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on Proposed Modifications to the Enforcement Procedures for the Renewables Portfolio Standard for POUs

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities	Docket No. 16-RPS-03

INITIAL COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON PROPOSED MODIFICATIONS TO THE ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

I. INTRODUCTION

The California Municipal Utilities Association ("CMUA") appreciates the opportunity to provide initial comments to the California Energy Commission ("Commission") on the proposed *Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* ("Proposed Regulations"), issued on May 7, 2020. As requested in the *Notice of Proposed Action* ("NOPR"),[1] CMUA is providing these initial comments in order to help inform the discussion that will occur during the Lead Commissioner Workshop/Hearing on June 8, 2020 ("June 8 Workshop"). In support of the request in the NOPR, CMUA sought preliminary feedback from its publicly owned utility ("POU") members on the Proposed Regulations and, based on that feedback, these comments provide an initial identification of areas of support and areas of concern. These positions may

[1] *See* California Energy Commission, "Notice of Proposed Action, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities," issued on May 7, 2020 at 2 ("If possible, please submit written comments to be considered at the workshop/hearing by June 1, 2020.").

change or be expanded upon based on the June 8 Workshop discussion and additional review. In final comments, CMUA and its members intend to provide a more comprehensive response regarding these positions, informed by the feedback received during the June 8 workshop. These initial comments also identify areas where additional clarification may be necessary in order to fully understand the intent and impacts of certain parts of the Proposed Regulations. To the extent that the Commission can provide responses to these areas during the June 8 Workshop, that will inform and improve any final comments submitted by the POUs.

As the Commission considers modifying or adopting the Proposed Regulations, CMUA urges the Commission to be guided by the overall intent of the RPS and by the rules of statutory construction. Pursuant to the rules of statutory construction, the Commission must implement the relevant RPS legislation in a manner that gives a reasonable and commonsense interpretation that is consistent with the Legislature's purpose.[2] This implementation should be practical rather than overly technical and should seek to harmonize individual provisions with the overall statutory structure.[3] The Commission should ensure that the RPS Enforcement Procedures meet the following goals:

- Support the ability of POUs to provide safe, reliable, environmentally sustainable, and economic service to their communities;
- Ensure that the RPS Program is implemented in a manner that is both reasonable and that can feasibly be complied with;
- Maximize the environmental, public health, and job-growth benefits for all Californians;
- Ensure that the most vulnerable POU customers are adequately protected from any undue or harmful financial impacts associated with achieving the goals of the RPS Program;

[2] Hubbard v. California Coastal Com. (2019) 38 Cal.App.5th 119, 135–136 [250 Cal.Rptr.3d 397, 409] (emphasis added), citing *Pasadena Metro Blue Line Construction Authority v. Pacific Bell Telephone Co.* (2006) 140 Cal.App.4th 658, 663–664, 44 Cal.Rptr.3d 556 (*Pasadena Metro Blue Line*) and *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1275, 109 Cal.Rptr.2d 611.

[3] *Id.*

- Ensure that POUs serving customers in areas with high levels of poverty and unemployment have the flexibility and tools to protect these most vulnerable customers; and
- Avoid any implementation that strands a POU with unnecessary costs or devalues the reasonable prior investments of a POU.

CMUA appreciates the opportunity to provide this preliminary feedback to the Commission and looks forward to engaging with the Commission and stakeholders during the June 8 Workshop.

II. INITIAL COMMENTS ON THE PROPOSED REGULATIONS

A. Initial Identification of Changes in the Proposed Regulations that CMUA Supports.

Overall, CMUA believes that the Proposed Regulations make many necessary corrections to the Pre-Rulemaking draft of proposed amendments. While CMUA intends to provide a more detailed analysis of its support for these proposals, CMUA provides this initial list identifying the key changes where the Proposed Regulations would properly implement the statutory provisions.

1. The Proposed Regulations Properly Implement the "Reasonable Proximity" Requirement for Voluntary Green Pricing Programs.

Public Utilities Code section 399.30(d)(4) allows a POU with a qualifying voluntary green pricing program to exclude from its retail sales any generation from an RPS-eligible generating facility that is credited to customers in the program, subject to various restrictions. One restriction is that, to the extent possible, the POU must seek to procure this generation from a facility located in reasonable proximity to the POU. Narrowly interpreting this requirement would present challenges for POUs with small service territories or POUs that are located in regions unsuited for certain generation types. Regulatory uncertainty would likely discourage the development of these programs because there would be a long lead time between the

development and financing of the project and when the Commission would formally determine if the POU had met the reasonable proximity requirement.

New Section 3204 (b)(9)(B)4. of the Proposed Regulations implements this requirement by requiring a POU to seek to procure this generation from a facility located in a California Balancing Authority Area. This implementation provides sufficient flexibility and strikes the appropriate balance between encouraging local development, while not punishing any POUs based on their geography. The proposal also provides sufficient certainty such that a POU that is designing a new program will have the confidence that a proposed project would ultimately comply with this requirement.

2. The ISOR Correctly Characterizes the Purpose of the Long-Term Procurement Requirement.

The Initial Statement of Reasons ("ISOR")[4] correctly identifies that the primary additional function that the long term procurement requirement serves is to provide a long term commitment from a utility that can be relied upon for developing new or repowering existing RPS-eligible resources.[5] This characterization is consistent with the California Public Utilities Commission's ("CPUC") discussion of this topic in Decision ("D.") 17-06-026:

> In the RPS program, long-term contracts advance specific program purposes. In D.06-10-019 and D.07-05-028, the [CPUC] adopted the parties' consensus that long-term contracts are necessary in order for developers to finance new and repowered RPS-eligible generation.
>
> Another value of long-term contracts is implicit in their duration: the ability of retail sellers, as well as RPS-eligible generators, to plan for a number of years into the future. In addition to the regular RPS compliance planning process incorporated into retail sellers' annual RPS plans (see, most recently, D.16-12-044), SB 350 gives the [CPUC] responsibility for directing integrated resource planning for IOUs, electric service providers (ESPs), and community choice

[4] California Energy Commission, "Initial Statement of Reasons, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities," issued on May 7.
[5] ISOR at 41-42.

> aggregators. Long-term contracts thus provide a valuable resource planning function, in addition to their role in facilitating the financing of new eligible renewable energy generation resources. Both these functions advance the policy of the state to increase the use of eligible renewable energy resources and reduce the emission of greenhouse gases.[6]

Correctly identifying and articulating the legislative purpose of the long-term procurement requirement is essential to faithfully implementing the statutory requirements and framing the discussion among stakeholders.

3. The Proposed Regulations Correctly Implement the Long-Term Procurement Requirement as an Independent Compliance Requirement That is Subject to the Delay of Timely Compliance Optional Compliance Mechanism.

CMUA supports the Proposed Regulations' adoption of an independent application of the long term procurement requirement, but that also allows the use of all optional compliance mechanisms, including the "delay of timely compliance" optional compliance mechanism. An independent application provides a simpler implementation and gives the POUs clear direction on their compliance obligations, without lessening or devaluing the impact or prominence of the long-term procurement requirement as part of the overall RPS Program objectives.

4. The Proposed Regulations Properly Treat Resales from a POU or Retail Seller for Long-Term Characterization.

Section 3204 (d)(2)(A)2. of the Proposed Regulations correctly allows a POU to treat as long-term any purchases from either a retail seller or POU, where the underlying contract meets the long term duration requirement, regardless of the length of the resale agreement. This will provide the necessary flexibility for POUs with highly variable loads to cost-effectively manage the long-term procurement requirement. This will also provide flexibility to POUs that have a

[6] D.17-06-026 at 15-16.

small number of contracts and thus may struggle to find sufficient replacement generation if an existing project fails near the end of a compliance period.

5. The Proposed Regulations Correctly Clarify that an Extension of a Short Term Contract Can Qualify as a Long-Term Contract Under Certain Narrow Circumstances.

Section 3204 (d)(2)(C)2. of the Proposed Regulations correctly implements the long-term procurement requirement to allow an extension of a short term contract to qualify as long term from the date of the contract amendment, in the very narrow situation where the length of time from the date of the execution of the amendment to the end of the new contract end date exceeds 10 years. For example, if a POU has an 8 year contract, and in year 2 of that contract, the POU executes an amendment to extend the term of the contract by 5 years, then the length of time from the contract amendment to the new contract end date is 11 years, and thus qualifies as long term. Such a contract would be treated as long term from the date of the execution of the contract amendment to the new contract end date. Any different interpretation would act to discourage a POU from extending a contract even where doing so would clearly demonstrate a long term financial commitment.

6. The Proposed Regulations Correctly Treat Assignments for Purposes of Characterizing the Long-Term Status of Contracts.

Section 3204 (d)(2)(H)5. of the Proposed Regulations treats an assignment to a POU that is from a long term contract of retail seller or POU as maintaining the original long term status regardless of the remaining term after the completion of the assignment. This is consistent with the legislative purpose described above because it provides additional financial support and stability to a renewable generation facility.

7. The Proposed Regulations Correctly Clarify the Restriction that Previously Banked PCC2 RECs Can No Longer Be Applied Toward Compliance as of the 6th Compliance Period.

Section 3206 (a)(1)(F) of the Proposed Regulations allows a POU to continue to apply any previously banked portfolio content category ("PCC") 2 RECs towards compliance through the 5th Compliance Period. Starting in the 6th Compliance Period, PCC2 RECs will no longer be able to be applied towards compliance. This is a reasonable implementation and CMUA believes it provides adequate time for a POU to use up any PCC2 RECs banked under the prior excess procurement rules.

8. The Proposed Regulations' 90 Day Compliance Period Compliance Report Deadline is Reasonable.

Section 3207 (d) of the Proposed Regulations requires that POUs submit a final Compliance Period Compliance Report within 90 days of the POU's receipt of the Commission's draft verification results. Based on initial input, CMUA believes that 90 days is reasonable and that this will provide adequate time for POUs to complete these reports.

B. Initial Identification of Changes in the Proposed Regulations that CMUA Opposes or Has Concerns With.

CMUA has concerns with some of the changes in the Proposed Regulations. These initial comments provide an identification of these areas of concerns.

1. The Proposed Regulations Incorrectly Require that for a Contract Between a Third Party and a POU to Qualify as Long Term, the POU Must Demonstrate that All of the Third Party's Underlying Contracts are Also Long Term.

Section 3204 (d)(2)(A)3. of the Proposed Regulations imposes a new restriction that applies if a POU signs a long term contract with a third party, where that third party sources the generation from multiple different projects/contracts. In such a case, the POU would need to demonstrate to the Commission that the third party has a long term contract or ownership shares

for all of the different projects that it uses to provide generation to the POU. CMUA opposes this restriction as not supported by the statutory language and being administratively complex to comply with.

2. The Proposed Regulations Incorrectly Implement Public Utilities Code section 399.30(k) in Section 3204(b)(8).

CMUA is concerned that the proposed amendment fails to properly apply the rules of statutory interpretation, resulting in an absurd outcome. The provisions of Public Utilities Code section 399.30(k) – formerly 399.30(l) – were intended to address long-term investments in large-hydroelectric resources. When the hydro exception was first adopted, the provisions of section 399.30(b) encompassed all of the compliance periods. The addition of subsequent compliance periods was added to section 399.30(c), which creates for a disjointed reading of the statute. As such it makes no sense for the provision intended to address long-term contracts to not be applicable throughout the duration of those contracts. While the ISOR states that 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," the resources at issue are zero-carbon, renewable resources that fit squarely within the state's SB 100 objectives.[7] By not applying the normal rules of statutory construction in such an obvious context, the proposed amendments thwart the intent of the Legislature and preclude the POU from utilizing the benefits of the provision as intended.

3. The Proposed Regulations Incorrectly Implement Public Utilities Code Section 399.33 in Section 3204 (b)(11).

Section 3204 (b)(11) of the Proposed Regulations creates an extra-statutory obligation that is not consistent with the provisions of Public Utilities Code section 399.33. Section

[7] ISOR at 26.

3204(b)(11) implements Public Utilities Code section 399.33. However, while the Public Utilities Code clearly states that the exception applies when "a powerplant that both meets the requirements of subdivision (a) and is operating below 20 percent of its total capacity on an average **annual basis during a given compliance period**," the Proposed Regulation to implement the statutory provision would require the POU to meet this threshold **throughout a given compliance period**.[8] This additional requirement is inconsistent with the plain meaning of the legislation. The ISOR notes that "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 that the 20 percent capacity factor was intended to be an annual evaluation rather than evaluated over a compliance period."[9] However, after making this correct observation, the ISOR leaps to the incorrect conclusion that since all compliance periods are multi-year, that "it is necessary that the power plant operate below 20 percent capacity each year" of a compliance period for the condition to be satisfied.[10] Had the legislature intended the 20% threshold to apply for the duration of the compliance period, the statute would have stated that the threshold must be met "throughout a compliance the period," rather than "during a given compliance period."

C. Initial Identification of Areas Where Additional Clarification is Required.

There are some parts of the Proposed Regulations where it is unclear how a specific provision will actually be applied or, alternatively, where the intent of a specific proposal is unclear. CMUA provides this initial list of questions and urges the Commission to respond to these questions during the June 8 Workshop.

[8] Proposed Regulations, Section (b)(11)(B).
[9] ISOR at 35.
[10] ISOR at 35.

1. How will "Continuous" Be Interpreted For Purposes of Determining the Long-Term Character of a Contract?

Section 3204 (d)(2)(A) of the Proposed Regulations requires that to qualify as long term, the commitment must be for ten "continuous" years, however, the regulatory language and ISOR do not provide detailed guidance on this issue. Significant questions remain regarding how a contract will be interpreted if there is a built-in declining share of the total output during the term of the contract. For example, if in years 1-8 of a 10 year contract, the POU receives 100% of the output, but for years 9-10, the POU receives 15% of the output, would this qualify as continuous? Similarly, it is unclear how "continuous" will be interpreted in the case of a PCC3 contract, where the contract allows for RECs to be delivered in batches, for example, once every year or once every compliance period. Additionally, is the "continuous" requirement met if a hydro resource does not deliver energy for multiple years due to drought or if a resource fails to deliver for multiple years due to mechanical failures? CMUA believes that the regulations should make clear that the term "continuous" applies to the underlying contract, and not to the delivery of a specific resource without interruption throughout the duration of the contract. This clarification is particularly important given that renewable resources are intermittent by their very nature.

2. How Will the Term "Commitment" Be Interpreted for Purposes of Determining the Long Term Character of a Contract?

Section 3204 (d)(2)(A) of the Proposed Regulations defines a long term contract as "a contract demonstrating a commitment to procure electricity products from an RPS-certified facility for a duration of at least 10 continuous years . . . ." However, Section 3204 (d)(2)(C)3. clarifies that if a contract is amended or terminated such that the contract "no longer provides a commitment to procure electricity products for a duration of at least 10 continuous years," then

only the electricity products procured prior to the amendment or termination qualify as long term. The ISOR provides a useful clarification that a termination due to project failure would not affect the long term status of the electricity products that were already generated.[11] But it is unclear what constitutes a "commitment" and what types of amendments could alter a contract such that it no longer provides this adequate level of commitment. The Commission should define long term contracts in a broad and flexible way that does not unduly limit contracting options or structures, or undermine regulatory certainty in long-term procurement planning.

3. What Qualifies as a "Jointly Negotiated Contract"?

Section 3204 (d)(2)(H)4. of the Proposed Regulations allow POUs that jointly negotiated a contract to reallocate the output of the underlying project among each other without affecting the long term status of the contract. CMUA strongly supports this interpretation and believes that it will provide vital flexibility, especially for small POUs. However, the Proposed Regulations do not define "jointly negotiated" and it would be helpful for POUs to better understand how this term would be interpreted. For example, if there is a joint solicitation, but the actual individual executed contracts do not reference the other POUs, would that qualify as jointly negotiated?

4. As Proposed, Does the Restriction on Third Party Contracts in Section 3204 (d)(2)(A)3. Apply to a Substitution of a Resource as Authorized in Section 3204 (d)(2)(H)3.?

Section 3204 (d)(2)(A)3. of the Proposed Regulations would require that if a POU has a long term contract with a Third Party, then the POU would need to demonstrate that any underlying contracts between the Third Party and the resources used for the POU contract would also need to be long term. However, Section 3204 (d)(2)(H)3. of the Proposed Regulations

[11] ISOR at 49.

clarifies that an amendment to a contract that substitutes a different renewable energy resource can still qualify as long term if the substitution was specified in the original contract. If a POU has a long term contract with an entity that is not a POU or a retail seller (and is thus presumably a "Third Party"), can the POU only amend such a contract to substitute a new resource if that Third Party has a long term contract or ownership share of the resource to be substituted? Such an interpretation would be problematic, because some POU contracts provide the developer with the ability to obtain replacement RECs/energy under certain circumstances, such as a long term outage due to maintenance. If the developer could only source the replacement RECs from its own long term contracts, this would severely limit the ability to include these types of replacement provisions in contracts.

5. What Does "Specified" Mean for Purposes of Determining if a Capacity Addition Can Be Treated as Long Term? Additionally, How Would the Commission Divide a Single Project into both Long Term and Short Term RECs?

Section 3204(d)(H)1.-2. of the Proposed Regulations would only allow the output associated with the addition of new capacity to an existing project to not be treated as a new agreement (and thus independently subject to the 10 year requirement) in circumstances where the increase was "specified" in the original contract. However, it is unclear what "specified" means in this context. Some contracts may include a reference to a potential future expansion of the project in general terms, with specific provisions to be negotiated at a later point. Other contracts may include some specific terms and details about the future expansion, such as timing and location. Given that these regulations will apply to existing contracts that were drafted without the benefit of this regulatory language, a narrow interpretation could have a detrimental impact. Facilitating the purchase of the output of an expansion of a project by the existing buyer supports the state's long term planning efforts. An expansion of an existing project can provide

significant efficiencies and cost savings because the parties already have a base contract and an existing financial relationship (simplifying the contracting process), the project likely already has the necessary infrastructure (meaning less development costs), and the site has already met various environmental and permitting requirements (meaning project failure is less likely).

Additionally, there is no explanation in the Proposed Regulations or ISOR to address how to divide a single project into both long term and short term RECs. As an example, assume that in year 12 of a 20-year contract, a developer adds 5 MW to an existing 20 MW project that is offered to the POU for the remainder of the contract term and the whole project has a single meter. In this case, the Proposed Regulations would treat the expanded 5 MW as short term and the 20 MW original project as long term. The Commission must provide direction on what formula should be used to apportion the RECs, and this formula may vary depending on technology type.

6. <u>What Must Be Specified in the Original Contract Regarding Substitution in Order for the Substitution of a Different Renewable Energy Resource to Not Be Treated as a New Agreement?</u>

Section 3204 (d)(2)(H)3. of the Proposed Regulations would treat any substitution of a different renewable energy resource, other than what was specified in the original contract, as a new agreement. For this new agreement, the remaining term would need to be at least 10 years in order for the contract to continue to be considered long term. However, it is unclear what must be "specified" in the original contract to comply with this provision. Does the original contract need to specify and name the exact ***resource*** that will be substituted or is it sufficient if the original contract merely specifies the ***ability to substitute*** a replacement resource under certain conditions? As described above, many contracts authorize the seller to replace energy/RECs in certain cases (extended outages) with RECs/energy of the same portfolio content

category. However, the contract may not list the exact facility that will be used. Would the exercise of such a provision make a contract not qualify as long term? What if the substitution is only for a temporary period, such as six months, and then deliveries resume from the original resource? The ISOR asserts that there is "no statutory support" for a proposal that would allow a POU 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."[12] It is unclear if the Commission views a substitution provision in a contract to address a temporary shutdown of a facility as a "bridge" contract that would violate this principle.

7. How Would a POU Using a Delay of Timely Compliance Optional Compliance Mechanism Based on an Unanticipated Curtailment Event Demonstrate that the Curtailment Event Did Not Result in an Increase in GHG Emissions?

Sections 3206 (a)(2)(A)3. and 3207 (d)(5)(B)6. of the Proposed Regulations require that if a POU seeks to utilize the delay of timely compliance optional compliance mechanism based on an unanticipated curtailment event, then that POU must demonstrate that the unanticipated curtailment of renewable resources delayed timely compliance and did not result in an increase in greenhouse gas emissions ("GHGs"). An unanticipated curtailment event may occur over a large region during emergency circumstances and could have a variety of causes. It would likely be challenging for a POU to demonstrate that such an event did not result in an increase in GHGs. For example, if a POU had a long term contract with a solar facility located in an IOU's service territory, and the solar facility is curtailed for an extended period of time due to a Public Safety Power Shutoff ("PSPS") action by the IOU, how would the POU demonstrate that this curtailment did not result in an increase in GHGs? What system/import analysis would be

[12] ISOR at 49.

necessary or relevant to such a demonstration? How would the underlying PSPS event and the associated drop in load affect this analysis?

8. How Would a POU determine that a Specific Transportation Electrification Forecast Is the "Best and Most Recently Available" As Required by the Proposed Regulations?

Section 3206 (a)(2)(A)4. of the Proposed Regulations requires that the source of information that a POU must use to determine if an increase in transportation electrification significantly exceeded forecasts should be the "best and most recently available" information. This information includes, but is not limited, to "information filed with the State Air Resources Board, the Commission, or another state agency, forecasts in the POU's integrated resource plan developed pursuant to Public Utilities Code section 9621, or other forecasts developed or approved by the POU." CMUA supports and appreciates the Commission's effort to provide flexibility on the information that a POU can use for this purpose. However, it is unclear what is meant by the "best and most recently available" information. Because these are forecasts, it is unclear how to demonstrate what would make one forecast better than another. To provide the necessary clarity, the regulation should note that the source of information used to support the position is deemed the "best and most recently available" once approved by the POU's governing body.

9. What Standard Applies to a POU Meeting the Criteria of Section 3204(b)(4) for Purposes of Seeking to Procure the Electricity Products for a Qualifying Green Pricing Program from the Same Balancing Authority that the POU is located in?

Section 3204 (b)(9)(B) of the Proposed Regulations provides that a "POU may exclude from its retail sales the electricity products credited to a participating customer in a voluntary green pricing program or shared renewable generation program" if certain requirements are met.

One such requirement is that the POU "sought to procure the electricity products from RPS-certified facilities that are located in a California balancing authority," and further, "for POUs that meet the criteria of section 3204 (b)(4), the *POUs must seek to procure* the electricity products from RPS-certified facilities that are located in the balancing authority in which the POU is located."[13]

CMUA seeks clarification regarding the meaning of "must seek to procure" in the context of Section 3204 (b)(9)(B)4.i and the ability for POUs subject to this provision to procure resources outside of their balancing authority. In the ISOR, staff notes the significant variation in POU service territories would make a requirement for procurement within their own service territory more restrictive than the standard applied to the electrical corporations.[14] The ISOR goes on to note that the requirement that POUs sought to procure the electricity products from RPS-certified facilities that are "located in a California balancing authority" was the best implementation of "reasonable proximity" requirement, and goes on to note that "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."[15] The ISOR applies a different explanation, however, for 3204(B)(9)(4.)(i). In this discussion, the ISOR notes that these POUs are required "to seek to procure resources located within the balancing authority area in which the POU is located," but does not clarify that the same rationale applies to allowing these POUs to seek resources outside of their balancing authority as for POUs located within a California balancing authority area. As the same rationale governs both sections, CMUA requests that staff clarify that POUs that meet the criteria of 3204(b)(4) are

[13] Proposed Regulations, Section 3204 (b)(9)(B)(4.)(i) (emphasis added).
[14] ISOR at 32.
[15] ISOR at 32.

not prevented from procuring from resources outside their balancing authority if the POU was unable to procure, to the extent possible, within their balancing authority.

10. What Process Will the Commission Use to Facilitate the Filing of Amended Compliance Reports to Reflect Changes Adopted in this Proceeding?

Because many of the requirements that are addressed in the Proposed Regulations deal with requirements that are already applicable to POUs, POUs may have already submitted annual Compliance Reports based on a differing or new interpretation of the relevant statutory requirements. The Commission should provide a procedure for submitting amended compliance reports necessary to reflect any such changes. While this does not necessarily need to be addressed in the regulations, the Commission should provide some guidance.

11. What is the Definition of Total Retail Sales?

Both the existing Enforcement Procedures and Proposed Regulations use the terms "retail sales" and "total retail sales," however, only "retail sales" is defined. The Proposed Regulations are somewhat inconsistent on the use of these terms. Sometimes "retail sales" is used to refer to all of a POU's retail sales during a certain period, and other times the Proposed Regulations use "total retail sales." There may be value in eliminating the use of the term "total retail sales" and, instead, always using the term "retail sales" in order to be consistent throughout the regulations.

12. What is the Rationale for the Clarification in the ISOR that the Monetization Prohibition for Voluntary Green Pricing Programs Would Exclude the Use of the Program for the Creation of Low Carbon Fuel Standard Program Credits?

Public Utilities Code section 399.30(d)(4) requires that the RECs used for a qualifying green pricing program cannot be further "sold, transferred, or otherwise monetized." Section 3204 (b)(9)(B)3.i of the Proposed Regulations defines "monetized" as meaning "to earn revenue or value from the RECs that are retired in a WREGIS subaccount designated for the benefit of

participating customers, other than the revenue earned through the tariff or subscription for the voluntary green pricing or shared renewable generation program." The ISOR further clarifies that this definition of "monetized" would prevent a POU from using a project for both a qualifying green pricing program and the Low Carbon Fuel Standard ("LCFS") program.[16] CMUA requests that the Commission provide a more detailed rationale for this clarification and allow an opportunity for further discussion during the June 8 Workshop.

III. CONCLUSION

CMUA appreciates the opportunity to provide initial comments on the Proposed Regulations.

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Respectfully submitted,

Justin Wynne
Braun Blaising Smith Wynne, PC
555 Capitol Mall, Suite 570
Sacramento, CA 95814
(916) 326-5813
wynne@braunlegal.com

Attorneys for the
California Municipal Utilities Association

[16] ISOR at 31.