. This suggests that while the average 20 percent capacity factor is assessed annually, eligibility for and the calculation of the procurement target reduction occurs on a compliance period basis, so staff determined it is necessary that the power plant operate below a 20 percent capacity each year for this condition to be satisfied on a compliance period basis. This addition is necessary for clarity.

Section 3204 (b)(11)(B)1 – This subparagraph was added to identify the calculation that will be used to determine the gas-fired power plant’s annual average capacity factor, which is needed to show eligibility for and calculate the amount of this exemption. This addition is necessary for clarity.

Section 3204 (b)(11)(C) – This subdivision was added to address the requirement that additional procurement of eligible renewable energy or zero-carbon resources resulted in the power plant operating at or below a 20 percent capacity factor. Portions of Public Utilities Code section 399.33 (b)(2) are repeated or rephrased in section 3204 (b)(11)(C) for organizational and consistency purposes, so statutory and regulatory requirements for the partial procurement target exemption could be identified in one subdivision of the regulation and thereby be easily accessible to POUs.

Section 3204 (b)(11)(D) – This subdivision was added to address the requirement that a POU must attempt to mitigate the reduction of generation to below a 20 percent capacity factor. Portions of Public Utilities Code section 399.33 (b)(3) are repeated or rephrased in section 3204 (b)(11)(D) for organizational and consistency purposes, so statutory and regulatory requirements for the partial procurement target exemption could be identified in one subdivision of the regulation and thereby be easily accessible to POUs.

Section 3204 (b)(11)(E) – This subdivision was added to address how a POU must demonstrate it satisfied the procurement requirements of Public Utilities Code section 399.30, as they existed on January 1, 2018, and to provide calculations illustrating how the procurement requirements will be evaluated. As of January 1, 2018, Public Utilities Code section 399.30 required POUs to procure 40 percent of retail sales from eligible renewable energy resources by 2024, 45 percent by 2027, and 50 percent by 2030, with soft targets for the intervening years demonstrating reasonable progress toward these targets.

This addition is necessary for clarity.

Section 3204 (b)(11)(F) – This subdivision was added to specify how the procurement target reduction is calculated for a POU that qualifies for the exemption, consistent with Public Utilities Code section 399.33 (b). This addition is necessary for clarity.

Section 3204 (b)(11)(G) – This subdivision was added to specify what information will be used to calculate a qualifying POU’s procurement target pursuant to the exemption. This addition is necessary for clarity.

Section 3204 (b)(11)(H) – This subdivision was added to clarify when this exemption’s availability ends. Portions of Public Utilities Code section 399.33 (f) are repeated or rephrased in section 3204 (b)(11)(H) for organizational and consistency purposes, so statutory and regulatory requirements for the partial procurement target exemption could be identified in one subdivision of the regulation and thereby be easily accessible to POUs.

Section 3204 (b)(11)(I) – This subdivision was added to address the requirement that a POU must notify the CEC by April 1, 2019, of its intent to act pursuant to this exemption. As of February 1, 2020, the CEC received notification from two POUs prior to the April 1, 2019, deadline. Portions of Public Utilities Code section 399.33 (c) are repeated or rephrased in section 3204 (b)(11)(I) for organizational and consistency purposes, so statutory and regulatory requirements for the partial procurement target exemption could be identified in one subdivision of the regulation and thereby be easily accessible to POUs.

Section 3204 (c) – This subdivision was modified to improve organizational clarity and make it easier to identify a POU’s portfolio balance requirement and limit for each compliance period. The modifications list the PCC 1 minimum and PCC 3 maximum together for each compliance period in the order they are assessed, making it easier to identify what a POU’s portfolio balance requirements are for a given compliance period as well how the calculations of the PCC 3 maximum and PCC 1 minimum components relate to each other. These modifications are necessary for clarity and for consistency.

Section 3204 (c)(1) – This subdivision was modified to function as a title header for the portfolio balance requirements for the 2011-2013 compliance period. This subdivision previously specified the PCC 1 minimum for the 2011-2013 compliance period. The deleted text, the associated equation, and the variable definition for “PCC1_x” were moved verbatim to section 3204 (c)(1), the new subdivision specifying the PCC 1 minimum for the 2011-2013 compliance period. The deleted text specifying the variable definition for “POST_x” was moved verbatim to a new subdivision specifying the PCC 3 maximum for the 2011-2013 compliance period, because the equation in that new section has the first use of that variable. These modifications are necessary for clarity and consistency.

Section 3204 (c)(1)(A) – This subdivision was added to specify the PCC 3 maximum component of the portfolio balance requirement for the 2011-2013 compliance period. The text was moved verbatim from former section 3204 (c)(5). This addition is necessary for clarity and consistency.

Section 3204 (c)(1)(B) – This subdivision was added to specify the PCC 1 minimum component of the portfolio balance requirements for the 2011-2013 compliance period. The text specifying the PCC 1 minimum requirement was moved verbatim from the prior section 3204 (c)(1). This addition is necessary for clarity and consistency.

Section 3204 (c)(2) – This subdivision was modified to function as a title header for the portfolio balance requirements for the 2014-2016 compliance period. This subdivision previously specified the PCC 1 minimum component of the portfolio balance requirement for the 2014-2016 requirement. The deleted text and the equation were moved verbatim to new section 3204 (c)(2)(B), the new subdivision specifying the PCC 1 minimum component of the portfolio balance requirement for the 2014-2016 compliance period. These modifications are necessary for clarity and consistency.

Section 3204 (c)(2)(A) – This subdivision was added to specify the PCC 3 maximum component of the portfolio balance requirement for the 2014-2016 compliance period. The text and equation specifying the PCC 3 maximum were moved verbatim from former section 3204 (c)(6). This addition is necessary for clarity and consistency.

Section 3204 (c)(2)(B) – This subdivision was added to specify the PCC 1 minimum component of the portfolio balance requirements for the 2014-2016 compliance period. The text and equation specifying the PCC 1 minimum requirement were moved verbatim from former section 3204 (c)(2). This addition is necessary for clarity and consistency.

Section 3204 (c)(3) – This subdivision was modified to function as a title header for the portfolio balance requirements for the 2017-2020 compliance period and all subsequent multiyear compliance periods to address statutory changes to compliance periods after 2020. These requirements are addressed in the same subdivision because they are identical for the 2017-2020 compliance and for all subsequent multiyear compliance periods.

The deleted text and equation were moved to section 3204 (c)(3)(B), the new location of the subdivision specifying the PCC 1 minimum component of the portfolio balance requirement for the 2017-2020 compliance period, with additional modifications.

These organizational modifications are necessary for clarity and consistency.

Section 3204 (c)(3)(A) – This subdivision was added to specify the PCC 3 maximum component of the portfolio balance requirement for the 2017-2020 compliance period and all subsequent compliance periods. The text and equation specifying the PCC 3 maximum were copied from former section 3204 (c)(7) with additional modifications, discussed below.

First, language was modified to replace “credited” with “applied” and “requirement” with “limit” for consistency and clarity. In addition, the equation calculating the PCC 3 maximum limit and associated variables were updated to ensure the calculation addresses a full range of procurement retirement and application scenarios, which is necessary for consistency. These modifications do not substantively affect the calculation, which has been employed for the 2011-2013 and 2014-2016 compliance periods.

Section 3204 (c)(3)(B) – This subdivision was added to specify the PCC 1 minimum component of the portfolio balance requirements for the 2017-2020 compliance period and all subsequent compliance periods. The text and equation specifying the PCC 1 minimum requirement were copied from former section 3204 (c)(3), with additional clarifications. This addition of this subdivision is necessary for clarity and consistency.

The additional clarifications make the following changes. First, the language was modified to replace “credited” with “applied” for consistency and clarity. In addition, the equation calculating the PCC 1 minimum requirement and associated variables was modified to ensure the calculation addresses a full range of procurement retirement and

application scenarios, which is necessary for consistency and clarity. Finally, the equation was modified to ensure that, for a POU that retires fewer electricity products than needed to comply with the RPS procurement target, any PCC 3 RECs in excess of the maximum limit, are subtracted prior to assessing the PCC 1 minimum requirement. With program implementation experience, CEC staff determined that subtracting PCC 3 RECs in excess of the maximum limit best implements the PCC 1 minimum as a requirement on the procurement *applied* toward compliance with the RPS procurement target.

Section 3204 (c)(4) (Deleted) – This subdivision, as it currently exists in the regulations, was deleted because it is no longer necessary. As modified by SB 350 and SB 100, Public Utilities Code section 399.30 (b) and (c) require multiyear compliance periods beginning on and after January 1, 2021. The portfolio balance requirements for these new compliance periods are now addressed in section 3204 (c)(3). Current section 3204 (c)(9) has been renumbered to new section 3204 (c)(4).

Section 3204 (c)(5) (Deleted) – This subdivision was deleted in accordance with the section’s organizational changes. The deleted text and equation were moved verbatim to section 3204 (c)(1)(A), the new location of the subdivision specifying the PCC 3 maximum component of the portfolio balance requirement for the 2011-2013 compliance period.

Section 3204 (c)(6) (Deleted) – This subdivision was deleted in accordance with the section’s organizational changes. The deleted text and equation were moved verbatim to section 3204 (c)(2)(A), the new location of the subdivision specifying the PCC 3 maximum component of the portfolio balance requirement for the 2014-2016 compliance period.

Section 3204 (c)(7) (Deleted) – This subdivision was deleted in accordance with the section’s organizational changes. The deleted text and equation were moved to section 3204 (c)(3)(A), the new location of the subdivision specifying the PCC 3 maximum component of the portfolio balance requirement for the 2017-2020 compliance period, with additional clarifying modifications.

Section 3204 (c)(8) (Deleted) – This subdivision was deleted because it is no longer necessary. As modified by SB 350 and SB 100, Public Utilities Code section 399.30 (b) and (c) require multiyear compliance periods beginning on and after January 1, 2021. The portfolio balance requirements for these new compliance periods are now addressed in section 3204 (c)(3).

Section 3204 (c)(4) (New) – This subdivision was renumbered from current section 3204 (c)(9) to accommodate the section’s organizational changes.

Section 3204 (d) – This section was added to address a new long-term procurement requirement established for retail sellers pursuant to Public Utilities Code section 399.13 (b) and established for POU's pursuant to Public Utilities Code section 399.30 (d)(1). These statutory provisions were enacted under SB 350.

Specifically, Public Utilities Code section 399.13 (b) now provides in pertinent part for retail sellers:

“Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.”

Public Utilities Code section 399.30 (d)(1) now provides in pertinent part for POU's:

“The governing board of a local publicly owned electric utility shall adopt procurement requirements consistent with ... subdivision (b) of, Section 399.13.”

In establishing the long-term procurement requirement, the Legislature did not declare its specific intent or purpose within SB 350. However, the statute, as applicable to retail sellers, appears to identify a preference for the retail seller's own long-term contracts. Statute directs POU governing boards to adopt “consistent” requirements. CEC staff considered multiple factors in determining how the purpose of the long-term procurement requirement should be understood and applied for POU's, including input from stakeholders, the CPUC's findings, and research on long-term contracts.

Some stakeholders identified the purpose of the long-term procurement requirement as supporting the financing and development for new eligible renewable resources and major capital investments for existing resources.²⁷ Others cited multiple purposes, including support for long-term planning and promoting market stability.²⁸ A core value of long-term contracts is providing a long-term commitment for the output of an eligible renewable energy facility, which developers may rely upon to obtain

²⁷ See California Wind Energy Association, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 2; Independent Energy Producers Association, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 4. Information on these documents is provided in Section III of the ISOR.

²⁸ See Joint POU's, “Comments on Pre-Rulemaking Draft Amendments” at p. 4; Joint Associations, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 3; TURN, “Comments on Pre-Rulemaking Draft Amendments” at p. 2, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 2; Sacramento Municipal Utility District, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 4. Information on these documents is provided in Section III of the ISOR.

financing for new or repowered projects.²⁹ In the past, new renewable generation capacity was often developed under long-term contracts or ownership agreements with utilities to serve customer load.³⁰ A value of long-term utility contracts to developers is the creditworthiness of a utility with a customer base.³¹ Absent a long-term commitment for the output of a facility, investors and lenders may be unwilling to commit funds for new projects or require higher rates of return, which may increase costs for ratepayers.³²

Long-term contracts may also provide a hedge if electricity prices rise in the future for POUs that lock in pricing terms on a long-term basis.³³ For example, the expiration of short-term contracts will require POUs to purchase new electricity products or renegotiate contracts, which may be more costly toward the end of a RPS compliance period.³⁴ Conversely, the cost of developing a similar project in the future may decline, which may result in comparatively higher future prices for POUs.³⁵ Finally, long-term contracts may serve a broader function as part of resource planning.³⁶

Based on these factors, as well as consideration of a POU's local authority over its costs and operations, CEC staff concluded that while long-term procurement may serve

²⁹ See CPUC Decision D.17-06-026 at p. 15; Holt, Sumner, and Bird, *The Role of Renewable Energy Certificates in Developing New Renewable Energy Projects* at pp. 13-14; Weiss and Sarro, *The importance of long-term contracting for facilitating renewable energy project development* at pp. 8-11 and at p. 33; California Wind Energy Association, "Comments on Pre-Rulemaking Draft Amendments" at p. 2, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 4; Independent Energy Producers Association, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 4; J. Aron & Company LLC, "Comments on Pre-Rulemaking Draft Amendments" at p. 1. Information on these documents is provided in Section III of the ISOR.

³⁰ See Caplan, *What Drives New Generation Construction? An Analysis of the Financial Arrangements behind New Electric Generation Projects in 2011* at pp. 53 and 55. Information on this document is provided in Section III of the ISOR.

³¹ See Norton Rose Fulbright "Renewable Energy Finance State of Play," August 2017. <https://www.nortonrosefulbright.com/en-us/knowledge/publications/b14ab86f/renewable-energy-finance-state-of-play>. Information on this document is provided in Section III of the ISOR.

³² See Weiss and Sarro, *The importance of long-term contracting for facilitating renewable energy project development* at pp. 11-12 and at p. 33; Holt, Sumner, and Bird, *The Role of Renewable Energy Certificates in Developing New Renewable Energy Projects* at pp. 13-14. Information on these documents is provided in Section III of the ISOR.

³³ See Wisland and Haya, *The Clean Energy Race: How Do California's Public Utilities Measure Up?* at p. 15. Information on this document is provided in Section III of the ISOR.

³⁴ See Wisland and Haya, *The Clean Energy Race: How Do California's Public Utilities Measure Up?* at p. 15. Information on this document is provided in Section III of the ISOR.

³⁵ See Weiss and Sarro, *The importance of long-term contracting for facilitating renewable energy project development* at p. 20. Information on this document is provided in Section III of the ISOR.

³⁶ See CPUC Decision D.17-06-026 at p. 16. Information on this document is provided in Section III of the ISOR.

multiple purposes, the primary additional function of the long-term procurement requirement, as it applies to POU's, is to provide a long-term commitment from a utility which may be relied upon for developing new or repowering existing eligible renewable energy resources.

Section 3204 (d)(1) – This subdivision was added to specify how the long-term procurement requirement will be assessed. The requirement will be assessed independently from the other RPS procurement requirements, consistent with the established framework for POU RPS procurement requirements, so the compliance obligation is fixed based on the lesser of the POU's RPS procurement target or the RECs applied toward the procurement target.

Some stakeholders recommended that the CEC should implement the long-term procurement requirement as a limit for compliance with the RPS procurement requirement, the same as the CPUC's implementation for retail sellers in CPUC Decision D.17-06-026.³⁷ However, that alternative was rejected because it is inconsistent with the established framework for enforcing POU RPS procurement requirement and could discourage POU's from procuring eligible renewable generation to satisfy other RPS procurement requirements in the event of an unexpected delay in a project under long-term contract.

As discussed previously, POU's and retail sellers are different entities and are subject to different provisions in the law and different oversight. The differences between the CPUC's implementation for retail sellers and the CEC's implementation for POU's are nonexistent if a POU has sufficient long-term procurement to satisfy the long-term procurement requirement. In the event of insufficient long-term procurement, the primary difference is whether the deficit is incurred in an independent RPS procurement requirement or in the POU's RPS procurement target, but in either case, a POU would be subject to enforcement action and face penalty exposure unless excused by an optional compliance measure.

This addition is necessary to clarify and provide guidance to POU's on how compliance with the long-term procurement requirement will be enforced. This addition will benefit POU's because the long-term procurement requirement compliance obligation will be simple to understand, straightforward to calculate, and will not result in the disallowance of eligible renewable energy procured by the POU.

³⁷ See TURN, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at pp. 1-3, "Comments on the Pre-Rulemaking Draft Amendments" at p. 10; California Wind Energy Association, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 2, "Comments on the Pre-Rulemaking Draft Amendments" at pp. 1-2; Pacific Gas and Electric Company, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at pp. 1-2. Information on these documents is provided in Section III of the ISOR.

Section 3204 (d)(1)(A) – This subdivision was added to explain how the long-term procurement requirement will be assessed for a POU with a special exemption or adjustment resulting in a lower RPS procurement target obligation for the compliance period. The requirement will be assessed in the same manner as in section 3204 (d)(1), except that the POU’s reduced or adjusted RPS procurement target pursuant to the special exemption replaces the target for the compliance period calculated in section 3204 (a). This addition is necessary for clarity and to provide guidance to POUs with special exemptions on how to comply with the long-term procurement requirement.

Section 3204 (d)(2) – This subdivision was added to specify how procurement will be classified for purposes of satisfying the long-term procurement requirement. This addition is necessary for clarity.

Section 3204 (d)(2)(A) – This subdivision was added to explain the requirements for long-term contracts from which procurement may be counted as long-term for purposes of the long-term procurement requirement. As discussed above, a continuous 10-year contract is necessary to provide the long-term planning stability to facilitate the development and repowering of eligible renewable energy resources.³⁸ This requirement that long-term contracts must include a continuous 10-year duration is consistent with the CPUC’s implementation of the long-term procurement requirement for retail sellers in CPUC Decision D.17-06-026.³⁹

Some stakeholders urged the CEC to grandfather contracts executed prior to January 1, 2020, and to consider these contracts long-term based on requirements in the existing regulations for measuring contract duration for purposes of excess procurement.⁴⁰ The long-term procurement requirement begins in the 2021-2024 compliance period and may be satisfied by new or existing contracts, ownership, or ownership agreements. Procurement from existing contracts that do not satisfy the contract duration requirements for purposes of the long-term procurement requirement may still be counted toward the 35 percent of procurement from short-term contracts. Furthermore, if a POU experiences delays in procuring from new long-term contracts due to one of the allowable causes for delaying timely compliance, or the cost of entering into new

³⁸ See California Wind Energy Association, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 2, “Comments on Pre-Rulemaking Draft Amendments” at p. 4; Independent Energy Producers Association, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 4; J. Aron & Company LLC, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at pp. 1-2. Information on these documents is provided in Section III of the ISOR.

³⁹ See CPUC Decision D.17-06-026, Ordering Paragraph 2. Information on this document is provided in Section III of the ISOR.

⁴⁰ See City of Pasadena, “Comments on the Pre-Rulemaking Draft Amendments” at pp. 2-3, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at pp. 3 and 6. Information on these documents is provided in Section III of the ISOR.

long-term contracts given the POU's existing portfolio of resources creates a disproportionate rate impact, the POU may plan accordingly and adopt one or more optional compliance measures to address a potential procurement requirement shortfall. In light of these factors, staff determined that there is no basis for grandfathering contracts for purposes of the long-term procurement requirement.

This subdivision is necessary to clarify and provide guidance to POUs on how a contract will be evaluated as long-term for purposes of the long-term procurement requirement.

Section 3204 (d)(2)(A)1 – This subdivision was added to address contracts by joint powers authorities (JPA) on behalf of POUs.

As discussed previously, Public Utilities Code section 399.13 (b) requires a retail seller to satisfy the long procurement requirement with “its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” However, Public Utilities Code section 399.30 (d)(1) requires a POU to adopt “consistent” requirements, rather than expressing the same requirements as retail sellers. Many POUs face challenges in negotiating long-term contracts due to small transaction size, ratepayer cost limits, lengthy municipal approval processes, and low budgets.⁴¹ Furthermore, some smaller POUs may have a significant amount of their electrical load due to single large customers.⁴² For cost and efficiency, many POUs work with a JPA that develops, negotiates, or enters into contracts on behalf of the POU. A long-term contract between a JPA, acting on behalf of one more POUs, and a developer provides the long-term planning horizon that is a core function of the long-term procurement requirement for POUs, regardless of the length of the individual POU's agreement with the JPA.

Based on these considerations, CEC staff concluded that a consistent application of the retail seller requirements to POUs would allow a POU to count as long-term any procurement from its contracts with a JPA, provided the JPA owns or has a long-term contract with the RPS-certified facility or facilities supplying the electricity products.

This addition is necessary to clarify and provide guidance on how contracts executed by a JPA on behalf of one or more POUs will be classified for purposes of the long-term

⁴¹ See Joint Associations, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 1 and 3; Small POU Coalition, “Comments on Initial Draft” at p. 1; California Municipal Utilities Association, “Comments on Initial Draft” at pp. 3-4. As used in the ISOR, “Small POU Coalition” refers collectively to the City of Rancho Cordova, City of Moreno Valley, City of Corona, City of Colton, City of Needles, City of Cerritos, City of Victorville, Eastside Power Authority, Pittsburg Power Company, and Power and Water Resources Pooling Authority.

Information on these documents is provided in Section III of the ISOR.

⁴² See Joint Associations, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 7. Information on this document is provided in Section III of the ISOR.

procurement requirement. This addition will benefit POU's by providing flexibility in long-term contracting while still supporting the overall purpose of the long-term procurement requirement.

Section 3204 (d)(2)(A)2 – This subdivision was added to address the resale or repackaging of long-term contracts, whereby a retail seller or POU sells a portion of the electricity products procured under a long-term contract with an RPS-certified facility to a second POU.

Broadly, speaking, repackaged contracts are new contracts that have been created or “repackaged” from another entity’s contracts. As contemplated in this provision, repackaged contracts refer to contracts that have been repackaged from another POU’s or retail seller’s long-term contract(s) with, or ownership of, one or more RPS-certified facilities.

The requirements in this subdivision for repackaged contracts are generally similar to the requirements for repackaged contracts for retail sellers, as established in CPUC Decision D.07-05-028 and modified in CPUC Decision D.12-06-038.⁴³ In CPUC Decision D.17-06-028, the CPUC authorized the use of repackaged contracts for purposes of the long-term procurement requirement, as long as the retail seller’s commitment for the repackaged share has a duration of at least 10 continuous years.⁴⁴

As previously discussed, the core function of the long-term procurement requirement as it applies to POU's is to support long-term procurement commitments from utilities that may be relied upon to finance new or major capital investments in eligible renewable energy resources. In addition to the contracting challenges noted above, smaller and medium-sized POU's, as well as POU's that rely on long-term contracts or ownership of RPS-certified hydroelectric generation to serve a significant portion of their load, may struggle to address generation shortfalls from long-term contracts due to circumstances like project failure and extended drought.⁴⁵ While the delay of timely compliance

⁴³ CPUC Decision D.07-05-028 allowed retail sellers to use contracts repackaged from contracts signed by other entities with RPS-eligible generation facilities, so long as the repackaged contracts are long-term (with existing or new facilities) or short-term with new facilities, as long as the repackaged and underlying contracts are properly documented, reported, and verified (see discussion at pp. 19-20 and Ordering Paragraph 14). CPUC Decision D.12-06-038, in implementing the minimum quantity long-term contracting requirement for retail sellers, carried forward the repackaging concept, but limited the use to retail sellers’ long-term contracts that were repackaged into smaller long-term contracts (See discussion at p. 44 and Ordering Paragraph 21). Information on these documents is provided in Section III of the ISOR.

⁴⁴ See CPUC Decision D.17-06-026, Ordering Paragraph 9. Information on this document is provided in Section III of the ISOR.

⁴⁵ See Joint Associations, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 3. Information on this document is provided in Section III of the ISOR.

measure may be available to POU's if they experience one or more allowable cause for delay, it is reasonable to, if possible, provide flexibility for POU's to make up that shortfall in a manner that still supports the long-term procurement requirement.

The use of repackaged long-term contracts or resales from long-term contracts originally executed by other POU's or retail sellers does not affect the underlying 10-year contract duration between the RPS-certified facility and a load-serving entity. They are also generally consistent with the statutory preference for long-term contracts executed by retail sellers and, by extension through Public Utilities Code section 399.30 (d)(1), POU's. However, they do provide options for POU's to mitigate against changes in electrical load or to bridge a short-term procurement need while protecting the value of the 10-year commitment.⁴⁶

Based on these considerations, CEC staff determined that a consistent application of the retail seller requirements to POU's would allow a POU to count as long-term procurement from repackaged long-term contracts or resales of long-term contracts, as long as the original long-term contracts were executed by another POU or retail seller with an RPS-certified facility and specified a procurement commitment of at least 10 continuous years and the repackaging or resale does not affect the underlying procurement terms of the original contract.

The addition of this subdivision is necessary to clarify and provide guidance on how procurement from repackaged or resold long-term contracts originally executed by another POU or retail seller will be classified for purposes of the long-term procurement requirement. This addition will benefit POU's by providing limited additional flexibility in complying with the long-term procurement requirement given the procurement challenges while supporting the overall purpose of the long-term procurement requirement.

Section 3204 (d)(2)(A)3 – This subdivision was added to address long-term contracts between a POU and an entity other than an RPS-certified facility, another POU, JPA, or retail seller. A POU's long-term contract with such an entity can count as long-term only if the entity has underlying long-term contract(s) or ownership agreements with the RPS-certified facilities supplying the electricity products. If the electricity products were instead sourced from a portfolio of short-term contracts with RPS-certified facilities, this arrangement would not provide the long-term procurement commitment underpinning the long-term procurement requirement. This implementation is conceptually consistent with the CPUC's requirements for retail sellers as noted above, which allow the use of repackaged long-term contracts only if the

⁴⁶ See Joint Associations, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 7; Los Angeles Department of Water and Power, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at pp. 5-6. Information on these documents is provided in Section III of the ISOR.

underlying agreements with RPS-certified facilities have durations of at least 10 years.⁴⁷

This addition is necessary to clarify and provide guidance to POU's on the use of contracts between POU's and entities other than RPS-certified facilities, other POU's, JPAs, or retail sellers. This addition benefits POU's by providing direction on how procurement from this contract arrangement may be used to comply with the long-term procurement requirement.

Section 3204 (d)(2)(B) – This subdivision was added to address what contracts are classified as short-term for purposes of the long-term procurement requirement. This addition is necessary to clarify and provide guidance on how procurement from short-term contracting arrangements will be treated when determining compliance with the long-term procurement requirement.

Section 3204 (d)(2)(C) – This subdivision was added to explain how contract duration will be measured for purposes of determining a long-term contract. The dates during which the POU expects to procure eligible renewable energy electricity products most accurately reflect the contract duration, particularly if a facility has yet to be developed when the contract is executed. This definition is based on the expected term of procurement and does not preclude long-term contracts from a variable resource (such as RPS-eligible hydroelectric generation), or from a resource that is temporarily interrupted due to a generator outage, from counting as long-term.

This addition is necessary to clarify and provide guidance to POU's on how the CEC will assess contract duration.

Section 3204 (d)(2)(C)1. – This subdivision was added to explain how procurement from extensions of long-term contracts will be treated for purposes of satisfying the long-term procurement requirement. As noted in CPUC Decision D.17-06-026, any extension of a qualifying long-term contract builds on the value from the original 10-year duration, and procurement from contracts with an original 10-year term is considered long-term.⁴⁸ CEC staff did not identify any reasons that POU's should be subject to different requirements than retail sellers with regard to extensions of long-term contracts.

This addition is necessary for clarity and to provide guidance to POU's.

Section 3204 (d)(2)(C)2 – This subdivision was added to explain how procurement

⁴⁷ See CPUC Decision D.17-06-026, Ordering Paragraph 9. Information on this document is provided in Section III of the ISOR.

⁴⁸ See CPUC Decision D.17-06-026, discussion at p. 19 and Ordering Paragraph 2. Information on this document is provided in Section III of the ISOR.

from extensions of short-term contracts will be treated for purposes of satisfying the long-term procurement requirement. Short-term extensions of short-term contracts generally do not provide the planning stability needed for repowering or new investments in existing facilities even if the combined term is at least 10 years in duration, because the planning horizon at each juncture is fewer than 10 continuous years.⁴⁹ However, a long-term amendment of a short-term contract may provide that planning stability in the term of the amendment, as well as certain short-term amendments of short-term contract sufficiently early in the term as to provide a continuous 10-year planning horizon as of the amendment execution date.

This is similar to the CPUC's requirements for retail sellers, except that the CPUC's implementation of the long-term procurement requirement prohibits any short-term extensions of short-term contracts from counting as long-term. Both the CEC and CPUC implementations require long-term contracts to provide a continuous future 10-year procurement commitment, but CEC staff determined that the marginal additional flexibility afforded to POUs in this approach was justified based on the practical challenges many POUs face in complying with the long-term procurement requirement as well as the increased RPS procurement targets, practical differences between POUs and retail sellers, and their different statutory treatment.

Some stakeholders argued that RPS-eligible procurement mandated by the Legislature in support of additional state climate goals should be subject to fewer restrictions on long-term contracts.⁵⁰ While additional procurement mandates may pose challenges for POUs in terms of costs, there is no statutory support for special treatment of this procurement within the RPS program. Mandated procurement procured from short-term contracts may still be counted in the 35 percent of procurement allowed from short-term contracts, and to the extent that it results in cost impacts, POUs have the ability to adopt cost limitation rules that considers these additional procurement obligations.

Section 3204 (d)(2)(C)3. – This subdivision was added to explain how procurement from long-term contracts that are amended to reduce the contract duration or that are terminated early will be treated for purposes of satisfying the long-term procurement requirement.

⁴⁹ See CPUC Decision D.17-06-026; California Wind Energy Association, "Comments on Pre-Rulemaking Draft Amendments" at p. 4, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 2; Independent Energy Producers Association, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 4. Information on these documents is provided in Section III of the ISOR.

⁵⁰ See Joint POUs, "Comments on Pre-Rulemaking Draft Amendments" at p. 4; Joint Associations, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 6; Los Angeles Department of Water and Power, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 4. Information on these documents is provided in Section III of the ISOR.

While early termination, including termination due to project failure, does not affect the electricity products already generated and procured by the POU, there is no statutory support for the proposal that POUs should be allowed to designate a short-term contract as a “replacement” long-term contract to bridge the gap in expected generation for purposes of satisfying the long-term procurement requirement.⁵¹ Furthermore, there is no practical or policy need for such flexibility, given the availability of the delay of timely compliance measure for POUs.

Section 3204 (d)(2)(D) – This subdivision was added to clarify how procurement from ownership agreements is treated for purposes of the long-term procurement requirements. Ownership and ownership agreements are assumed to be permanent, unless specifically stated otherwise in the ownership documentation or ownership agreement, in which case the ownership or ownership agreement is not permanent and must be subject to the same 10-year duration requirement as long-term contract.

Section 3204 (d)(2)(E) – This subdivision was added to explain how the 10-year duration requirement applies to PCC 2 electricity products. Staff determined it was unnecessary to require the substitute energy be procured from a contract of at least 10 years in duration, because the long-term procurement requirement supports the development and repowering of eligible renewable energy resources, not substitute energy. Staff concluded that this treatment is similar to the CPUC’s implementation of the long-term procurement requirement for retail sellers in CPUC Decision D.17-06-026, which did not add any new requirements for the substitute energy.

Section 3204 (d)(2)(F) – This subdivision was added to explain how electricity products meeting the criteria of section 3202 (a)(2) or historic carryover will be classified for purposes of the long-term procurement requirement. Both of these procurement types meet the requirements to count in full toward the RPS procurement requirements in accordance with Public Utilities Code section 399.16 (d) and thus must be classified as long-term for purposes of counting in full toward the long-term procurement requirement. However, electricity products meeting the criteria of section 3202 (a)(2) that subsequently lose eligibility based on certain contract modifications or amendments will no longer count in full toward the long-term procurement requirement and must be evaluated based on the duration of the contracts through which they were procured.

This addition is necessary for clarity.

Section 3204 (d)(2)(G) – This subdivision was added to explain how excess

⁵¹ Joint Associations, “Comments on Implementation Proposal for RPS Long-Term Procurement Requirement” at p. 2; Joint POUs, “Comments on Pre-Rulemaking Draft Amendments” at p. 3. Information on these documents is provided in Section III of the ISOR.

procurement accrued under the rules for compliance periods between 2011 and 2020 will be classified for purposes of the long-term procurement requirement when applied to compliance periods beginning on and after January 1, 2021. The requirements for accruing excess procurement for compliance periods between 2011 and 2020 include a 10-year contract duration, but the calculation of that contract duration differs from the calculation of contract duration used for purposes of the new long-term procurement requirement. However, because the excess procurement was accrued in compliance with the regulatory requirements for a 10-year contract in place at the time, staff determined it was reasonable to recognize the full value of that previously-acrued excess procurement as long-term when it is applied in a future compliance period.

This addition is necessary for clarity.

Section 3204 (d)(2)(H) – This subdivision was added to explain how procurement pursuant to certain amendments of long-term contract are classified as long-term or short-term. This subdivision does not contemplate all possible types of current and future contract modifications but is necessary to provide clarity and guidance on the effect of certain modifications to long-term contracts known to CEC staff.

Section 3204 (d)(2)(H)1 – This subdivision was added to address contract amendments or modifications that increase the expected quantity or allocation of generation relative to the original contract or ownership agreement resulting from efficiency improvements. Such improvements are specifically tied to the operations of the existing RPS-certified facility under contract and thus are treated as part of the original agreement to promote the efficient operation of the facility and the efficient use of the renewable energy resource or fuel. Examples of efficiency improvements may include, but are not limited to, replacing existing equipment, such as solar panels or inverters, with higher efficiency equipment, even if that results in an increase in nameplate capacity; the addition of energy storage that is directly connected or integrated into the RPS-certified facility and allows for a more efficient use of the facility's generation; and the addition of another renewable resource that is directly connected to the RPS-certified facility to reduce its onsite load and effectively increase the amount of generation available for procurement from the original RPS-certified facility. Efficiency improvements do not include wholesale capacity additions, such as increasing the quantity of solar panels in an existing solar facility or co-locating a new resource for purposes other than improving the efficiency of the existing RPS-certified facility's operations.

This subdivision is necessary for clarity and to provide guidance to POUs on how procurement from amendments that increase expected quantity or allocation of generation resulting from efficiency improvements will be classified for purposes of the long-term procurement requirement.

Section 3204 (d)(2)(H)2 – This subdivision was added to address contract amendments or modifications that increase the expected quantity or allocation of generation under the original contract or ownership agreement other than as a result of efficiency improvements to the RPS-certified facility from which the POU is procuring generation under the original contract or ownership agreement. Procurement resulting from such amendments is considered part of the original long-term contract only if expressly specified in the original contract or ownership agreement.

Certain capacity increases may leverage existing land and infrastructure to provide cost savings for both developers and POUs, as noted in comments.⁵² However, capacity additions such as new generating units or increases in generation allocation must be legitimately tied to the existing resources and/or agreements from which the POU is procuring generation to minimize opportunities for circumventing the long-term procurement requirement.

This addition is necessary to provide clarity and guidance to POUs on how procurement from amendments that increase expected quantities or allocation of generation for reasons other than efficiency improvements to the RPS-certified facility will be classified for purposes of the long-term procurement requirement. This addition benefits POUs by allowing them flexibility in the types of amendments increasing expected quantity or allocation of generation that may be considered part of a long-term contract, as long as the increases were specified in the terms of the original long-term contract.

Section 3204 (d)(2)(H)3 – This subdivision was added to address contract amendments or modifications that substitute a different eligible renewable energy resource or fuel than was specified in the original contract or ownership agreement. Such additions or substitutions should be considered part of the original long-term contract only if expressly specified in the original contract to demonstrate they are legitimately tied to the long-term commitment with one or more RPS-certified facilities from which the POU is procuring generation.

This addition is necessary to provide clarity and guidance to POUs on how procurement from contract amendments or modifications that substitute a renewable energy resource or fuel will be classified for purposes of the long-term procurement requirement.

Section 3204 (d)(2)(H)4 – This subdivision was added to address amendments, assignments, and modifications of jointly negotiated contracts to reallocate electricity products among the contract parties. Such reallocations are treated as part of the original long-term contracts because they preserve the overarching 10-year contract

⁵² See Los Angeles Department of Water and Power, “Comments on Pre-Rulemaking Draft Amendments” at p. 4. Information on this document is provided in Section III of the ISOR.

structure between the joint parties and the RPS-certified facility.⁵³

This addition is necessary to clarify and provide guidance to POU's on how procurement from jointly negotiated long-term contracts, including contracts negotiated through a JPA on behalf of one or more POU's, that is reallocated between parties for a period of less than 10 years will be classified for purposes of the long-term procurement requirement. This addition benefits POU's by providing options for joint contracting that allows the individual members to mitigate against changes in load within the framework of the existing long-term contract.

Section 3204 (d)(2)(H)5 – This subdivision was added to address assignments of long-term contracts. Assignments of long-term contracts in which one POU replaces another POU or retail seller in a long-term contract are conferred the long-term classification regardless of the length of assignment, provided the assignment maintains the procurement commitment by the assigning retail seller or POU to procure the same type and quantity of electricity products from the RPS-certified facility for the remaining duration of the original contract. Such assignments can help POU's and retail sellers mitigate against changes in electrical load while preserving the value of the long-term contract. For example, a POU that experiences a significant load decrease due to the departure of a large industrial customer may seek to assign some or all of a long-term contract that it no longer needs to another POU. However, if there are fewer than 10 years remaining on the original long-term contract, a second POU may be unwilling to replace the first POU in the contract if the second POU's procurement from the contract is classified as short-term for purposes of the long-term procurement requirement. Additionally, the assignment maintains the procurement commitment to the RPS-certified facility, thereby preserving the long-term financial support for the facility's development and operation.

While this treatment provides limited additional flexibility to POU's than retail sellers, CEC staff concluded it is justified based on the practical differences between POU's and retail sellers as well as their statutory treatment, and is generally consistent with the apparent statutory preference for long-term contracts executed by retail sellers and, by extension, POU's.

This addition is necessary to clarify and provide guidance to POU's on how procurement from long-term contracts executed by one POU or retail seller and subsequently assigned to a second POU will be classified for purposes of the long-term procurement requirement. This addition benefits POU's by providing limited flexibility in compliance with the long-term procurement requirement, while preserving the value of long-term

⁵³ See Joint Associations, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 7; Los Angeles Department of Water and Power, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at pp. 5-6. Information on these documents is provided in Section III of the ISOR.

contracts with RPS-certified facilities executed by another POU or retail seller.

Section 3204 (e) – This subdivision was moved verbatim from current section 3204 (b) to accommodate the addition of new subdivisions in this section.

SECTION 3205 – PROCUREMENT PLANS AND ENFORCEMENT PROGRAMS

Section 3205 specifies criteria for a POU's procurement plans and enforcement programs, including the date by which the initial plans must be adopted, information that must be included in the plans and programs, public notification requirements for the adoption and revision of these plans and programs, and requirements for notifications and information that must be submitted to the CEC regarding the adoption or revision of these plans and programs. SB 1393 repealed requirements in Public Utilities Code section 399.30 (f) pertaining to information submitted to the CEC. Modifications are proposed to select provisions in Section 3205 for the reasons discussed below, including to implement changes in law under SB 1393. In general, the modifications are needed to help clarify the select provisions, some of which are necessary because of statutory changes, will help avoid ambiguity, and will benefit POUs by providing additional clarity and guidance.

Section 3205 (a)(3)(B) – This subparagraph was removed as the underlying statutory requirement upon which it is based, Public Utilities Code section 399.30 (f)(2), was repealed by SB 1393.

Section 3205 (a)(3)(C) – This subparagraph was removed as the underlying statutory requirement upon which it is based, Public Utilities Code section 399.30 (f)(2), was repealed by SB 1393.

Section 3205 (b)(3) – This subparagraph was removed as the underlying statutory requirement upon which it is based, Public Utilities Code section 399.30 (f)(2), was repealed by SB 1393.

Section 3205 (b)(4) – This subparagraph was removed as the underlying statutory requirement upon which it is based, Public Utilities Code section 399.30 (f)(2), was repealed by SB 1393.

Section 3205 (c) – This subdivision was modified to reflect the repeal of one of the underlying statutory requirements upon which it is based, Public Utilities Code section 399.30 (f)(3), by SB 1393. Additionally, internal references were updated and this subdivision was renumbered from current (d) to reflect the deletion of subdivisions in this section.

SECTION 3206 – OPTIONAL COMPLIANCE MEASURES

Section 3206 specifies optional compliance measures that may, but are not required to be adopted by a POU, including accruing excess procurement in one compliance period for application in a future compliance period, delay of timely compliance based on one or more specified allowable conditions, cost limitations on RPS procurement expenditures, a reduction in the PCC 1 minimum component of the portfolio balance requirements, and historic carryover. Section 3206 specifies how these optional compliance measures must be adopted, the information that must be included related to the adoption of the measures, how the CEC must be notified of action taken by a POU regarding the measures, how the CEC will review such measures to determine conformance with the statutory and regulatory requirements, if so requested by a POU, and what action the CEC may take if a POU applies optional compliance measures that the CEC finds do not conform with the statutory or regulatory requirements.

The information in this section is necessary to explain how the CEC will determine whether a POU's adopted and applied optional compliance measures meet the statutory and regulatory requirements.

SB 350 modified the requirements for accrual of excess procurement, delay of timely compliance, and cost limitations through amendments to Public Utilities Code sections 399.13 (a)(4)(B) and 399.15 (b)(5) and (c), respectively, which are applicable to POUs through Public Utilities Code section 399.30 (d). The changes to accrual of excess procurement in Public Utilities Code section 399.13 (a)(4)(B) take effect beginning January 1, 2021, unless a POU follows a process for voluntary early compliance with the long-term procurement requirement. The changes to Public Utilities Code section 399.15 (b) modified an existing condition and added a new condition for delaying timely compliance. The changes to Public Utilities Code section 399.15 (c) remove requirements for cost limitation rules, except the requirement that cost limitations rules be set at a level to prevent disproportionate rate impacts.

Modifications are proposed to various provisions in this section for the reasons discussed below, including to implement the changes in law under SB 350. In general, the modifications are needed to help clarify the select provisions, will help avoid ambiguity, and will benefit POUs by providing additional clarity and guidance regarding the adoption and application of optional compliance measures.

Section 3206 (a)(1)(A) – This subdivision was modified to add specific language to better differentiate between accrued and applied excess procurement, which is necessary for clarity. In addition, the internal references to the requirements for accruing and applying excess procurement were updated to address the addition of new requirements.

Section 3206 (a)(1)(B) – This subdivision was added to clarify the requirements for accruing excess procurement. This modification is necessary for clarity because “excess procurement” is not a defined term in statute or the current regulations. Requiring a POU to meet all of its RPS procurement requirements in order to accrue excess procurement is based on a fair reading of the statute regarding the use of “excess procurement” and is generally consistent with the CPUC’s implementation of excess procurement requirements for retail sellers in CPUC Decision D.17-06-026.⁵⁴ This decision notes that if there is a procurement deficit, there cannot be an excess.⁵⁵ This proposed clarification of the requirements for accruing excess procurement leads to essentially the same treatment for POUs and retail sellers, because neither can accrue new excess procurement without satisfying both the RPS procurement target and the long-term procurement requirement.

Section 3206 (a)(1)(C) – This paragraph was added to specify that requirements for accruing excess procurement in the current regulations will only apply to the compliance periods between January 1, 2011 and December 31, 2020. This modification is necessary because statutory changes under SB 350 establish new requirements for excess procurement beginning January 1, 2021, and retain the existing requirements for earlier compliance periods. The statutory changes are codified in Public Utilities Code section 399.13 (a)(4)(B) for retail sellers and in Public Utilities Code section 399.30 (d)(1) for POUs.

Specifically, Public Utilities Code section 399.13 (a)(4)(B) provides that the CPUC shall adopt excess procurement rules for retail sellers as follows:

“Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall retain the rules adopted by the commission and in effect as of January 1, 2015, for the compliance period specified in subparagraphs (A) to (C), inclusive, of paragraph (1) of subdivision (b) of Section 399.15. For any subsequent compliance period, the rules shall allow the following:

- (i) For electricity products meeting the portfolio content requirements of paragraph (1) of subdivision (b) of Section 399.16, contracts of any duration may count as excess procurement.

⁵⁴ See CPUC Decision D.17-06-026, Ordering Paragraph 15 and discussion at pp. 26-27. Information on this document is provided in Section III of the ISOR.

⁵⁵ See CPUC Decision 17-06-026, discussion at p. 26. Information on this document is provided in Section III of the ISOR.

- (ii) Electricity products meeting the portfolio content requirements of paragraph (2) or (3) of subdivision (b) of Section 399.16 shall not be counted as excess procurement. Contracts of any duration for electricity products meeting the portfolio content requirements of paragraph (2) or (3) of subdivision (b) of Section 399.16 that are credited towards a compliance period shall not be deducted from a retail seller's procurement for purposes of calculating excess procurement.
- (iii) If a retail seller notifies the commission that it will comply with the provisions of subdivision (b) for the compliance period beginning January 1, 2017, the provisions of clauses (i) and (ii) shall take effect for that retail seller for that compliance period."

Public Utilities Code section 399.30 (d)(1) provides in pertinent part for POUs:

"The governing board of a local publicly owned electric utility shall adopt procurement requirements consistent with subparagraph (B) of paragraph (5) of subdivision (a) of, . . . , Section 399.13."

Section 3206 (a)(1)(C)1 – This subdivision was modified to replace "counted" with "accrued" to more clearly identify that this requirement pertains to accrued excess procurement. This modification is necessary to avoid ambiguity. This subdivision was also renumbered from current (a)(1)(A)1. based on the organizational changes necessary to address the different excess procurement requirements for different compliance period.

Section 3206 (a)(1)(C)2 – This subdivision was modified to add "for the compliance period" after referring to the maximum limit on PCC 3 electricity products and "accrued" before excess procurement. These modifications are necessary for clarity and to avoid ambiguity.

In addition, this subdivision was renumbered from (a)(1)(A)2. based on the organizational changes necessary to address the different excess procurement requirements for different compliance periods.

Section 3206 (a)(1)(C)3 – This subdivision was modified to clarify that "contracts of less than 10 years in duration" refers to a contract duration calculation specific to excess procurement for the compliance periods between January 1, 2011, and December 31, 2020. As previously discussed, additional requirements for 10-year contracts are necessary for purposes of the long-term procurement requirement in section 3204 (d). However, the current requirements for a 10-year contract for purposes of excess procurement accrual remain in effect through December 31, 2020, consistent with the direction of Public Utilities Code section 399.13 (b) to retain rules adopted and in effect as of January 1, 2015, through December 31, 2020. Furthermore,

changing the contract duration calculation for purposes of calculating excess procurement for the 2017-2020 compliance period may adversely affect POUs that planned to accrue excess procurement for that compliance period under the current regulations.

In addition, several modifications were made for clarity and/or consistency. First, “accrued” was added before excess procurement to more clearly identify the requirement as relevant to excess procurement accrual, not application. Next, the text pertaining to the effect of amendments that extend the contract term on excess procurement eligibility verbatim was moved to a new, separate subparagraph (4). Finally, this subdivision was renumbered from current (a)(1)(A)3. based on the organizational changes necessary to address the different excess procurement requirements for different compliance periods.

Section 3206 (a)(1)(C)4 – This subdivision was added to create a new location for the effect of amendments that extend the contract term on excess procurement eligibility for compliance periods beginning January 1, 2011, through December 31, 2020. The text was moved verbatim from current (a)(1)(A)3., with the addition of text identifying the compliance periods for which it is relevant. This addition is necessary for clarity.

Section 3206 (a)(1)(D) – This subdivision was added to specify the excess procurement accrual limitations for compliance periods beginning on and after January 1, 2021, consistent with the statutory changes under SB 350 to Public Utilities Code sections 399.13 (a)(4)(B) and 399.30 (d)(1).

This is consistent with Public Utilities Code section 399.13 (a)(4)(B)(i), which specifies that electricity products qualifying as PCC 1 - electricity products meeting the portfolio content requirements of Public Utilities Code section 399.16 (b)(1) - may be accrued as excess procurement from contracts of any duration, and Public Utilities Code section 399.13 (a)(4)(B)(ii), which specifies that electricity products qualifying as PCC 2 or PCC 3 cannot be counted as excess procurement. Accrual of electricity products meeting the criteria of section 3202 (a)(2) is subject to no additional restrictions, as these electricity products satisfy the requirements of Public Utilities Code section 399.16 (d) to count in full toward the RPS procurement requirements.

The eligibility requirements for a POU’s accrued excess procurement for compliance periods beginning on and after January 1, 2021, are the same as the requirements for retail sellers implemented by the CPUC Decision D.17-06-026.⁵⁶

⁵⁶ See CPUC Decision D.17-06-026, Ordering Paragraphs 15-16 and discussion at p. 31. Information on this document is provided in Section III of the ISOR.

Section 3206 (a)(1)(E) – This subdivision was renumbered from current (a)(1)(B) to accommodate the addition of new paragraphs in this subdivision.

Section 3206 (a)(1)(F) – This subdivision was renumbered from current (a)(1)(C) to accommodate the addition of new paragraphs. In addition, it was modified to better differentiate between accrued and applied excess procurement and to address changes to the application of accrued excess procurement consistent with Public Utilities Code section 399.13 (a)(4)(B) and (a)(4)(B)(ii). Specifically, the reference to “compliance years” following 2020 was removed because it is no longer relevant and a new subparagraph was added specifying that any excess procurement accrued prior to January 1, 2021, and qualifying as PCC 2 cannot be applied toward the RPS procurement requirements of a compliance period beginning on or after January 1, 2028. This modification is needed to harmonize statutory requirements in Public Utilities Code section 399.13 (a)(4)(B) and (a)(4)(B)(ii), which respectively allow excess procurement to be applied in any subsequent compliance period and prevent PCC 2 electricity products from “counting” as excess procurement.

This modification is similar to the CPUC’s implementation for retail sellers in Decision D.17-06-026, which prohibits retail sellers from applying excess procurement qualifying as PCC 2 toward the RPS procurement requirements for compliance periods beginning on or after January 1, 2025.⁵⁷ The longer period of availability for POUs is justified by the need to provide a reasonable amount of time for POUs with existing banks of accrued PCC 2 excess procurement to use up those banks and the relative timing of the effective date of these regulations. CPUC Decision D.17-06-026 was adopted July 5, 2017, allowing six and a half years for retail sellers to plan and apply any previously-accrued PCC 2 excess procurement prior to the December 31, 2024, deadline. Assuming an effective date of December 2020 for these regulations, POUs will have approximately seven years to plan and apply previously-accrued PCC 2 excess procurement prior to the December 31, 2027, deadline.

Section 3206 (a)(1)(G) – This subdivision was added to address statutory changes in Public Utilities Code section 399.13 (a)(4)(B)(iii), which allows the new excess procurement rules to take effect in the 2017-2020 compliance period for retail sellers that comply early with the long-term procurement requirement. Public Utilities Code section 399.30 (d)(1) requires POU governing boards to adopt consistent requirements. This subdivision is necessary to specify the process by which a POU can elect for voluntary early compliance with the long-term procurement requirement beginning January 1, 2017, and concurrently begin using the new excess procurement rules.

⁵⁷ See CPUC Decision D.17-06-026, Ordering Paragraph 18. Information on this document is provided in Section III of the ISOR.

The voluntary early compliance process for POU's differs slightly from the voluntary early compliance process for retail sellers specified by the CPUC in Decision D.17-06-026, which required retail sellers seeking early compliance to file an election with the CPUC within 60 days of the effective date of the decision and specifies that failure to meet the long-term procurement requirement after making the election will result in enforcement actions.⁵⁸ However, these differences are based in part on the different statutory treatment for POU's and retail sellers with respect to optional compliance measures. Whereas Public Utilities Code sections 399.13 and 399.15 require the CPUC to adopt rules for retail sellers for the use of excess procurement and other optional compliance measures, a POU's governing board has discretion under Public Utilities Code section 399.30 (d) in adopting its own rules subject to the applicable statutory requirements and the CEC's regulatory requirements. The differences are also justified based on the timing of this regulatory update relative to the end the 2017-2020 compliance period. It is unreasonable to expect POU's to make a binding election on early compliance before the regulations establishing the requirements for compliance are approved and effective.

Section 3206 (a)(1)(H) – This subdivision was renumbered from current (a)(1)(D) to accommodate the addition of new paragraphs in this subdivision. In addition, specific language was added to better differentiate between accrued and applied excess procurement, which is necessary for clarity and consistency.

Section 3206 (a)(1)(H)1 – This subdivision was modified in several ways. First, specific language was added to better identify that the requirement pertains to the accrual, rather than application, of excess procurement, which is necessary for clarity. Next, the subdivision was modified to provide calculations for both the 2011-2013 and 2014-2016 compliance periods, as the same equation applies. Finally, the equation was updated to ensure all procurement scenarios were addressed and to make the calculation easier to follow. These modifications are necessary to clarify how the excess procurement accrual requirements will be applied across a range of compliance scenarios and compliance periods.

Section 3206 (a)(1)(H)2 – This subdivision was added to specify two excess procurement calculations a POU is permitted to use for the 2017-2020 compliance period. One calculation applies for those POU's that have not elected for voluntary early compliance and satisfied the long-term procurement requirement. The second calculation applies if a POU has elected for voluntary early compliance and satisfied the long-term procurement requirement and thus is permitted to use the new excess procurement rules for the compliance period beginning January 1, 2017.

⁵⁸ See CPUC Decision D.17-06-026, Ordering Paragraphs 6 and 23. Information on this document is provided in Section III of the ISOR.

Section 3206 (a)(1)(H)3 – This subdivision was added to specify the excess procurement calculation for POU's to apply in compliance periods beginning on and after January 1, 2021.

Section 3206 (a)(1)(D)2 (Deleted) – This subdivision, as currently exists in the regulations, was deleted as it is now unnecessary. The excess procurement calculation accrual for the 2014-2016 compliance period is now addressed in section 3206 (a)(1)(H)1.

Section 3206 (a)(1)(D)3 (Deleted) – This subdivision, as currently exists in the regulations, was deleted because it is now unnecessary. The excess procurement calculation accrual for the 2017-2020 compliance period is now addressed in section 3206 (a)(1)(H)2. and has been updated to address the optional new calculation permitted by Public Utilities Code section 399.13 (a)(4)(B)(iii).

Section 3206 (a)(1)(D)4 (Deleted) – This subdivision, as currently exists in the regulations, was deleted because it is now redundant. The excess procurement calculation accrual for compliance periods beginning on and after January 1, 2021, is now addressed in section 3206 (a)(1)(H)3. and has been updated to address the new requirements of Public Utilities Code section 399.13 (a)(4)(B)(i)-(ii).

Section 3206 (a)(1)(I) – This subdivision was renumbered from current (a)(1)(E) to accommodate the addition of new paragraphs. This subdivision has also been modified to update internal references to excess procurement requirements in this section and to special exemptions to the RPS procurement requirements in section 3204 that have been renumbered. In addition, specific language was added to better differentiate between accrued and applied excess procurement, which is necessary for clarity and consistency.

Section 3206 (a)(1)(I)1 – This subdivision was renumbered from current (a)(1)(E)1. to accommodate the addition of new paragraphs. In addition, specific language was added to better differentiate between accrued and applied excess procurement, which is necessary for clarity and consistency, and an unnecessary sentence was deleted. The prohibition on unbundled RECs precludes them from being counted in the calculation of excess procurement, so additional subtraction is unnecessary.

Section 3206 (a)(1)(I)2 – This subdivision was renumbered from current (a)(1)(E)2. to accommodate the addition of new paragraphs. In addition, it was modified to specify the applicable compliance periods for which the 10-year contract duration requirements are part of excess procurement eligibility. This modification is necessary to avoid ambiguity, because the existing requirements for excess procurement, which restrict eligibility based on contract duration, are retained for the compliance periods ending on or prior to December 31, 2020, except for POU's that elect for voluntary early

compliance with the long-term procurement requirement. The new excess procurement requirements do not restrict eligibility based on contract length.

Section 3206 (a)(1)(I)3 – This subdivision was added to address the process by which a POU can elect for voluntary early compliance with the long-term procurement requirement beginning January 1, 2017, and concurrently begin using the new excess procurement rules. This is the same process specified in section 3206 (a)(1)(G) but is included here for clarity so that all excess procurement requirements for POUs meeting the criteria of section 3204 (b)(4) or (b)(5) may be found within the same paragraph.

Section 3206 (a)(1)(I)4 – This subdivision was renumbered from current (a)(1)(E)3. to accommodate the addition of new paragraphs and subparagraphs.

Section 3206 (a)(1)(I)5 – This subdivision was renumbered from current (a)(1)(E)4. to accommodate the addition of new paragraphs and subparagraphs. In addition, specific language was added to better differentiate between accrued and applied excess procurement, and “including compliance years following 2020” was deleted because it is no longer relevant. The compliance periods following 2020 that SB 350 established are multiyear.

Section 3206 (a)(1)(I)6 – This subdivision was renumbered from current (a)(1)(E)5. to accommodate the addition of new paragraphs and subparagraphs. In addition, specific language was added to better identify the calculation as specific to accrued, rather than applied, excess procurement, for clarity.

Section 3206 (a)(1)(I)6.i – This subdivision was renumbered from current (a)(1)(E)5.i. to accommodate the addition of new paragraphs and subparagraphs. In addition, several modifications were made for clarity.

First, specific language was added to better identify that the requirement pertains to the accrual, rather than application, of excess procurement, which is necessary for clarity. Next, the subdivision was modified to provide calculations for both the 2011-2013 and 2014-2016 compliance periods, as the same equation applies. Finally, the equation was updated to ensure all procurement scenarios were addressed and to make the calculation easier to follow. These modifications are necessary to clarify how the excess procurement accrual requirements will be applied across a range of compliance scenarios and compliance periods.

Section 3206 (a)(1)(I)6.ii – This subdivision was added to specify two excess procurement calculations a POU is permitted to use. One calculation applies for those POUs that have not elected for voluntary early compliance and satisfied the long-term procurement requirement. The second calculation applies for a POU that has elected for voluntary early compliance and satisfied the long-term procurement requirement and

thus is permitted to use the new excess procurement rules for the compliance period beginning January 1, 2017.

Section 3206 (a)(1)(I)6.iii – This subdivision was added to specify the excess procurement calculation for qualifying POUs to apply in compliance periods beginning on and after January 1, 2021.

Section 3206 (a)(1)(E)5.ii (Deleted) – This subdivision, as currently exists in the regulations, was deleted as it is now redundant. The excess procurement calculation for the 2014-2016 compliance period is now addressed in section 3206 (a)(1)(I)6.i.

Section 3206 (a)(1)(E)5.iii (Deleted) – This subdivision, as currently exists in the regulations, was deleted as it is now redundant. The excess procurement calculation for the 2017-2020 compliance period is now addressed in section 3206 (a)(1)(I)6.ii.

Section 3206 (a)(1)(E)5.iv (Deleted) – This subdivision, as currently exists in the regulations, was deleted as it is now redundant. The excess procurement calculation for the compliance periods following the 2017-2020 compliance period is now addressed in section 3206 (a)(1)(I)6.iii.

Section 3206 (a)(2)(A) – This subdivision was modified to clarify what actions are required for a POU to satisfy the requirements for delaying timely compliance with respect to adopted rules and the POU’s determination or finding. These modifications are necessary for clarity, consistency, and to provide better guidance to POUs based on implementation experience.

Section 3206 (a)(2)(A)1 – This subdivision was modified to clarify that the requirements for the POU’s determination are mandatory, not optional, and to specify that a POU’s determination must include information showing how the POU experienced the allowable cause for delaying timely compliance and satisfied the applicable regulatory requirements. This modification is necessary for clarity and to provide better guidance to POUs on the information they must submit to excuse a procurement requirement shortfall due to inadequate transmission capacity.

Section 3206 (a)(2)(A)2 – This subdivision was modified to specify that a POU’s determination must include information showing how the POU experienced the allowable cause for delaying timely compliance and satisfied the applicable regulatory requirements. This modification is necessary for clarity and to provide better guidance to POUs on the information they must submit to excuse a procurement requirement shortfall due to permitting, interconnection, or other circumstances delaying procured resources, or an insufficient supply of eligible renewable energy resources.

Section 3206 (a)(2)(A)2.iii – This subdivision was modified to clarify that a POU must show that it procured an appropriate minimum margin of procurement to account for foreseeable delays or insufficient supply only if the cause of delay was foreseeable. If the cause of delay was not foreseeable, the requirement to procure a minimum margin sufficient to account for foreseeable delays is not applicable. In addition, this subdivision was modified to specify that POUs must identify the appropriate minimum margin to account for foreseeable delays in their determinations. These modifications are necessary for clarity and to avoid ambiguity.

Section 3206 (a)(2)(A)3 – This subdivision was modified to address statutory changes under SB 350 to Public Utilities Code section 399.15 (b)(5)(C), which revised the allowable condition for delaying timely compliance due to unanticipated curtailment.

Specifically, SB 350 amended Public Utilities Code section 399.15 (b)(5) to require the CPUC to waive enforcement of a retail seller’s RPS procurement requirement if the retail seller demonstrates that any of the following conditions are beyond its control and will prevent compliance:

“[. . .]

(C) Unanticipated curtailment of eligible renewable energy resources if the waiver would not result in an increase in greenhouse gas emissions.”

The provisions of Public Utilities Code section 399.15 (b)(5) are extended to POUs pursuant to Public Utilities Code section 399.30 (d)(2), which provides:

“The governing board of a local publicly owned electric utility may adopt the following measures:

(A) Conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15.

[. . .]”

The modifications to this subdivision extend the statutory changes in Public Utilities Code section 399.15 (b)(5)(C) to POUs. In addition, this subdivision was modified to clarify necessary information in a POU’s determination of whether this condition delayed timely compliance.

Section 3206 (a)(2)(A)4 – This subdivision was added to address the statutory changes under SB 350 to Public Utilities Code section 399.15 (b)(5)(D), which established a new condition for delaying timely compliance based on unanticipated increases in retail sales due to transportation electrification. The provisions of Public Utilities Code section 399.15 (b)(5)(D) are extended to POUs pursuant to Public Utilities Code section 399.30 (d)(2)(B).

Specifically, SB 350 amended Public Utilities Code section 399.15 (b)(5) to require the CPUC to waive enforcement of a retail seller's RPS procurement requirement if the retail seller demonstrates that any of the following conditions are beyond its control and will prevent compliance:

"[. . .]

- (D) Unanticipated increase in retail sales due to transportation electrification. In making a finding that this condition prevents timely compliance, the commission shall consider both of the following:
 - (i) Whether transportation electrification significantly exceeded forecasts in that retail seller's service territory based on the best and most recently available information filed with the State Air Resources Board, the Energy Commission, or another state agency.
 - (ii) Whether the retail seller has taken reasonable measures to procure sufficient resources to account for unanticipated increases in retail sales due to transportation electrification."

The provisions of Public Utilities Code section 399.15 (b)(5) are extended to POU's pursuant to Public Utilities Code section 399.30 (d)(2), which provides:

"The governing board of a local publicly owned electric utility may adopt the following measures:

- (A) Conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15.

[. . .]"

The modifications to this subdivision extend the statutory changes in Public Utilities Code section 399.15 (b)(5)(D) to POU's. In addition, this subdivision clarifies what electrical loads are considered part of transportation electrification and specify the necessary information in a POU's determination. However, the specific transportation electrification forecasts, methods relied upon for attributing load growth to transportation electrification, and metrics for "significantly exceeding" are determined by the POU based on the specific characteristics of its customer base and service territory.

Section 3206 (a)(2)(A)4.i – This subdivision was added to address the first of two factors a POU must consider in determining whether transportation electrification significantly exceeded forecasts in its service territory. At this time not all POU's may be required to file the same information with state agencies, so a POU's governing board is best suited to judge how well a particular forecast is suited to its service area based on its specific circumstances. Therefore, it is the POU's responsibility to determine what is the best information available to the POU. The modification is necessary to provide

better guidance to POU's on how the unanticipated increases in retail sales due to transportation electrification will be applied in delaying compliance.

Section 3206 (a)(2)(A)4.ii – This subdivision was added to address the second of two factors that must be considered in determining whether the POU has taken reasonable measures to procure sufficient resources to account for unanticipated increases in retail sales due to transportation electrification. A POU's governing board is responsible for determining what measures were reasonable, as it is best suited to make that judgment based on its specific circumstances. The modification is necessary to provide better guidance to POU's on how the unanticipated increases in retail sales due to transportation electrification will be applied in delaying compliance.

Section 3206 (a)(3)(B) – The subdivision was modified to address the changes from SB 350, which repealed requirements for cost limitation rules set by the CPUC for electrical corporations except that the rules be set at a level to prevent disproportionate rate impacts. The modification further clarifies that it is the POU's responsibility for setting cost limitation rules to prevent disproportionate rate impacts. This modification is necessary for clarity and consistency.

Section 3206 (a)(3)(C) (Deleted) – This subdivision was deleted in accordance with SB 350, which repealed the statutory requirements in Public Utilities Code section 399.15 (c) and (d) establishing factors relied upon for cost limitation rules.

Section 3206 (a)(3)(C)– This subdivision was renumbered from current (a)(3)(D) to accommodate the deletion of subdivision (a)(3)(C) as currently exists in the regulations.

Section 3206 (a)(3)(D) – This subdivision was renumbered from current (a)(3)(E) to accommodate deletions in this section. In addition, an example of a planned action was included to provide better guidance to POU's.

Section 3206 (a)(4)(D) – This subdivision was modified to remove a noticing requirement because the underlying statutory requirement upon which the noticing requirement is based, Public Utilities Code section 399.30 (f)(2), was repealed by SB 1393.

Section 3206 (a)(4)(D)3 (Deleted) – This subdivision was deleted because it is unnecessary. A POU may only reduce its portfolio balance requirement based on conditions beyond the control of the POU as specified in section 3206 (a)(2); thus, the POU's reasons must explain how the needed reduction resulted from these conditions, which is already required by current (a)(4)(D)4.

Section 3206 (a)(4)(D)3 – This subdivision was renumbered from section 3204 (a)(4)(D)4. to accommodate the deletion of current subparagraph (D)3.

SECTION 3207 – COMPLIANCE REPORTING FOR POUS

Section 3207 specifies the required timing and content of annual reports and compliance reports that POUs must submit to the CEC. It also includes special reporting instructions for POUs that adopt and apply optional compliance measures and/or meet reduce or adjust their RPS procurement target pursuant to a special exemption in section 3204 (b).

Modifications are proposed to various reporting provisions in this section for the reasons discussed below. In general, the modifications are needed to address reporting for new or updated statutory requirements or exemptions and help clarify existing provisions, will help avoid ambiguity, and will benefit POUs by providing additional clarity and guidance regarding reporting requirements.

Section 3207 (c) – This subdivision was modified to remove requirements pertaining to the first annual report submitted for the 2011-2012 calendar years because it is no longer relevant.

Section 3207 (c)(1) – This subdivision was modified to remove reporting requirements that are unnecessary for the CEC’s verification process. The requirements of paragraphs (B) and (C) were deleted, and the requirements of paragraph (A) were integrated into section 3207 (c)(1).

Section 3207 (c)(2) – This subdivision was modified to delete “progress” and replace it with “procurement,” which is a more precise characterization of the pertinent information. This modification is necessary for clarity.

Section 3207 (c)(2)(B) – This subdivision was modified to require POUs to report the total electricity products, in MWh, projected for retirement for the compliance period. This information is necessary for CEC staff to better assess a POU’s procurement information and progress for the compliance period.

Section 3207 (c)(2)(C) – This subdivision was modified to specify how POUs will be required to report procurement claims that have not been tracked in the WREGIS system, a process that is outlined and explained in the RPS Guidelines. This modification is necessary for clarity.

Section 3207 (c)(2)(E) – This subdivision was added to require POUs to submit an initial, nonbinding classification of retired electricity products qualifying as long-term or short-term. This information is necessary to help verify compliance with the long-term procurement requirement and to assess how the procurement the POU is retiring toward its procurement target is being distributed for the compliance period. The POU

will assign each retired REC into long-term or short-term classifications and CEC staff will determine whether the RECs actually do qualify for the assigned classification.

Section 3207 (c)(2)(F) – This subdivision was renumbered from current (c)(2)(E) to accommodate the addition of a new subparagraph. This subdivision was also updated to clarify the information needed for verification and remove requirements that are redundant based on the information in an RPS-certified facility’s certification record, based on the CEC’s implementation experience. These modifications are necessary for consistency and clarity.

Finally, reporting specific to the long-term procurement requirement was added. This information will support the CEC’s verification activities for the POU to prove that electricity products procured from the contract or ownership agreement are classified as long-term.

Section 3207 (c)(2)(G) – This subdivision was renumbered from current (c)(2)(F) to accommodate the addition of a new subparagraph. In addition, it was modified to clarify that the POU must provide supporting documentation for all electricity products procured for the reporting year.

This subdivision was also modified to address information a POU must submit demonstrating the qualification for each long-term or short-term classification assigned to retired electricity products. Such documentation may include a POU’s own contracts with RPS-certified facilities, a POU’s procurement contracts with a third party, and the third party’s contracts with RPS-certified facilities, as applicable. This information will be used to verify contract duration and other information specific to the requirements of long-term procurement in accordance with section 3204 (d).

Section 3207 (c)(2)(G) (Deleted) – This subdivision was removed because the underlying statutory requirement, in former Public Utilities Codes section 399.30 (I)(1), as enacted by SBX1-2, was repealed.

Section 3207 (c)(2)(H) – This subdivision was modified to add “an unanticipated increase in retail sales due to transportation electrification” as a possible condition which may delay the timely compliance of a POU, consistent with the addition to allowable conditions in Public Utilities Code section 399.15 (b)(5).

Section 3207 (c)(2)(I) – This subdivision was modified to clarify how a POU’s own energy consumption and electricity procured for end-uses other than retail sales must be reported in compliance reports. Additional specificity in POU reporting of this information is necessary for CEC staff to verify a POU’s retail sales with other data sources as part of the CEC’s RPS verification and compliance responsibilities.

Section 3207 (d) – This subdivision was modified to implement a new compliance reporting process for POU's. The new reporting process will provide POU's more accurate information on the procurement eligibility, PCC classification, and contract duration classification of retired electricity products available to the POU before the POU makes decisions to apply electricity products to the RPS procurement target or to accrue them as excess procurement. The compliance reports are due 90 days after the CEC sends draft verification results to the POU. This will provide the POU ample time to review the results and make fully informed procurement application decisions, which is necessary to improve and simplify the reporting process based on implementation experience. In addition, the reporting requirements of this subdivision were reorganized to better reflect the order of procurement application decisions.

Section 3207 (d)(1) (Deleted) – This subdivision was removed because reporting classification per RPS-certified facility is unnecessary in the CEC's verification process, based on implementation experience.

Section 3207 (d)(1) – This subdivision was renumbered from current (d)(2) to accommodate a deletion of a subdivision.

Section 3207 (d)(3) (Deleted) – This subdivision was deleted and the text was moved with additional modifications to new section 3207 (d)(3). This modification was necessary to address the organizational changes within the compliance reporting subdivision.

Section 3207 (d)(2) – This subdivision was renumbered from current (d)(4) to accommodate deletions and the organizational changes within the compliance reporting subdivision. In addition, this subdivision was modified in accordance with new compliance reporting process in section 3207 (d) to require POU's to report the amount of draft verified procurement retired for the compliance period, using the draft verification results sent from the CEC, that the POU applies to the RPS procurement requirements of the compliance period.

The amount of draft verified procurement retired that a POU applies for the compliance period will be used in determining whether a POU has met the RPS procurement target. In addition, the amount applied in each portfolio content category and long-term or short-term classification will be used in calculating and determining compliance with the portfolio balance requirement and the long-term procurement requirement. These modifications are necessary for clarity and consistency.

Section 3207 (d)(3) – This subdivision was added to require POU's to report on excess procurement and historic carryover that it applies toward the RPS procurement requirements with additional specificity, in accordance with the new compliance reporting process. The amount of historic carryover and previously-accrued excess

procurement that a POU applies for the compliance period will be used in determining whether a POU has met the RPS procurement target. In addition, the amount of applied excess procurement in each portfolio content category and long-term or short-term classification will be used in calculating and determining compliance with the portfolio balance requirement and long-term procurement requirement. These modifications are necessary for consistency and clarity.

Section 3207 (d)(4) – This subdivision was renumbered from current 3207 (d)(5) to accommodate the deletion of subparagraphs in this subdivision. It was also modified to update internal references to excess procurement requirements in section 3206 (a)(1) that have been renumbered and to clarify that the reporting pertains to accrual of new excess procurement.

Finally, the subdivision was modified to require POUs to identify the classifications of the electricity products claimed as newly accrued excess procurement in accordance with the new compliance reporting process. A POU must document the amount of accrued excess procurement in each portfolio content category and long-term or short-term classification so that the excess procurement is properly accounted for in the calculation of the portfolio balance requirement and long-term procurement requirement of the future compliance period in which it is applied. These modifications are necessary for consistency and clarity.

Section 3207 (d)(4)(A) – This subdivision was added to address how a POU that elects for voluntary early compliance with the long-term procurement requirement must report on that election.

Section 3207 (d)(5) – This subdivision was renumbered from current 3207 (d)(6) to accommodate the deletion of subparagraphs in this subdivision. It was also modified to clarify the information a POU must report to demonstrate it has met the requirements for adopting and applying the delay of timely compliance, cost limitation, and portfolio balance requirement reduction optional compliance measures to excuse a procurement requirement deficit based on implementation experience.

Section 3207 (d)(5)(A) – This subdivision was modified to serve as a header for the additional information a POU must report if it applies a cost limitation measure. The information contained in current paragraph (A) was moved with clarifying changes to subparagraphs 1.-6. to more easily identify the individual reporting requirements.

Section 3207 (d)(5)(A)1.- (A)6 – These subparagraphs were added to clarify the information that a POU must submit to justify the application of the cost limitation optional compliance measures in accordance with section 3206 (a)(3). The requirements of subparagraphs 1., 2., 4., and 6., were existing requirements moved from current section 3207 (d)(5)(A) and updated for clarity and consistency. The

requirements of subparagraphs 2. and 3. were added to clarify that the documentation submitted by a POU as part of its justification for applying this optional compliance measure must include information showing how the POU evaluated its cost limitation rules and how the rules were set at a level to prevent disproportionate rate impacts. This information is necessary for CEC staff to verify whether a POU satisfied the statutory requirements for cost limitations and is consistent with implementation to date.

Section 3207 (d)(5)(B) – This subdivision was added to serve as a header for the information a POU must submit when delaying timely compliance pursuant to one of the allowable conditions for delay, as specified in section 3206 (a)(2)(A)1.-4.

Section 3207 (d)(5)(B)1.- (B)6 – These subparagraphs were added to clarify the information that a POU must submit to justify the application of the delay of timely compliance optional compliance measure for any of the allowable causes for delay in accordance with section 3206 (a)(2). This information is necessary for CEC staff to verify whether a POU satisfied the statutory requirements for delaying timely compliance and is consistent with implementation to date.

Section 3207 (d)(5)(C) – This subdivision was added to clarify the information that a POU must submit to justify the application of adopted portfolio balance requirement reduction rules.

Section 3207 (d)(5)(C)1.- (C)2 – These subparagraphs were added to clarify the information that a POU must submit to justify the application of the portfolio balance requirement reduction measure. Specifically, these requirements clarify that the documentation submitted by a POU as part of its justification for applying this optional compliance measure must include information showing the level to which the portfolio balance requirement was reduced and how the need to reduce the portfolio balance requirement resulted from specified conditions. This information is necessary for CEC staff to verify whether a POU satisfied the statutory requirements for the portfolio balance requirement reduction and is consistent with implementation to date.

Section 3207 (d)(6) – This paragraph was added to provide a time extension request process following the established process in the RPS Guidelines for the compliance report deadline before the report is past due. This additional flexibility is necessary because the deadline for completion of the updated compliance report now depends on the CEC's completion of initial draft verification results, rather than a fixed date, and it may be challenging for POUs if the deadline occurs during periods of heavy workload or holidays. The extension process in the RPS Guidelines allows the Executive Director to extend the due date for the submittal of a report.

Section 3207 (e) – This subdivision was modified to update an internal reference to a special exemption to the RPS procurement requirements in section 3204 that has been renumbered. This modification is necessary for consistency and clarity.

Section 3207 (f) – This subdivision was modified to update an internal reference to a special exemption to the RPS procurement requirements in section 3204 that has been renumbered. In addition, this subdivision was modified to make a non-substantive grammatical correction. These modifications are necessary for consistency and clarity.

Section 3207 (g) – This subdivision was modified with conforming changes to address the new compliance reporting process described in section 3207 (d). The most accurate and up-to-date information for a POU to make procurement application decisions includes the POU’s eligibility for a special exemption. A POU must report on the use of a special exemption in the final annual report submitted for the last year of the compliance period so that its eligibility may be addressed in the CEC’s draft verification results. These modifications are necessary for consistency and clarity.

Section 3207 (h) – This subdivision was modified to replace references to former Public Utilities Code section 399.30 (k), which was repealed by SB 100, and to separately address reporting requirements for the exemption criteria in effect from 2014-2016 and the exemption criteria in effect from 2017-2018. These modifications are necessary for consistency and clarity.

Section 3207 (h)(1) – This subdivision was modified to specify the applicable reporting date for the existing reporting requirements based on the dates the exemption is effective, update internal references to this special exemption in section 3204 based on renumbering, and replace references to former Public Utilities Code section 399.30 (k). These modifications are necessary for consistency and clarity. This subdivision was also modified to specify that additional documentation that may be requested to determine whether any amount reported as qualifying hydroelectric generation includes incremental generation as a result of efficiency improvements. This modification is necessary for the CEC staff to assess whether the POU qualifies for the exemption and the claimed amount of the exemption.

Section 3207 (h)(2) – This subdivision was modified to identify the reporting dates and requirements for the exemption criteria in effect from 2017-2018. This modification is necessary to address the reporting requirement for the new set of exemption criteria.

Section 3207 (h)(2)(A)-(B) – These subparagraphs were added to require a POU to report the amount of large hydroelectric generation it received for the reporting year, which is necessary to calculate the amount of the procurement target exemption, and any additional documentation needed to determine a POU’s eligibility for the exemption.

These additions are necessary to provide direction on reporting requirements to the CEC.

Section 3207 (i) – This subdivision was added to specify the reporting deadline and serve as a header for the information that a POU adjusting its soft target pursuant to the special exemption in section 3204 (b)(7) must report for each year that it claims the exemption.

Section 3207 (i)(1)-(4) – These paragraphs were added to require POUs to report the amount of large hydroelectric generation procured for the reporting year, information showing that the POU meets the eligibility criteria of the special exemption, and information showing the claimed large hydroelectric generation qualifies under the exemption requirements. This information will be used by CEC staff to verify eligibility for the exemption and the amount of the soft target adjustment. These additions are necessary to provide direction on reporting requirements to the CEC.

Section 3207 (i)(5) – This paragraph was added to require a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes 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) to report annual retail sales for the reporting year. This addition is necessary because such a POU's retail sales are otherwise reported as a seven-year average in accordance with section 3204 (b)(1). This addition is necessary to provide direction on reporting requirements to the CEC.

Section 3207 (i)(6) – This paragraph was added to require POUs to submit any additional documentation requested by the CEC necessary to determine whether the POU meets the criteria specified in section 3204 (b)(7) and to determine the amount of generation that qualifies as large hydroelectric generation as defined in section 3204 (b)(7)(A). This information, if needed, will be used to verify eligibility for this special exemption and the amount of the soft target adjustment. This addition is necessary to provide direction on reporting requirements to the CEC.

Section 3207 (j) – This subdivision was added to specify the reporting deadline and serve as a header for the information that a POU adjusting its soft target pursuant to section 3204 (b)(8) must report for each year that it claims the special exemption.

Section 3207 (j)(1)-(4) – These paragraphs were added to require POUs to report the amount of large hydroelectric generation procured for the reporting year, information showing that the POU meets the eligibility criteria of the special exemption, and information showing the claimed large hydroelectric generation qualifies under the exemption requirements. This information will be used by CEC staff to verify eligibility

for the exemption and the amount of the soft target adjustment. These additions are necessary to provide direction on reporting requirements to the CEC.

Section 3207 (j)(5) – This subdivision was added to require a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes 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) to report annual retail sales for the reporting year. This addition is necessary because such a POU’s retail sales are otherwise reported as a seven-year average in accordance with section 3204 (b)(1). This addition is also necessary to provide direction on reporting requirements to the CEC.

Section 3207 (j)(6) – This subdivision was added to require POUs to submit any additional documentation requested by the CEC necessary to determine whether the POU meets the criteria specified in section 3204 (b)(8) and to determine the amount of generation that qualifies as large hydroelectric generation as defined in section 3204 (b)(8)(A). This information, if needed, will be used to verify eligibility for this special exemption and the amount of the soft target adjustment. This addition is necessary to provide direction on reporting requirements to the CEC.

Section 3207 (k) – This subdivision was added to specify the reporting deadline and serve as a header for the information that a POU must report for each year that it adjusts its retail sales pursuant to section 3204 (b)(9).

Section 3207 (k)(1)-(6) – These paragraphs were added to require POUs to report on their voluntary green pricing or shared renewable generation program, the quantity of electricity products procured and excluded from retail sales, information showing that excluded electricity products meet all eligibility requirements and the associated RECs were retired in a subaccount designated for the benefit of participating customers, and information showing how the POU sought to procure the electricity products from eligible renewable energy resources located within a California balancing authority area, except for POUs that are not in a California balancing authority area. This information will be used by CEC staff to verify the amount and eligibility of electricity products used to adjust a POU’s retail sales. These additions are necessary to provide direction on reporting requirements to the CEC.

Section 3207 (l) – This subdivision was added to specify the reporting deadline and information that a POU qualifying for a procurement target exemption pursuant to section 3204 (b)(10) must report for the 2021-2024 compliance period.

Section 3207 (l)(1)-(3) – These paragraphs were added to require POUs to report the amount of qualifying procurement of coal-fired generation for the compliance period, the POU’s procurement agreement(s) through which it was procured, and a

copy of the POU's RPS procurement plan, if not already submitted to the CEC. This information will be used by CEC staff to verify the amount of the special exemption and the POU's eligibility for the special exemption. These additions are necessary to provide direction on reporting requirements to the CEC.

Section 3207 (m) – This subdivision was added to specify the reporting deadline and serve as a header for the information that a POU qualifying for a procurement target exemption pursuant to section 3204 (b)(11) must report each compliance period it claims the exemption.

Section 3207 (m)(1)-(7) – These paragraphs were added to require POUs to report the quantity of qualifying generation procured each year of the compliance period, documentation demonstrating that the gas-fired power plant meets the eligibility criteria for the special exemption, the POU's calculations for the gas-fired power plant's annual average capacity factors, and information showing the POU satisfied all requirements of the special exemption. This information will be used by CEC staff to verify eligibility for and the amount of the special exemption. This information is necessary to provide direction on reporting requirements to the CEC.

Section 3207 (n) – This subdivision was added to specify the reporting deadline and information that a POU qualifying for the portfolio balance requirement exemption in section 3204 (b)(5) must submit each compliance period it claims the special exemption. This information will be used by CEC staff to verify that the POU meets the eligibility criteria of Public Utilities Code section 399.18. This addition is necessary to provide guidance on reporting requirements to the CEC.

Section 3207 (o) – This subdivision was added to clarify that the CEC may request information related to any RPS requirement if necessary for the CEC's verification and enforcement obligations pursuant to Public Utilities Code sections 399.25 and 399.30 (o).

Section 3207 (p) – This subdivision was modified to clarify that the enforcement process for incorrect and incomplete reports is also applicable to missing reports. This modification is necessary for clarity.

Section 3207 (p)(1) – This subdivision was modified to make conforming changes clarifying that the enforcement process is also applicable to missing reports in addition to incorrect and incomplete reports. This modification is necessary for clarity and consistency.

Section 3207 (p)(2) – This subdivision was modified to make conforming changes clarifying that the enforcement process is also applicable to missing reports in addition to incorrect and incomplete reports, and to clarify a request for an extension of time

must be received by the date specified in the Executive Director's written notice. These modifications are necessary for clarity and consistency.

SECTION 3208 – ENFORCEMENT

Section 3208 specifies reasons for which a complaint may be issued for a POU's failure to comply with an RPS requirement, and that any complaints against a POU shall be filed in accordance with the procedures set forth in section 1240.

Modifications are proposed to select provisions in this section for the reasons discussed below. In general, the modifications are needed to help clarify the provisions, including applicability to the long-term procurement requirement established by SB 350, will help avoid ambiguity, and will benefit POU's by providing additional clarity and guidance regarding CEC enforcement.

Section 3208 (b)(2) – This subdivision was modified to clarify the potential applicability of the portfolio balance requirement reduction measure to a failure to meet the PCC 1 component of the portfolio balance requirement. This modification is necessary for clarity and consistency with the existing requirements governing the applicability of the portfolio balance requirement reduction measure in section 3206 (f).

Section 3208 (b)(3) – This subdivision was added to specify that failure to comply with the long-term procurement requirement is grounds for the Executive Director to issue a complaint, unless the noncompliance is excused by the adoption and application of a cost limitation or delay of timely compliance measure that comports with the CEC's regulatory requirements.

As previously discussed, a POU's RPS procurement requirements are independent but equal compliance obligations. Accordingly, failure to comply with the long-term procurement requirement is necessarily subject to the same complaint and referral processes as failure to comply with the procurement target or the portfolio balance requirement.

Some stakeholders have argued that the delay of timely compliance measure should not be available to excuse a deficit in the long-term procurement requirement for POU's based on how the statutory requirements for delaying timely compliance apply to retail sellers.⁵⁹ However, establishing "consistent" requirements for the use of the delay of timely compliance measure for POU's, in accordance with Public Utilities Code section

⁵⁹ See TURN, "Comments on the Pre-Rulemaking Draft Amendments" at p. 2, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" at p. 9; California Wind Energy Association, "Comments on Pre-Rulemaking Draft Amendments" at pp. 2-3. Information on these documents is provided in Section III of the ISOR.

399.30 (d)(2)(A), necessitates making the measure applicable to the long-term procurement requirement. Because the CPUC implemented the long-term procurement requirement for retail sellers as a precondition for complying with the RPS procurement target, any deficits caused by insufficient long-term procurement are translated to the RPS procurement target, rather than incurred as a deficit in an independent long-term procurement requirement. As a result, a retail seller may be able to address a deficit in its RPS procurement target that was caused by procuring insufficient electricity products from long-term contracts through the waiver measure.⁶⁰ Making this same measure applicable to the long-term procurement requirement for POUs is essential for consistent and comparable treatment between POUs and retail sellers, as noted by the Joint Associations.⁶¹

Section 3208 (b)(4) – This subdivision was renumbered from current (b)(3) to accommodate the addition of a new subdivision in this section.

Section 3208 (b)(5) – This subdivision was renumbered from current (b)(4) to accommodate the addition of a new subdivision in this section.

Section 3208 (c) – This subdivision was added to clarify that it is the CEC’s intent to give the same treatment to deficits in all RPS procurement requirements – the RPS procurement target, portfolio balance requirement, and long-term procurement requirement. The POU RPS procurement requirements represent independent compliance obligations of equal import. While CARB, not the CEC, is responsible for the determination of penalties in the event the CEC issues a notice of violation, the CEC intends that noncompliance with any RPS procurement requirement be equally treated in the complaint process.

SECTION 1240 – RENEWABLES PORTFOLIO STANDARD ENFORCEMENT

Section 1240 specifies the process under which CEC staff may file a complaint against a POU for failure to meet a requirement of the RPS or any regulation, order or decision adopted by the CEC pertaining to the RPS for POUs. This section also provides information regarding final decisions by the CEC and the method and timing by which the CEC will issue a notice of violation against a POU and refer the violation to CARB to determine a penalty. Modifications are proposed for the reasons discussed below.

⁶⁰ See CPUC Decision D.14-12-023 for a discussion of the waiver process for retail sellers. Information on this document is provided in Section III of the ISOR.

⁶¹ See Joint Associations, “Initial Comments on Pre-Rulemaking Draft Amendments” at p. 4. Information on this document is provided in Section III of the ISOR.

Section 1240 (g) – This subdivision was modified to update a reference to the Public Utilities Code section specifying the CEC’s enforcement authority. The modifications from SB 350 and SB 100 resulted in renumbered provisions in Public Utilities Code section 399.30, including the CEC’s enforcement authority.

Section 1240 (h)(1) – This paragraph was modified to include a POU as one of two parties, along with CARB, to receive a forwarded notice of violation from the CEC. This modification is necessary because this information directly affects the POU, and was made in response to a POU request.

III. DOCUMENTS RELIED UPON (Government Code section 11346.2 (b)(3))

Pursuant to the requirements of Government Code section 11346.2 (b)(3), this section of the Initial Statement of Reasons (ISOR) contains “[a]n identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.” A list of these documents is provided below. Copies of the documents or their pertinent parts are included in the rulemaking file for this proceeding (Docket No. 16-RPS-03) and are available for public inspection at the California Energy Commission located at 1516 9th Street, in Sacramento, California.

Many of the documents listed below are referenced in Section II of this ISOR and are cited in footnotes in that section.

California Energy Commission. *Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities* (“Implementation Proposal for RPS Long-Term Procurement Requirement”). August 2019. CEC-300-2019-007.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229682&DocumentContentId=61101>

California Energy Commission. *Key Topics for Lead Commissioner Workshop on Proposed Pre-Rulemaking Amendments to Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. December 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231217&DocumentContentId=62869>

California Energy Commission. *Pre-Rulemaking Amendments to Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (“Pre-Rulemaking Draft Amendments”). December 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231274-2&DocumentContentId=62931>

California Energy Commission. *Pre-Rulemaking Amendments to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utility* ("Initial Draft"). August 2016.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=212630&DocumentContentId=26374>

California Energy Commission. *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)*. January 2017. CEC-300-2016-006-ED9-CMF-REV.

<https://efiling.energy.ca.gov/getdocument.aspx?tn=217317>

California Municipal Utilities Association. "Comments on Initial Draft." September 9, 2016.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=213602&DocumentContentId=26385>

California Municipal Utilities Association, Imperial Irrigation District, Modesto Irrigation District, Turlock Irrigation District, M-S-R Public Power Agency, Northern California Power Agency, Sacramento Municipal Utilities District, and Southern California Public Power Authority (collectively, "Joint POUs"). "Comments on Pre-Rulemaking Draft Amendments." January 17, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231590&DocumentContentId=63407>

California Municipal Utilities Association, Northern California Power Agency, and Southern California Public Power Authority (collectively, "Joint Associations"). "Initial Comments on Pre-Rulemaking Draft Amendments." January 8, 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231421&DocumentContentId=63224>

California Municipal Utilities Association, Northern California Power Agency, and Southern California Public Power Authority (collectively, "Joint Associations"). "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." October 1, 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229896&DocumentContentId=61348>

California Public Utilities Commission. *Decision Approving Green Tariff Shared Renewables Program for San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company Pursuant to Senate Bill 34*, Decision D.15-05-051, issued on February 2, 2015.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K250/146250314.PDF>

California Public Utilities Commission. *Decision Revising Compliance Requirements for the California Renewables Portfolio Standard in Accordance with Senate Bill 350*, Decision

D.17-06-026, issued on July 5, 2017.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M191/K530/191530416.PDF>

California Public Utilities Commission. *Decision Implementing Senate Bill 350 Provision on Penalties and Waivers in the Renewables Portfolio Standard Program and Denying Petition for Modification of Decision 17-06-026*, Decision D.18-05-026, issued on June 6, 2018.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K717/215717833.PDF>

California Public Utilities Commission. *Decision Implementing Provisions of Senate Bill 100 Relating to Procurement Quantity Requirements under the California Renewables Portfolio Standard*, Decision D.19-06-23, issued on June 28, 2019.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M307/K595/307595168.PDF>

California Public Utilities Commission. *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program*, Decision D. 12-06-038, issued on June 27, 2012.

http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/169704.pdf

California Public Utilities Commission. *Decision Setting Enforcement Rules for the Renewables Portfolio Standard Program, Implementing Assembly Bill 2187, and Denying Petitions for the Modification of Decision 12-06-038*, Decision D.14-12-023, issued on December 5, 2014.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M143/K520/143520009.PDF>

California Public Utilities Commission. *Interim Opinion on Implementation of Public Utilities Code Section 399.14(b)*, Decision D.07-05-028, mailed May 4, 2007.

http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/67490.pdf

California Wind Energy Association. "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." October 1, 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229894&DocumentContentId=61350>

California Wind Energy Association. "Comments on Pre-Rulemaking Draft Amendments." January 17, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231585&DocumentContentId=63402>

Caplan, Elise. *What Drives New Generation Construction? An Analysis of the Financial Arrangements behind New Electric Generation Projects in 2011*. The Electricity Journal. July 2012. <https://www.sciencedirect.com/science/article/pii/S1040619012001716>

City and County of San Francisco. "Comments on Pre-Rulemaking Draft Amendments." January 17, 2020."

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231593&DocumentContentId=63412>

City of Pasadena. "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." October 2, 2020.
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229927&DocumentContentId=61393>

City of Pasadena. "Comments on Pre-Rulemaking Draft Amendments." January 16, 2020.
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231574&DocumentContentId=63390>

City of Rancho Cordova, City of Moreno Valley, City of Corona, City of Colton, City of Needles, City of Cerritos, City of Victorville, Eastside Power Authority, Pittsburg Power Company, and Power and Water Resources Pooling Authority ("Small POU Coalition"). Comments on Initial Draft. September 9, 2016.
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=213593&DocumentContentId=26383>

Federal Register. Western Area Power Administration *2025 Power Marketing Plan*. 82 Fed. Reg. 156 (August 15, 2017). <https://www.gpo.gov/fdsys/pkg/FR-2017-08-15/pdf/2017-17210.pdf>

Federal Register. Western Area Power Administration *Call for 2025 Resource Pool Applications*. 83 Fed. Reg. 46 (March 8, 2018). <https://www.govinfo.gov/content/pkg/FR-2018-03-08/pdf/2018-04672.pdf>

Holt, Edward, Sumner, Jenny, and Lori Bird. *The Role of Renewable Energy Certificates in Developing New Renewable Energy Projects*. National Renewable Energy Laboratory. June 2011. <https://www.nrel.gov/docs/fy11osti/51904.pdf>

Independent Energy Producers Association. "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." September 19, 2019.
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229792&DocumentContentId=61235>

J. Aron & Company LLC. "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." October 1, 2019.
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229893&DocumentContentId=61352>

J. Aron & Company LLC. "Comments on Pre-Rulemaking Draft Amendments." January 21, 2020.
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231612&DocumentContentId=63432>

Los Angeles Department of Water and Power. "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement. October 1, 2019."
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229926&DocumentContentId=61392>

Los Angeles Department of Water and Power. "Comments on Pre-Rulemaking Draft Amendments. January 21, 2020."

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231596&DocumentContentId=63415>

Norton Rose Fulbright. "Renewable Energy Finance State of Play." August 2017.

<https://www.nortonrosefulbright.com/en-us/knowledge/publications/b14ab86f/renewable-energy-finance-state-of-play>

Pacific Gas and Electric Company. "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." October 1, 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229900&DocumentContentId=61364>

Port of Stockton. "Comments on the Committee Proposed Decision." April 5, 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=227518&DocumentContentId=58767>

Roseville Electric Utility and Redding Electric Utility. "Comments on Pre-Rulemaking Draft Amendments." February 24, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=232200&DocumentContentId=64181>

Sacramento Municipal Utility District. "Comments on Pre-Rulemaking Draft Amendments." January 17, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231579&DocumentContentId=63395>

The Utility Reform Network (TURN). "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement." October 2, 2019.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=229929&DocumentContentId=61397>

The Utility Reform Network (TURN). "Comments on Pre-Rulemaking Draft Amendments." January 17, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=231578&DocumentContentId=63394>

Weiss, Jurgen and Mark Sarro. *The importance of long-term contracting for facilitating renewable energy project development*. The Brattle Group. May 7, 2013.

https://brattlefiles.blob.core.windows.net/files/6147_the_importance_of_long-term_contracting_for_facilitating_renewable_energy_project_development_weiss_sarro_may_7_2013.pdf

Wisland, Laura and Barbara Haya. *The Clean Energy Race: How Do California's Public Utilities Measure Up?* Union of Concerned Scientists. July 2012.

<https://www.ucsusa.org/sites/default/files/2019-09/The-Clean-Energy-Race-Full-Report.pdf>

IV. CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

(Government Code section 11346.2(b)(4))

No other reasonable alternatives to the proposed regulations have been proposed that would lessen any adverse impact on small business or that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that achieves the purposes of the statutes being implemented. The CEC considered stakeholder and public input to determine the best approach to implementing the new and revised statutory requirements.

TURN, the California Wind Energy Association, and Pacific Gas and Electric Company submitted comments during pre-rulemaking activities recommending the CEC implement the long-term procurement requirement for POU's as a limit on procurement that can be used for compliance with the RPS procurement target.⁶² This alternative is the approach under which the long-term procurement requirement is enforced by the CPUC for retail sellers.⁶³ Under this alternative implementation, if a POU procures sufficient electricity products to meet the procurement target in a compliance period but fails to procure at least 65 percent of those electricity products from long-term contracts, ownership, and ownership agreements, the POU's electricity products procured from short-term contracts would be disallowed until the electricity products from long-term procurement constituted 65 percent of the total electricity products counted. In this circumstance, a POU that had met the procurement target but not the long-term procurement requirement would through the process of disallowing excess short-term procurement be precluded from compliance with the RPS procurement target and would be forced into compliance with the long-term procurement requirement.

This alternative implementation was rejected for a number of reasons. First, as noted in the example above, this implementation would likely result in valid procurement of otherwise eligible renewable energy being disallowed. POU's face certain unique challenges that limit their ability to adjust procurement decisions, including ratepayer cost limits, limited budgets, and municipal approval processes for expenditures. In addition, in aggregate POU's represent roughly 25 percent of the state's total retail sales, with two larger POU's accounting for the majority of this proportion. As such, many POU's face the added challenge of a small customer base which further limits their

⁶² See TURN, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" (pp. 1-3); California Wind Energy Association, "Comments on Pre-Rulemaking Draft Amendments" (pp. 1-2), "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" (p. 2); Pacific Gas and Electric Company, "Comments on Implementation Proposal for RPS Long-Term Procurement Requirement" (p. 2). Information on these documents is provided in Section III of the ISOR.

⁶³ See CPUC Decision D.17-06-026, Ordering Paragraph 5. Information on this document is provided in Section III of the ISOR.

ability to adjust procurement or find parties willing to contract for very small amounts of generation. The alternative implementation would discourage a POU from procuring additional eligible renewable energy resources under short-term agreements if that procurement would ultimately be disallowed because the POU was unable to satisfy the long-term procurement requirement. Implementing one requirement in a manner that discourages procurement of otherwise eligible renewable energy would be counter to the primary goal of the RPS to encourage the use of renewable energy.

Further, the alternative is inconsistent with the established framework for evaluating compliance with POU RPS procurement requirements, employed to date in the 2011-2013 and 2014-2016 compliance periods. The established framework treats both the procurement target and portfolio balance requirement compliance obligations independently and with equal weight, and there was no statutory directive to implement the long-term procurement requirement, a third RPS procurement requirement, for POUs in an entirely new manner. In its implementation of SB X1-2 for the compliance periods from 2011 through 2020, the CPUC has required that retail sellers meet a minimum long-term contracting requirement that acts as a limit on procurement applied to the RPS procurement target, because procurement from short-term contracts may be used for compliance only if this requirement was satisfied.⁶⁴ However, POUs have never been subject to this kind of requirement. In making the long-term procurement requirement applicable to POUs, Public Utilities Code section 399.30 (d)(1) requires POUs to adopt requirements “consistent with” the statutory requirements for retail sellers but does not require POU requirements to be exactly the same as those for retail sellers.

Under both the proposed implementation of the long-term procurement requirement and this alternative, a POU that fails to satisfy the long-term procurement requirement will be subject to enforcement action and face penalty exposure, unless excused by an optional compliance measure. The primary difference is whether the deficit is incurred in an independent long-term procurement requirement or in the POU’s RPS procurement target. While statute makes certain options available to retail sellers and provides POUs with similar optional compliance measures to excuse an RPS procurement requirement in limited circumstances, statute provides POU governing boards the authority to adopt their own optional compliance measures and make determinations in using these measures, unlike retail sellers, which are subject to the CPUC’s determinations. In the alternative implementation, a POU would have no incentive to procure RPS-eligible generation from short-term contracts to meet its RPS procurement target if it was unable to also meet the long-term procurement requirement; instead, POUs would likely be encouraged to rely on optional compliance measures to address the RPS procurement target deficit in addition to a deficit in the long-term procurement requirement without undertaking additional procurement.

⁶⁴ See CPUC Decision D.12-06-038 at Ordering Paragraph 15. Information on this document is provided in Section III of the ISOR.

V. SPECIFIC TECHNOLOGIES OR EQUIPMENT (Government Code section 11346.2 (b)(1))

The proposed regulations do not mandate the use of specific technologies or equipment.

VI. ECONOMIC IMPACT ASSESSMENT (Government Code sections 11346.2 (b)(2) and 11346.3 (a)(3))

The economic impact assessment was performed pursuant to Government Code section 11346.2 (b)(2) and is included as Appendix A.

VII. DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS (Government Code section 11346.2 (b)(6))

The proposed regulations neither duplicate nor conflict with any federal regulation or statute. The proposed regulations do not implement a federally mandated regulation or statute. The CEC is unaware of any comparable federal regulation or statute establishing procedures for the enforcement of California's RPS on POUs.

VIII. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS (Government Code section 11346.2 (b)(5)(A))

This statement is not applicable since the CEC finds that the proposed regulations will have no significant statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination also applies to small businesses, which, as defined in Government Code section 11342.610, are limited to business activities that are "independently owned and operated" and "not dominant in its field of operation." (Government Code section 11342.610 (a)(1) and (2).)

The only obligated parties under the proposed regulations are POUs, which are local government agencies and not businesses. No business, including a small business, is legally required to comply with or enforce the proposed regulations or to submit any new information or reports. The CEC is unaware of any legitimate cause and effect relationship between the proposed regulations and a significant adverse economic impact directly affecting businesses, nor any business deriving a direct benefit or detriment from the implementation of the proposed regulations.