

DOCKETED

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PG&E Comments on Changes to the RPS Rules for POUs

Additional submitted attachment is included below.

March 4, 2016

**ELECTRONICALLY FILED IN
DOCKET 16-RPS-01**California Energy Commission
Dockets Office, MS-4
Docket No. 16-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512Re: Docket 16-RPS-01: Pacific Gas and Electric Company Comments on California Energy Commission Notice of Proposed Change to Renewables Portfolio Standard Guideline**I. Introduction**

Pacific Gas and Electric Company (PG&E) welcomes the opportunity to comment on the California Energy Commission's (CEC) "Notice of Proposed Change to the Renewables Portfolio Standard (RPS) Guidelines" (Notice). PG&E comments specifically on the proposal to authorize the CEC's Executive Director to approve, for only publicly owned utilities (POUs), an extended period for withdrawing surplus retired renewable energy credits (RECs) from one compliance period and shifting those RECs to the next compliance period (Extended Withdrawal). This proposal is fundamentally flawed in that it would provide, after the fact, potentially significant financial benefits to a subset of the load serving entities (LSEs) that must comply with the RPS. Additionally, parties have not had the benefit of even discussing the proposal in a workshop setting. As detailed below, PG&E objects to the adoption of this proposal in its current iteration for three main reasons:

- 1. There has been insufficient time for stakeholder review:** This proposal to modify elements of the RPS compliance program has not been subject to the thorough public review process that stakeholders rely upon from the CEC's administration of the RPS Program. The Extended Withdrawal process should be considered as part of the anticipated 2016 RPS Guidebook update and should not be adopted at the next CEC meeting outside of a robust stakeholder process.
- 2. The same rules for compliance should apply to all LSEs to maintain the integrity of the RPS program:** The ability to shift "surplus retired RECs" (i.e., RECs that the reporting entity later discovers are not needed for compliance during a certain reporting period) from one compliance period to another, should apply to all LSEs, not solely POUs. Doing otherwise creates conflicting compliance requirements and effectively creates two sets of RECs with different financial values depending on the owner – POU or non-POU.
- 3. Retroactive application of new rules for a subset of LSEs is inappropriate:** Even if the Extended Withdrawal is revised to apply to all LSEs, it should not be applied retroactively to the 2011-2013 RPS compliance period. Rushing to change the compliance rules after all parties have already submitted compliance reports for the period affects individual party performance and is an end run around due process. Such a significant, after-the-fact change is highly unusual and

completely inappropriate for a multiyear compliance process where compliance activities are in the final stages of verification.

II. The Proposed Changes Should Be Considered Through a Complete Stakeholder Process

The CEC's RPS Guidebook is the source of RPS compliance information for all LSEs, and is periodically updated to reflect changes such as the ones proposed by the Notice. The consideration of any changes to the RPS counting and compliance rules, including the Extended Withdrawal proposal, must be incorporated into the CEC's public process to update the RPS Guidebook for 2016. This would afford adequate time for stakeholder review and input, which is missing from the process provided by the Notice.

In this case, the proposal being considered was just issued on February 26, with comments due on March 4, and a proposed adoption hearing on March 9. No public workshops were held. No comments have been submitted. Updates to the RPS Guidebook have always been considered through a robust workshop process. A change in the availability of retired RECs for subsequent periods is a material change to the RPS Guidelines – it could alter the value of the RECs, affect a reporting entity's RPS procurement strategy, and even impact the entity's compliance. Because the Extended Withdrawal proposal would be offered to only local POU, it has anti-competitive potential as well. Never has public notice of such significant changes to RPS compliance rules been limited to only 11 days before a CEC vote. The Commission should not act on this item on March 9. The CEC should direct staff to hold public workshops on Extended Withdrawal so that it can be appropriately vetted.

III. The Proposed Changes, if Adopted, Should Apply to All LSEs

Should the Commission choose to ignore the lack of public input on this proposal and move forward to adopt additional flexibility in REC treatment, it should apply the changes to all LSEs, not just the POU. By applying only to POU, the proposal effectively creates two categories of RECs; those belonging to POU that can be resurrected from retirement and re-categorized as "surplus" for use in the next compliance period, and RECs belonging to non-POU that cannot be resurrected and shifted to the next compliance period. The proposal gives POU more flexibility to benefit from their RECs than non-POU, such as investor-owned utilities (IOUs), energy service providers (ESPs) and other LSEs.

These conflicting compliance standards result in different relative values for RECs depending upon their owner. The CEC's Executive Director may approve the shift of RECs between compliance periods if, among other things, a POU applicant will suffer financial consequences or other hardships if the request is denied. The proposal gives POU the option to realize the benefit of excess procurement in a later compliance period. By limiting Extended Withdrawal to just POU, the procedure denies relief to other LSEs who meet the stated criteria for Extended Withdrawal and would also suffer financial hardships. There is no reason for this disparate treatment. Allowing all LSEs the flexibility to apply to use excess RECs in another compliance period is a way to equitably avoid financial hardships imposed by unintentional over-retirement of RECs. To make this change, each occurrence of the term "POU" in the Attachment A to the Notice should be replaced with "LSE."

PG&E also notes that the RPS statute authorizes the CEC to establish and amend its REC accounting rules for all LSEs, not just POU. Public Utilities Code section 399.25 states that:

The Energy Commission shall ... (b) Design and implement an accounting system to verify compliance with the RPS by retail sellers and local publicly owned electric utilities, to ensure that electricity generated by an eligible renewable energy resource is counted

*only once for the purpose of meeting the RPS...” and (c) establish a system for tracking and verifying RECs. It should be noted that the accounting system **must cover both “retail sellers,” which includes IOUs, and “local publicly-owned electric utilities.”***
(Emphasis added.)

Thus, the CEC is responsible for adopting rules by which IOU procurement of RPS-eligible energy is counted, just as it is for POU procurement rules. The CEC should only adopt rules that provide additional flexibility for RECs so long as they apply to all parties that are required to comply with the RPS.

IV. If approved, the Extended Withdrawal Changes Should Not Apply Retroactively to the 2011-2013 RPS Compliance Period

Information provided by CEC staff implies intent to apply the REC flexibility changes retroactively to the 2011-2013 RPS compliance period. Changing the RPS compliance rules after the fact would undermine public confidence in the work to establish the rules and create a two-tiered system with winners and losers. Retroactive application of a rule change would change the most essential and basic requirements of a multiyear process that is in the final stages of verification.

During the First Compliance Period, all LSEs were required to comply with a 12-month timeframe for withdrawing retired RECs, as set forth in the current edition of the RPS Guidebook. POU and LSEs have had ample time to remedy mistakes and make adjustments to their REC retirements based on updated information. Out of fairness to LSEs who have complied with the RPS Guidebook in good faith, the proposed changes should not be applied retroactively to the 2011-2013 compliance period. The retroactive application of an Extended Withdrawal procedure could confer a windfall benefit that would not exist under current rules on some LSEs and place other LSEs, who followed existing rules, at a disadvantage. The basic premise of fairness and consistency would be violated.

V. Conclusion

In conclusion, the Extended Withdrawal proposal should not be adopted at the CEC’s March 9 hearing, and should be deferred to the anticipated RPS Guidebook update process, giving all parties appropriate and adequate time to prepare comments. Additionally, if the Extended Withdrawal policy is to eventually be adopted, it should be modified to apply to all LSEs on a prospective basis beginning with the second RPS compliance period. PG&E appreciates the willingness of CEC staff to discuss this issue, and looks forward to continuing to work with the CEC in this proceeding.

Sincerely,

/s/

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