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REGULATIONS

FINAL STATEMENT OF REASONS

ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

CALIFORNIA
ENERGY COMMISSION

Edmund G. Brown, Jr., Governor

JULY 2013

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ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

California Code of Regulations
Title 20, Division 2, Chapter 13, Sections 3200 through 3208, and Chapter 2, Article 4, Section 1240

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INTRODUCTION

This document is the Final Statement of Reasons (FSOR) required by Government Code section 11346.9(a) for the California Energy Commission (Energy Commission) regulations establishing enforcement procedures for the Renewable Portfolio Standard (RPS) for local publicly owned electric utilities (POUs).

The regulations were developed to fulfill the purposes of Public Utilities Code section 399.30 (l), as enacted by Senate Bill X1-2 (Stats. 2011, 1st Ex. Sess., ch. 1) and subsequently revised by Assembly Bill 2227 (Stats. 2012, ch. 606, sec. 8).[1] Public Utilities Code section 399.30 (l) directs the Energy Commission to adopt regulations specifying procedures for the enforcement of the RPS on POUs under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. Section 399.30 (l) requires the regulations to "include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and for referral of violations to the State Air Resources Board for penalties…."

The regulations implement, interpret, and make specific the provisions in Public Utilities Code section 399.30 (l). The regulations also implement, interpret, and make specific related provisions in Public Utilities Code sections 399.13, 399.15, 399.16, 399.21, 9507, 9508, and in Public Resources Code sections 25741 and 25747. The regulations will be codified in the California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3200 through 3208, and in Title 20, Division 2, Chapter 2, Article 4, section 1240.

The regulations establish the rules and procedures the Energy Commission will use to assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. The regulations determine what POU action is required by the law; so when the Energy Commission evaluates a POU's actions, it may determine whether the POU complied with the law. The regulations require POUs to submit various information and reports to the Energy Commission, so the Energy Commission may verify and determine compliance with the RPS, and, if appropriate, issue a notice of violation and correction for a POU's failure to comply and refer the violation to the State Air Resources Board (ARB) for potential penalties.

The anticipated benefits of the Energy Commission's regulatory action are consistent application and enforcement of the state's RPS, which will help promote the underlying goals of the RPS, including reducing air pollution associated with fossil fuel-based electrical generation and helping the state meet its climate change goals by reducing greenhouse gas emissions associated with electrical generation. The regulations will ensure POUs are subject to a uniform

[1] Assembly Bill 2227 repealed some of the reporting requirements for POUs in Public Utilities Code Section 399.30 and re-codified these requirements elsewhere in the Public Utilities Code without making substantive changes to the requirements. As a result of this change, subdivisions (h) through (p) of Public Utilities Code Section 399.30, as enacted by Senate Bill X1-2, have now been renumbered subdivisions (g) through (n).

set of rules for satisfying the RPS requirements. The regulations will also ensure the POU rules are consistent with the rules for retail sellers of electricity to the extent appropriate in accordance with SBX1-2. Consistent rules will help provide market certainty for stakeholders participating in the California RPS and renewable energy market. Consistency in the application of the rules among POUs and between POUs and retail sellers of electricity may also ease the contracting processes for utilities, developers of eligible renewable energy resources, and other market participants, thereby accelerating the development of new eligible renewable energy resources, which in turn helps promote the underlying goals of the RPS.

The proposed regulations will also help the POUs by providing direction and guidance on how the Energy Commission will interpret, apply and enforce the law, so the POUs can plan accordingly in procuring renewable electricity to meet their RPS requirements.

PROCEDURAL HISTORY OF RULEMAKING

On March 1, 2013, the Office of Administrative Law published a Notice of Proposed Action (NOPA) concerning the potential adoption of the subject regulations. The NOPA, the Express Terms of the regulations, also referred to as the 45-day language Express Terms, the Initial Statement of Reasons (ISOR), and the Energy Commission's fiscal and economic analysis for the regulations were posted on the Energy Commission website on March 1, 2013, and made available to interested persons. The NOPA was also distributed to every subscriber on the Energy Commission's Renewable Listserve, and to every person who had requested notice of such matters.

In addition, the Energy Commission provided notice on April 5, 2013, of its Initial Study and Proposed Negative Declaration pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, section 21000 et seq.

The first public hearing listed in the NOPA, identified as a staff workshop, was held on March 15, 2013, for the purpose of receiving public comments. A second public hearing, identified in the NOPA as an adoption hearing, was noticed to be held before the full Energy Commission on May 8, 2013. The public comment period for the NOPA was open from March 1, 2013, through and including April 16, 2013. The Energy Commission received a significant number of comments, including many filed on the last day of the comment period on April 16, 2013.

On April 19, 2013, pursuant to the NOPA and Government Code section 11346.8, the Energy Commission published a Notice of Changes to Proposed Regulations and Notice of 15-Day Comment Period regarding changes to the text of the proposed regulations. This notice was published along with the full text of the revised proposed regulations ("15-Day Language") with the changes clearly indicated in underline/strikeout. The notice and the 15-Day Language were distributed to interested parties consistent with the NOPA and posted on the Energy Commission's website. The notice provided a 15-day period through May 6, 2013, to comment

on the changes to the proposed regulations. The notice identified May 8, 2013, as the date for the Energy Commission hearing to consider adoption of the proposed regulations.

On May 2, 2013, the Energy Commission notified every person and entity on the Energy Commission's Renewable listserve that consideration of the proposed regulations and associated Negative Declaration was being removed from the May 8, 2013, Business Meeting agenda. The notification stated that the proposed regulations and associated Negative Declaration would be considered for adoption at a future Energy Commission business meeting anticipated to be held June 5, 2013.

On May 22, 2013, pursuant to the NOPA, Government Code section 11346.8, and the notice published on April 19, 2013, the Energy Commission published a Notice of Changes to Proposed Regulations and Notice of Second 15-Day Comment Period regarding additional changes to the text of the proposed regulations. This notice was published along with the full text of the revised proposed regulations ("Second 15-Day Language") with the first 15-day language changes clearly indicated in underline/strikeout and the second 15-day language changes clearly indicated in double-underline/double-strikeout. This notice and the Second 15-Day Language was distributed to interested parties consistent with the NOPA and posted on the Energy Commission's website. This notice provided a 15-day period through June 6, 2013, to comment on the additional changes to the proposed regulations. The notice informed interested parties that the date of the Energy Commission hearing to consider adoption of the proposed regulations and associated Negative Declaration was changed from June 5, 2013, to June 12, 2013.

On June 12, 2013, the Energy Commission held the hearing to consider adopting:

- the proposed Negative Declaration, including a Finding of No Significant Impact under CEQA, for the proposed regulations, and
- the originally proposed Express Terms, as modified and published in the Second 15-Day Language.

Public comments were taken at the hearing. After considering public testimony at the hearing and the comments submitted during the noticed written comment periods, the Energy Commission unanimously adopted the proposed Negative Declaration and the originally proposed Express Terms, as modified and published in the Second 15-day Language.

INCORPORATION BY REFERENCE OF MATERIALS FROM THE NOTICE OF PROPOSED ACTION

The Second 15-Day Language does not substantially deviate from the originally proposed Express Terms of the regulations. Therefore, in accordance with Government Code section 11346.9(d), the Energy Commission determines that this Final Statement of Reasons can satisfy

the following requirements by incorporating by reference various parts of the March 1, 2013, Notice of Proposed Action.

- Section 11346.9 (a)(2). The Local Mandate Determination from the Notice of Proposed Action is incorporated by reference.

- Section 11346.9 (a)(5). The Small Business Impacts and Economic Impact on Business determinations from the Notice of Proposed Action are incorporated by reference. The Energy Commission has determined that the regulations have no adverse economic impact upon small businesses. Thus, alternatives to lessen any impact were not considered, and none were identified.

- Section 11346.9 (c). The relationship to federal law discussion from the Notice of Proposed Action is incorporated by reference.

UPDATE OF INITIAL STATEMENT OF REASONS

Government Code section 11346.9(a)(1) requires the FSOR to include an update of the information contained in the initial statement of reasons. Other than the changes noted below, no other changes to the ISOR are necessary. Those items not addressed below are incorporated by reference.

Studies, Reports, and Documents Relied Upon.

No additional studies, reports or documents, other than those identified in the ISOR, were relied upon by the Energy Commission.

Update to the Specific Purpose, Rationale, and Necessity of Each Proposed Regulation.

In the ISOR the Energy Commission explains the benefits anticipated from the proposed regulatory action and states:

> "The proposed regulations will also ensure the POU rules are consistent with the rules for retail seller to extent appropriate in accordance with SBX1-2. Consistent rules will help provide market uncertainty for stakeholder participating in the California RPS and renewable energy market."[2]

These statements include typographical errors and should have stated:

[2] ISOR, page 4.

> "The proposed regulations will also ensure the POU rules are consistent with the rules for retail seller**s** to extent appropriate in accordance with SBX1-2. Consistent rules will help provide market **certainty** for stakeholder**s** participating in the California RPS and renewable energy market."[3]

The Energy Commission believes the subject regulations will help provide market "**certainty**," rather than uncertainty, for stakeholders participating in the California RPS and renewable energy market, which in turn will help promote the underlying goals of the RPS.

Updates to Discussion of Chapter 13. Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

Section 3201 – Definitions

Subdivision (h). The definition of "compliance period" was modified to delete "s" from the word "period" to correct a grammatical error. The definition as originally proposed in the Express Terms referred to compliance "periods" and was grammatically incorrect and potentially confusing.

Subdivision (i). The definition of "compliance report" was modified to delete "s" from the word "POU" to correct a grammatical error. The definition as originally proposed in the Express Terms referred to the report each "POUs" files with the Energy Commission, and was grammatically incorrect and potentially confusing.

Subdivision (o). The definition of "NERC e-Tag" was modified to add a comma after the word "energy" to separate the sub-definition of "sink" from the sub-definition of "source point." The definition as originally proposed in the Express Terms did not separate these two sub-definitions with a comma, and was grammatically incorrect and potentially confusing.

Subdivision (t). The definition of "procure" was modified to add the clause "either directly from the eligible renewable energy resource or from a third party" after the term "eligible renewable energy resources." The modification was made to clarify that electricity products could be procured from a third party or directly from the eligible renewable energy resource. The definition as originally proposed in the Express Terms did not specify that electricity products could be procured from a third party and was potentially confusing. This modification was made in response to a comment from an affected stakeholder.

Subdivision (v). The definition of "renewable energy credit" was modified to add a comma after the word "proof" to correct a grammatical error. The definition as originally proposed in the Express Terms did not include a comma after the word "proof" and was potentially confusing.

[3] Changes noted in bold font.

Subdivision (y). The definition of "RPS Guidelines" was not modified. However, the ISOR discussion of the RPS Guidelines under this subdivision must be updated. The ISOR indicates the RPS Guidelines are set forth in two Energy Commission guidebooks: 1) the *Renewables Portfolio Standard Eligibility Guidebook*, which specifies the procedures and requirements for certifying eligible renewable energy resources for the RPS and for tracking and verifying the electricity generation from these resources for the RPS, and 2) the *Overall Program Guidebook for the Renewable Energy Program*, which governs the Energy Commission's Renewable Energy Program, describes how this program and the program elements are administered, and includes information on requirements that apply to all Renewable Energy Program elements, including elements related to the RPS.

Subsequent to the publication of the NOPA and the ISOR on March 1, 2013, the Energy Commission adopted changes to both the *Renewables Portfolio Standard Eligibility Guidebook* and the *Overall Program Guidebook for the Renewable Energy Program.* These changes were adopted by the Energy Commission on April 30, 2013. Among the changes made to the *Renewables Portfolio Standard Eligibility Guidebook* were changes to incorporate all of the provisions and definitions from the *Overall Program Guidebook for the Renewable Energy Program* related to the RPS into the *Renewables Portfolio Standard Eligibility Guidebook*. This was done so that all of the RPS-related provisions would be included in a single guidebook, rather than in two separate guidebooks.

Consequently, the RPS Guidelines for purposes of subdivision (y) are now set forth in a single Energy Commission guidebook – the *Renewables Portfolio Standard Eligibility Guidebook.*

Section 3202 – Qualifying Electricity Products

Subdivision (a)(1). The clause "unless the procurement is retired by a POU that meets the criteria of sections 3204 (a)(7), 3204 (a)(8), or 3204 (a)(9)" was added to the end of the sentence in subdivision (a)(1)(B). This modification was made to clarify that procurement on or after June 1, 2010, will not be included in the calculation of the portfolio balance requirements for POUs that meet the criteria of sections 3204 (a)(7), 3204 (a)(8), or 3204 (a)(9), because those POUs are exempt from the portfolio balance requirements. The language of subdivision (a)(1)(B) as originally proposed in the Express Terms stated that procurement on or after June 1, 2010, will be included in the calculation of the portfolio balance requirements. The modification was necessary to avoid confusion and make clear that not all POUs will have to include procurement on or after June 1, 2010, in the calculation of the portfolio balance requirements.

Subdivision (a)(2). "Electricity products associated with contracts of less than 10 years will not be subtracted when calculating excess procurement in accordance with section 3206 (a)" was added back in as subdivision (a)(2)(A)(3). This modification was made to clarify the application of excess procurement rules to electricity products procured pursuant to contracts or ownership agreement executed before June 1, 2010, and associated with generation from an eligible renewable energy resource that met the Energy Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU. The language of subdivision (a)(2)(A) as originally proposed in the Express Terms included the same modified text of subdivision (a)(2)(A)(3). The original text was deleted with

the First 15-Day language changes and added back in with the Second 15-Day language changes.

Subdivision (b). The clause "unless the procurement is retired by a POU that meets the criteria of sections 3204 (a)(7), 3204 (a)(8), or 3204 (a)(9)" was added to the end of the sentence in subdivision (b). This modification was made to clarify that electricity products procured prior to June 1, 2010, resold after June 1, 2010, and meeting the specified criteria, will be classified in a portfolio content category and subject to portfolio balance requirements, unless the procurement is retired by a POU that meets the criteria of section 3204 (a)(7), 3204 (a)(8), or 3204 (a)(9), because those POUs are exempt from the portfolio balance requirements. The language of subdivision (b) as originally proposed in the Express Terms stated that electricity products procured prior to June 1, 2010, resold after June 1, 2010, and meeting the specified criteria, will be classified in a portfolio content category and subject to the portfolio balance requirements, but did not address POUs that are exempt from the portfolio balance requirements. The modification is necessary to avoid confusion and make clear that not all POUs will have to include procurement prior to June 1, 2010, resold after June 1, 2010, and meeting the specified criteria, in the calculation of the portfolio balance requirements.

Subdivision (e). The following language was added as subdivision (e): "A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date the POU procured that REC. For example, a POU may not retire a REC associated with electricity generated in November 2013 that the POU procured in February 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period."This modification was made to clarify that a REC may not be used for a POU's RPS procurement requirements for a compliance period that precedes the date the POU procured that REC. This modification was necessary to avoid confusion and reflect the statutory requirement of Public Utilities Code section 399.30 (c) that procurement used to satisfy a compliance period's requirements must occur during the compliance period, and not after the compliance period ends.

The modification to subdivision (e) is also consistent with the statutory scheme enacted by the legislature for allowing POUs to avoid or delay compliance with the RPS. The conditions under which a POU may avoid or delay compliance are limited in scope and prescribed by the criteria of Public Utilities Code section 399.30 (d)(1) – (3), which allow a POU to apply excess procurement from one compliance period to a subsequent compliance period, delay timely compliance under specified conditions, and establish cost limitations for expenditures to comply with RPS. The legislature established no other basis for a POU to avoid or delay compliance with the RPS other than satisfying the criteria of Public Utilities Code section 399.30 (d)(1) – (3). Allowing a POU to count electricity products procured after the compliance period ends to meet the compliance period procurement requirement effectively permits the POU to avoid compliance with the RPS without satisfying the criteria of Public Utilities Code section 399.30 (d)(1) – (3).

Section 3203 – Portfolio Content Categories

Subdivision (a)(1). Four modifications were made to this subdivision: 1) "at least" was removed from subdivision (a)(1) to clarify that electricity products only need to meet one of the specified criteria to qualify as Portfolio Content Category 1; 2) "within an hour" and "within that same hour" were added to subdivision (a)(1)(C) to clarify that the comparison of electricity generated and electricity scheduled, for electricity products scheduled into a California balancing authority without substituting electricity from another source, is based on generation within an hour and scheduled electricity within that same hour; 3) "and delivered" was deleted from the description of that same comparison in subdivision (a)(1)(C) to clarify that delivery is not required under Public Utilities Code section 399.16 (b)(1)(A); and 4) the clause "with a first point of interconnection outside the metered boundaries of a California balancing authority" was added to subdivision (a)(1)(C) to clarify the requirements of Public Utilities Code section 399.16 (b)(1)(A).

The language of subdivision (a)(1) as proposed in the original Express Terms stated that an electricity product must meet at least one of the following criteria to be classified as portfolio content category (PCC) 1: 1) generated by an eligible renewable energy resource that has its first point of interconnection within the metered boundaries of a California balancing authority area; 2) generated by an eligible renewable energy resource that has its first point of interconnection to an electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area; 3) scheduled into a California balancing authority without substituting electricity from another source; or 4) subject to an agreement between a California balancing authority and the balancing authority in which the eligible renewable energy resource is located, executed before the product is generated, to dynamically transfer electricity from the eligible renewable energy resource into the California balancing authority area. For electricity products scheduled into a California balancing authority without substituting electricity from another source, the original Express Terms did not specify where the eligible renewable energy resource must be located, and stated, "If there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered into a California balancing authority, only the lesser of the two amounts shall be classified as Portfolio Content Category 1."

The modifications were made in response to comments and to clarify the requirements and avoid confusion. Commenters suggested that the Energy Commission add language to clarify that electricity products scheduled into a California balancing authority without substituting electricity from another source must come from outside a California balancing authority. In the absence of this clarification, a POU may think that it must submit hourly generation and scheduling data for electricity products from resources located within a California balancing authority, as these electricity products are still technically "scheduled into a California balancing authority."

Subdivision (a)(2). The words "at least" were removed from subdivision (a)(2) to clarify that the original contract for procurement of electricity products needs to meet only one of the criteria specified in section 3203 (a)(1)(A) – (D) to qualify as Portfolio Content Category 1.

The language of subdivision (a)(2) proposed in the original Express Terms stated that an electricity product originally qualifying as PCC 1 and resold must meet "at least" one of the following criteria to remain classified as PCC 1: 1) generated by an eligible renewable energy resource that has its first point of interconnection within the metered boundaries of a California balancing authority area; 2) generated by an eligible renewable energy resource that has its first point of interconnection to an electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area; 3) scheduled into a California balancing authority without substituting electricity from another source; or 4) subject to an agreement between a California balancing authority and the balancing authority in which the eligible renewable energy resource is located, executed before the product is generated, to dynamically transfer electricity from the eligible renewable energy resource into the California balancing authority area. The words "at least" suggest a single electricity product can satisfy criteria for more than one of the above four PCC 1 categories, which may or may not be possible given the circumstances. To avoid confusion, the words "at least" were removed.

Subdivision (b)(1). Two modifications were made to this subdivision: 1) "firmed and shaped" was deleted and replaced with "matched" and 2) "substitute electricity to provide" was deleted. These modifications were made to clarify the criteria for electricity products to qualify as PCC 2 under Public Utilities Code section 399.16 (b)(2). Section 399.16 (b)(2) specifies that electricity product must be "firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority." Although the law does not define "firmed and shaped," the practical application of Section 399.16 (b)(2) requires that renewable electricity generated outside a California balancing authority be matched with an equivalent amount of incremental electricity scheduled into a California balancing authority in order for the renewable electricity to qualify as PCC 2. Replacing "firmed and shaped" with the term "matched" avoids confusion and potential ambiguity.

Public Utilities Code section 399.16 (b)(2) requires that PCC 2 electricity products provide "incremental electricity" that is scheduled into a California balancing authority. The law does not refer to "substitute electricity." Referring to "substitute" electricity in subdivision (b)(1) was potentially confusing and unnecessary given the requirements of Public Utilities Code section 399.16 (b)(2). In addition, removing the reference to "substitute" electricity in subdivision (b)(1) helps differentiate "incremental" electricity, which is required for PCC 2 products under Public Utilities Code section 399.16 (b)(2), and "substituting electricity," which is required for PCC 1 products under Public Utilities Code section 399.16 (b)(1).

Subdivision (b)(2). Nine modifications were made to this subdivision: 1) "substitute" was deleted and replaced with "incremental" in subdivision (b)(2)(B) consistent with the modifications made to subdivision (b)(1); 2) "substitute" was deleted and replaced with "incremental" in subdivision (b)(2)(B) to clarify that incremental electricity, rather than

substitute electricity, is needed to satisfy the PCC 2 requirements consistent with the modifications made to subdivision (b)(1); 3) "firmed and shaped" was deleted and replaced with "matched" in subdivision (b)(2)(B) consistent with the modifications made to subdivision (b)(1); 4) "incremental" was added to subdivision (b)(2)(B) to clarify the sub-definition of "incremental electricity" consistent with the requirements for PCC 2 products under Public Utilities Code section 399.16 (b)(2), and consistent with the modification made to subdivision (b)(1); 5) "generated by a resource located outside the metered boundaries of a California balancing authority area and that is" was added to the sub-definition of "incremental electricity" in subdivision (b)(2)(B) to further clarify the requirements for PCC2 products under Public Utilities Code section 399.16 (b)(2), and to be consistent with the modifications made to subdivision (b)(1); 6) the clause "with which the incremental electricity is being matched" was added to the sub-definition of "incremental electricity" in subdivision (b)(2)(B) to clarify that the electricity procured from an eligible renewable energy resource must be matched with "incremental electricity" procured by the POU to qualify as PCC 2; 7) "incremental" was added and "from the substitute resource" was deleted from subdivision (b)(2)(C) to clarify the requirements for PCC 2 products consistent with the modifications made to subdivision (b)(2)(A) and (B); 8) "substitute" was deleted and "incremental" was added to subdivision (b)(2)(D) consistent with the modifications made to subdivision (b)(2)(A), (B) and (C); 9) "used to firm and shape the electricity from the eligible renewable energy resource" was deleted from subdivision (b)(2)(D) consistent with the modifications made to subdivision (b)(2)(A), (B) and (C).

Subdivision (b)(3). Five modifications were made to this subdivision: 1) "substitute" was deleted and replaced with "incremental" in subdivision (b)(3)(C) consistent with the modifications made to subdivisions (b)(1) and (2); 2) "substitute" was deleted and replaced with "incremental" in subdivision (b)(3)(D) consistent with the modifications made to subdivisions (b)(1) and (2); 3) "firming and shaping" was deleted in subdivision (b)(3)(D) consistent with the modifications made to subdivisions (b)(1) and (2); 4) "from the substitute resource" was deleted from subdivision (b)(3)(E) consistent with the modifications made to subdivisions (b)(1) and (2) and (b)(3)(C); and 5) "transaction" was deleted and replaced with "incremental electricity" in subdivision (b)(3)(F) to clarify that the incremental electricity required for PCC 2 products must be scheduled into a California balancing authority. The original language in the Express Terms required the "transaction" to be scheduled into a California balancing authority, which was confusing. The modifications made subdivision (b)(3)(F) are consistent with the modifications made to subdivisions (b)(1) and (2) and (b)(3)(C) and (D).

Section 3204 – RPS Procurement Requirements

Subdivision (a)(1). Two modifications were made to this subdivision. 1) The letter "P" in "Products" was changed from a capital to lower case to correct a grammatical error; and 2) a hyphen ("-") was deleted between the words "carry over" to correct a grammatical error. The

modifications were made so that these terms would appear correctly and consistently throughout the regulations.

Subdivision (a)(3). The percentages specified in this subdivision for required procurement as a function of retail sales in the third compliance period were modified from "25" percent to "27" percent of retail sales in 2017, from "25" percent to "29" percent of retail sales in 2018, and from "25" percent to "31" percent of retail sales in 2019. The percentages specified in the original Express Terms for this compliance period set an RPS procurement target for the 2017-2020 compliance period equal to the sum of 25 percent of 2017 retail sales, 25 percent of 2018 retail sales, 25 percent of 2019 retail sales, and 33 percent of 2020 retail sales.

The percentages in the original Express Terms were based on a fair reading of the statutory requirements in Public Utilities Code section 399.30 (c)(2), which provides in pertinent part as follows:

> "The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020…."

In the ISOR, the original Express Terms set forth that a total RPS procurement target equivalent to the sum of 20 percent of 2014 retail sales, 20 percent of 2015 retail sales, and 25 percent of 2016 retail sales would demonstrate reasonable progress for the second compliance period in accordance with Public Utilities Code section 399.30 (c)(2), and that a total RPS procurement target equivalent to the sum of 25 percent of 2017 retail sales, 25 percent of 2018 retail sales, 25 percent of 2019 retail sales, and 33 percent of 2020 retail sales would similarly demonstrate reasonable progress for the third compliance period in accordance with 399.30 (c)(2), while still allowing POUs the discretion to appropriate their resources in a manner that best meets their budgets and long-term goals. This approach differed from the approach for retail sellers taken by the CPUC, which requires retail sellers to procure increasing quantities of electricity products during each of the intervening years of the second and third compliance periods to demonstrate reasonable progress during the intervening years.

Staff reasoned that because Public Utilities Code section 399.30 (c)(2) does not require a specific amount of procurement in each of the intervening years, it was reasonable not to require POUs to procure increasing quantities of electricity products during the intervening years of the second and third compliance period to demonstrate reasonable progress in these compliance periods.

Although the requirements for "reasonable progress" for POUs and retail sellers spring from different sections in the statute – from Public Utilities Code section 399.30 (c)(2) for POUs and from Public Utilities Code section 399.15 (b)(2)(B) for retail sellers – the pertinent language of sections 399.30 (c)(2) and 399.15 (b)(2)(B) is the same. Both sections require that the quantities procured in the second and third compliance periods "reflect reasonable progress in each of the

intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."

Given that the pertinent language in sections 399.30 (c)(2) and 399.15 (b)(2)(B) is the same for "reasonable progress," it is reasonable to apply section 399.30 (c)(2) to POUs in a consistent manner with the application of section 399.15 (b)(2)(B) to retail sellers. Doing so is appropriate under rules of statutory interpretation and in line with the spirit of SBX1-2, which repealed the POUs' authority under former Public Utilities Code section 387 to establish and implement their own RPS programs and now subjects POUs to many of the same or similar RPS requirements applied to retail sellers.

While some commenters had argued that it is appropriate to subject POUs to the same "reasonable progress" requirements in the second and third compliance periods, consistent with the requirements for retail sellers, the Energy Commission did not modify the "reasonable progress" requirements for the second compliance period. As explained in the ISOR, POUs were not subject to the same RPS requirements as retail sellers prior to SBX1-2 and have not been subject to the same steadily increasing annual RPS procurement targets applied to retail sellers from 2004-2010. Consequently, a POU's reasonable progress during the early years of the RPS under SBX1-2 would not necessarily follow a linear progression. Moreover, the Energy Commission recognizes the need for many POUs to put their limited resources into contracting for and building new generating facilities that may not come on-line for several years, likely after the close of the second compliance period. It would be extremely difficult for POUs to procure additional electricity products to comply with a higher target in the second compliance period, which begins a little more than six months after the adoption of the regulations. A higher target would be especially difficult because POUs often own their eligible renewable energy resources and have a longer delay before those resources can become commercially operational..

Subdivision (a)(7). Three modifications were made to this subdivision: 1) "or if the POU meets the requirements of paragraph (D)"was added to subdivision (a)(7); 2) "(a)(7)" was added to subdivision (a)(7)(A); and 3) "based on the definition of a renewable electrical generation facility" was added to subdivision (a)(7)(A)(3).

The language of the original Express Terms could be interpreted to mean that a qualifying POU would be deemed in compliance and exempt from the requirements of section 3204 (a)(1)-(4) and section 3204 (c)(1)-(9) *only* if the POU satisfies all of its electricity demand with its qualifying hydroelectric generation in a given year. The first modification was made to clarify that a qualifying POU would also be deemed in compliance and exempt from the requirements of section 3204 (a)(1)-(4) and section 3204 (c)(1)-(9) if the POU met the requirements of section 3204 (a)(7)(D).

The second modification was made to make the section reference consistent with other references throughout the regulations.

The third modification was made to clarify the eligibility criteria for "qualifying hydroelectric generation." The language of subdivision (a)(7)(A)(3) as in the original Express Terms would have unintentionally disallowed hydroelectric generation facilities that do not qualify as RPS eligible under Public Resources Code section 25741, but that are RPS-certified under a different section of statute (for example, incremental generation resulting from qualifying efficiency upgrades pursuant to Public Utilities Code section 399.12.5). The third modification was made to remove this unintended exclusion of hydroelectric generation facilities that meet the criteria in Public Utilities Code section 399.30 (j) but have some portion of their generation certified as RPS eligible.

Subdivision (a)(9). The following language was added as subdivision (a)(9): "A POU that meets the criteria of Public Utilities Code section 399.18 shall not be subject to the requirements in section 3204 (c)(1)-(9). A POU shall demonstrate that it meets these criteria by providing the Energy Commission documentation showing that the POU is a successor to an electrical corporation that had 1,000 or fewer customer accounts in California as of January 1, 2010, and was not interconnected to any transmission system or to the Independent System Operator as of January 1, 2010.

The language in the original Express Terms did not provide an exemption from the portfolio balance requirements in section 3204 (c)(1)-(9) for a POU that meets the criteria of Public Utilities Code section 399.18. Public Utilities Code section 399.18 provides:

> 399.18.
> (a) This section applies to an electrical corporation that as of January 1, 2010, met either of the following conditions:
> (1) Served 30,000 or fewer customer accounts in California and had issued at least four solicitations for eligible renewable energy resources prior to June 1, 2010.
> (2) Had 1,000 or fewer customer accounts in California and was not connected to any transmission system or to the Independent System Operator.
> (b) For an electrical corporation or its successor, electricity products from eligible renewable energy resources may be used for compliance with this article, notwithstanding any procurement content limitation in Section 399.16, provided that both of the following conditions are met:
> (1) The electrical corporation or its successor participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.25.
> (2) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the requirements of Section 399.15.

Based on information obtained during the comment period of the rulemaking, it appears that at least one POU may satisfy the requirements of Public Utilities Code section 399.18. In comments, one party provided information showing that Kirkwood Meadows Public Utility District is a successor to a former electrical corporation (Mountain Utilities), may satisfy the eligibility criteria of Public Utilities Code section 399.18 (a), and should not be held to the

portfolio balance requirements of Public Utilities Code section 399.16 in accordance with Public Utilities Code section 399.18 (b)(1), which specifies that it applies to an electrical corporation "or its successor." Subdivision (a)(9) was added to address the exemption provided in Public Utilities Code section 399.18.

Subdivision (b). The word "one" was removed from this subdivision. The language in original Express Terms indicated that RPS procurement deficits incurred by a POU in "any one compliance period" shall not be added to the RPS procurement requirements of the POU in a future compliance period. As used, the word "one" was unnecessary and potentially confusing, so it was removed to clarify the requirements of this subdivision.

Section 3205 – Procurement Plans and Enforcement Programs

Subdivision (a)(1). The following language was added to this subdivision: "A POU that has previously adopted a renewable resources procurement plan before the effective date of these regulations does not need to adopt a new renewable energy resources procurement plan and submit the plan to the Commission if no changes are made to the plan after the effective date of these regulations." This language was added to clarify that a POU that has previously adopted a renewable energy resources plan in accordance with Public Utilities Code section 399.30 before the effective date of the subject regulations does not need to adopt a subsequent procurement plan after the regulations take effect, provided no changes are made to the procurement plan after the regulations take effect.

The language in the original Express Terms did not address situations in which a POU had adopted a renewable energy resources procurement plan before the effective date of the subject regulations, and was potentially ambiguous.

Subdivision (a)(3). No modifications were made to this subdivision. However, the ISOR did not explain that portions of the statute are repeated or rephrased in this subdivision. Specifically, the following portions of Public Utilities Code section 399.30 (f)(1) are repeated in subdivision (a)(3)(A):

> "(f)(1) Each local publicly owned electric utility shall annually post notice, in accordance with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, whenever its governing body will deliberate in public on its renewable energy resources procurement plan."

In addition, the following portions of Public Utilities Code section 399.30 (f)(2) are repeated in subdivision (a)(3)(B):

> "(2) Contemporaneous with the posting of the notice of a public meeting to consider the renewable energy resources procurement plan, the local publicly owned electric utility shall notify the Energy Commission of the date, time, and location of the meeting in order to enable the Energy Commission to post the information on its Internet Web site.

> This requirement is satisfied if the local publicly owned electric utility provides the uniform resource locator (URL) that links to this information."
> [Pub. Util. Code sec. 399.30, subd. (f)(2).]

The language of Public Utilities Code section 399.30 (f)(1) and (2) was repeated in subdivisions (a)(3)(A) and (a)(3)(B), respectively, for organizational and consistency purposes, so all of the statutory requirements and regulatory requirements for noticing a POU's new or updated renewable energy resources procurement plan could be identified in one subdivision of the regulations and thereby be easily accessible to POUs.

Subdivision (b)(1). Three modifications were made to this subdivision: 1) "By" was removed and replaced with "As of"; 2) "have" was added; and 3) "ed" was added to the word "adopt." These modifications were made to correct grammatical errors and make the language more clear and concise.

Subdivision (b)(2). The word "Not" was modified by deleting the letter "t" so the language reads "No less than." This modification was made to correct a grammatical error and make the language more clear and concise.

In addition, the ISOR did not explain that portions of the statute are repeated or rephrased in this subdivision. Specifically, the following portions of Public Utilities Code section 399.30 (e) are repeated in subdivisions (b), (b)(2)(A) and (b)(2)(B):

> "The program shall be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days' notice shall be given to the public of any meeting held for purposes of adopting the program. Not less than 10 days' notice shall be given to the public before any meeting is held to make a substantive change to the program."
> [Pub. Util. Code sec. 399.30, subd. (e).]

The language of Public Utilities Code section 399.30 (e) was repeated in subdivisions (b), (b)(2)(A) and (b)(2)(B) for organizational and consistency purposes, so all of the statutory requirements and regulatory requirements for noticing a POU's new or updated enforcement programs could be identified in one subdivision of the regulations and thereby be easily accessible to POUs.

Subdivision (c). The clause "at the same time it is distributed to its governing board" was added to this subdivision. This modification was made to clarify when a POU must make information, distributed to its governing board related to its renewable energy resources procurement status or future procurement plans or enforcement programs for consideration at a public meeting, available to the public. The language in the original Express Terms did not indicate when this information needed to be made available to the public and was potentially ambiguous. The modification is consistent with the requirements of Public Utilities Code section 399.30 (f)(3),

which requires a POU to make information available to the public "upon distribution to its governing board."

Section 3206 – Optional Compliance Measures

Subdivision (a)(1)(A). Three modifications were made to this subdivision: 1) "that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are" was added to subdivision (a)(1)(A)(1); 2) "that meet the criteria of section 3202 (a)(1) and" was added to subdivision (a)(1)(A)(2); and 3) "Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2)" was added back in as (a)(1)(A)(3). These modifications were made to clarify the requirements for utilizing excess procurements in accordance with Public Utilities Code section 399.30 (d)(1) and Public Utilities Code section 399.13 (a)(4)(B).

These modifications were necessary to clarify that while Portfolio Content Category 3 electricity products that meet the criteria of section 3202 (a)(3) may not be counted as excess procurement, they are not part of the calculation of the maximum limit in section 3204 (c) and therefore are not subtracted from the excess procurement calculation. The language of subdivision (a)(1)(A)(1) and (2) in the original Express Terms did not adequately address this nuance and was potentially ambiguous.

In addition, the language of subdivision (a)(1)(A)(3) was added back in. This language was included the original Express Terms, but was removed in the first 15-Day language change based on public comments suggesting it was not necessary, because the excess procurement rules for POUs merely needed to be consistent with the rules for retail sellers. The statute, however, requires more than mere consistency. Public Utilities Code section 399.30 (d)(1) permits a POU to use excess procurement from one compliance period in subsequent compliance periods "in the same manner as allowed for retail sellers pursuant to [Public Utilities Code] Section 399.13." The statutory language "in the same manner as" is more exacting than mere consistency (i.e. "consistent with"), and requires that the excess procurement rules for POUs be the same or very similar to the rules for retail sellers under Public Utilities Code section 399.13. Arguably, there would be more flexibility if the statute allowed POUs to adopt excessive procurement rules that were "consistent with" the rules for retail sellers, because in that case it would be possible to argue the rules could be different, and yet "consistent with" the intended purpose of the statute, given the differences between a retail seller and a POU.

Consequently, the language of subdivision (a)(1)(A)(3) was added back into the regulations, as proposed in the original Express Terms, to comport with the requirements of Public Utilities Code section 399.30 (d)(1) and Public Utilities Code section 399.13 (a)(4)(B).

Subdivision (a)(1)(D). Eleven modifications were made to this subdivision: 1) "+ $STC_{2011\text{-}2013}$" was added back into the excess procurement equation in subdivision (a)(1)(D)(1) to make the

requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 2) the letter "P" in "Products" was changed from a capital to lower case in the description of the factors of the excess procurement equation in subdivision (a)(1)(D)(1) to correct a grammatical error; 3) "that meet the criteria of section 3202 (a)(1)" was added to the description of the factors of the excess procurement equation in subdivision (a)(1)(D)(1) to make the excess procurement equation consistent with the modifications made to subdivision (a)(1)(A); 4) The letter "S" in "Section" was changed from a capital to lower case in the description of the factors of the excess procurement equation in subdivision (a)(1)(D)(1) to correct a grammatical error; 5) "STC_X = All electricity products that meet the criteria of section 3202 (a)(1) of section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance period X" was added back into the description of the factors of the excess procurement equation in subdivision (a)(1)(D)(1) to make the excess procurement equation consistent with the modifications made to subdivision (a)(1)(A); 6) "+ $STC_{2014\text{-}2016}$" was added back in to the excess procurement equation in subdivision (a)(1)(D)(2) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 7) "+ $STC_{2017\text{-}2020}$" was added back into the excess procurement equation in subdivision (a)(1)(D)(3) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 8) "+ STC_y" was added back in to the excess procurement equation in subdivision (a)(1)(D)(4) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 9) "that meet the criteria of section 3202 (a)(1)" was added to the description of the factors of the excess procurement equation in subdivision (a)(1)(D)(4) to make the excess procurement equation consistent with the modifications made to subdivision (a)(1)(A); 10) "of the maximum" was removed and replaced with "of the maximum calculated in section 3204" to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); and 11) "STC_Y = All electricity products that meet the criteria of section 3202 (a)(1) of section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance year Y" was added back in the description of the factors of the excess procurement equation in subdivision (a)(1)(D)(4) to make the excess procurement equation consistent with the modifications made to subdivision (a)(1)(A).

These modifications were made to correct grammatical errors and to make the requirements of this subdivision consistent with modifications made to other subdivisions of the regulations.

Subdivision (a)(1)(E). Nine modifications were made to this subdivision: 1) "of section 3204(a)(8) or section 3204 (a)(9)" was added and "of Public Utilities Code section 399.30 (h)" was removed from this subdivision to clarify the excess procurement rules for POUs that satisfy the requirements of section 3204(a)(8) or (9) and are subject to different requirements in accordance with Public Utilities Code section 399.18 and Public Utilities Code section 399.30 (h); 2) "4"was removed and replaced with "5"in subdivision (a)(1)(E)(1) to correct a reference to "paragraph 5," rather than "paragraph 4"; 3) "Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2)" was add back in as

subdivision (a)(1)(E)(2) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 4) "+ $STC_{2011\text{-}2013}$" was added back in to the excess procurement equation in subdivision (a)(1)(E)(5)(i) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 5) "+ $STC_{2014\text{-}2016}$" was added back in to the excess procurement equation in subdivision (a)(1)(E)(5)(ii) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 6) the letter "S" in "Section" was changed from a capital to lower case in the description of the factors of the excess procurement equation in subdivision (a)(1)(E)(5) to correct a grammatical error; 7) "+ $STC_{2017\text{-}2020}$" was added back in to the excess procurement equation in subdivision (a)(1)(E)(5)(iii) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); 8) "+ STC_y" was added back in to the excess procurement equation in subdivision (a)(1)(E)(5)(iv) to make the requirements of this subdivision consistent with the modifications made to subdivision (a)(1)(A); and 9) the letter "S" in "Section" was changed from a capital to lower case in the description of the factors of the excess procurement equation in subdivision (a)(1)(E)(5)(iv) to correct a grammatical error.

These modifications were made to correct grammatical errors and to make the requirements of this subdivision consistent with modifications made to other subdivisions of the regulations.

Subdivision (a)(2)(A). Two modifications were made to this subdivision: 1) "reasonable cause" was removed and replaced with "conditions beyond the control of the POUs" to align the requirements of this subdivision with the pertinent statutory language of Public Utilities Code section 399.30 (d)(2) and section 399.15 (b); and 2) the letter "s" was removed from "exists" to correct a grammatical error.

Public Utilities Code section 399.30 (d)(2) permits a POU to adopt rules allowing for the delay of timely compliance consistent "consistent with subdivision (b) of Section 399.15." Public Utilities Code section 399.15 (b)(5) in turn provides that a retail seller's noncompliance with the RPS may be waived if it demonstrates the specified conditions "are beyond the control of the retail seller" and will prevent compliance.

The language in the original Express Terms allowed a POU to delay timely compliance based on a finding that "reasonable cause" exists. This language was not in line with the statutory requirements, so was modified accordingly.

In addition, the ISOR did not explain that portions of the statute are repeated or rephrased in this subdivision. Specifically, the following portions of Public Utilities Code section 399.15 (b)(5) are repeated in subdivisions (a)(2)(A)(1) – (3):

> "(A) There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator. In making its findings relative to the existence of this condition with respect to a retail seller that owns transmission lines, the commission shall consider both of the following:

(i) Whether the retail seller has undertaken, in a timely fashion, reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations, to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources. In determining the reasonableness of a retail seller's actions, the commission shall consider the retail seller's expectations for full-cost recovery for these transmission lines and upgrades.
(ii) Whether the retail seller has taken all reasonable operational measures to maximize cost-effective deliveries of electricity from eligible renewable energy resources in advance of transmission availability.
(B) Permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the retail seller. In making a finding that this condition prevents timely compliance, the commission shall consider whether the retail seller has done all of the following:
(i) Prudently managed portfolio risks, including relying on a sufficient number of viable projects.
(ii) Sought to develop one of the following: its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources. This clause shall not require an electrical corporation to pursue development of eligible renewable energy resources pursuant to Section 399.14.
(iii) Procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply.
(iv) Taken reasonable measures, under the control of the retail seller, to procure cost-effective distributed generation and allowable unbundled renewable energy credits.
(C) Unanticipated curtailment of eligible renewable energy resources necessary to address the needs of a balancing authority."
[Pub. Util. Code sec. 399.15, subd. (b)(5).]

The language of Public Utilities Code section 399.15 (b)(5) was included in subdivisions (a)(2)(A)(1) – (3) for organizational and consistency purposes, so all of the statutory requirements and regulatory requirements for POU rules to delay timely compliance with the RPS could be identified in one subdivision of the regulations and thereby be easily accessible to POUs.

Subdivision (a)(3). No modifications were made to this subdivision. However, the ISOR does not explain that portions of the statute are repeated or rephrased in this subdivision. Specifically, the following portions of Public Utilities Code section 399.15 (d) are repeated in subdivision (a)(3)(B):

"(1) The limitation is set at a level that prevents disproportionate rate impacts.

(2) The costs of all procurement credited toward achieving the renewables portfolio standard are counted towards the limitation.
(3) Procurement expenditures do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities."
[Pub. Util. Code sec. 399.15, subd. (d)(1) –(3).]

In addition, the following portions of Public Utilities Code section 399.15 (c) are repeated in subdivision (a)(3)(C):

"(1) The most recent renewable energy procurement plan.
(2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.
(3) The potential that some planned resource additions may be delayed or canceled."
[Pub. Util. Code sec. 399.15, subd. (c)(1) – (3).]

The language of Public Utilities Code section 399.15 (d) and (c) was included in subdivisions (a)(3)(B) and (C), respectively, for organizational and consistency purposes, so all of the statutory requirements and regulatory requirements for POU rules on cost limitations for the RPS could be identified in one subdivision of the regulations and thereby be easily accessible to POUs.

Subdivision (a)(4). The following language was removed from subdivision (a)(4)(D): "5. If applicable, an explanation of why the reduction was needed as a result of cost limitations adopted by the POU as provided in section 3206 (a)(3)." This modification was made to align the requirements of subdivision (a)(4)(D) with the requirements of Public Utilities Code section 399.16 (e), which allows a reduction in the portfolio balance requirements if a retailer seller demonstrates that it cannot comply with the portfolio balance requirements "because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15." Public Utilities Code section 399.15 (b)(5) establishes requirements for the delay of timely compliance with the RPS. It does not establish requirements for cost limitations for the RPS. Therefore, the language of subdivision (a)(4)(D)(5) was deleted to make rules for portfolio balance reductions consistent with the statutory requirements.

The language in the original Express Terms required POUs to explain why a reduction in the portfolio balance requirements was needed based the cost limitation rules established by a POU. Since cost limitations are not a consideration when implementing portfolio balance requirements, it was unnecessary and potentially ambiguous to require POUs to explain why a reduction in portfolio balance requirements was needed as a result of the POU's cost limitations.

In addition, the discussion of this subdivision in the ISOR refers to the CPUC's Proposed Decision *Setting Compliance Rules for the Renewables Portfolio Standard Program*, dated April 24, 2012. The portions of this Proposed Decision dealing with the reduction of the portfolio balance

requirements were not included in the final Decision adopted by the CPUC (Decision 12-06-038), and implementing this element of SB X1-2 for retail sellers has been deferred by the CPUC for consideration in a future CPUC decision. Because of this, the CPUC's position on this matter is unknown.

Subdivision (a)(5)(B). This subdivision was modified by removing the language "must be procured pursuant to a contract or ownership agreement executed before June 1, 2010, and" and replacing it with a sentence at the beginning of the subdivision that states: "The historic carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010." This modification was made to clarify the requirement for using historic carryover and necessary to ensure all RECs generated prior to January 1, 2011, would retain value, while still maintaining that all historic carryover must qualify as "count in full."

The language in the original Express Terms was potentially ambiguous, so modifications were made to clarify the requirements.

Subdivision (a)(5)(D). Two modifications were made to this subdivision: 1) the letter "P" in "Products" was changed from a capital to lower case in the description of the factors of the baseline equation in subdivision (a)(5)(D)(1) to correct a grammatical error; and 2) "the years" was removed from subdivision (a)(5)(D)(2), because it is was redundant in describing "the years 2004-2010."

Subdivision (a)(5)(E). Four modifications were made to this subdivision: 1) "Any REC qualifying as historic carryover shall be retired within 36 months of the month in which the REC was generated" was removed as subdivision (a)(5)(E) to better align the requirements for historic carryover to the statutory requirement of Public Utilities Code section 399.21 (a)(6); 2) Subdivision (a)(5)(F) was renumbered as subdivision (a)(5)(E); 3) "by... July 1, 2013 or 30" was removed and replaced with "within 90" to provide POUs more time to report historic carryover procurement claims and supporting materials to the Energy Commission; and 4) "whichever is later" was removed as unnecessary in light of the modifications made by item 3; and 5) "All applicable procurement claims must be retired and reported to the Commission by 90 calendar days after the effective date of these regulations to qualify as historic carryover" was added to further clarify a POU's timeframe for reporting historic carryover procurement claims and supporting materials to the Energy Commission.

The language in the original Express Terms required that RECs qualifying as historic carryover be retired within 36 months of the date of generation. This was based in part on the requirements of Public Utilities Code section 399.21 (a)(6), which provides that a REC shall not be eligible for compliance with a RPS procurement requirement unless the REC is retired by a retail seller or POU "within 36 months from the initial date of generation of the associated electricity." However, Public Utilities Code section 399.21 (a)(6) was enacted under SBX1-2 and did not take effect until 2011. Therefore, it was not appropriate to apply the REC retirement requirements of section 399.21 (a)(6) to historic carryover RECs associated with generation that pre-dates 2011. Doing so could inadvertently limit the amount of historic carryover RECs claimed by a POU. The language of this subdivision was therefore modified accordingly.

The language in the original Express Terms also required POUs to report historic carryover: "by July 1, 2013, or 30 calendar days after the effective date of these regulations, whichever is later."The Energy Commission modified the language of this subdivision to provide POUs more time to compile the necessary documentation for their historic carryover reports.

Subdivision (d). This subdivision was modified by removing "in order" to correct a grammatical error. The language in the original Express Terms stated the Executive Director may request additional information "in order to make a determination." The words "in order" were unnecessary and removed to make the language more clear and concise.

In addition, the discussion of this subdivision in the ISOR does not explain that the Energy Commission, when determining if a POU rule or rule revision complies with Public Utilities Code section 399.30, the subject regulations, or any applicable order or decision adopted by the Energy Commission pertaining to the RPS, will recognize the POU's authority and discretion under Public Utilities Code section 399.30 over procurements matters, including: 1) the mix of eligible renewable energy resources procured by the POU and those additional generation resources procured by the POU for purposes of ensuring resource adequacy and reliability, and 2) the reasonable costs incurred by the POU for eligible renewable energy resources owned by the POU.

Section 3207 – Compliance Reporting for POUs

Subdivision (b). Three modifications were made to this subdivision: 1) "By July 1, 2013, or 30" was deleted and replaced with "Within 90"consistent with the modifications made to subdivision 3206 (a)(5)(E); 2) "whichever is later," was deleted; and 3) "the years" was deleted, because it is was redundant in describing "the years 2004-2010." The first modification is consistent with the changes made to subdivision 3206 (a)(5)(E) and provides POUs more time to compile the necessary documentation for their historic carryover reports. The second modification was made to delete "whichever is later," from the first sentence, since this phrase is no longer necessary because the first modification to subdivision (b) changed the reporting requirement to include only one possible due date. The second modification is also consistent with the changes made to subdivision 3206 (a)(5)(E). The third modification was made to remove redundant words.

Subdivision (c)(4). Two modifications were made to this subdivision. Both modifications remove "b" from "(b)(3)(A)-(G)" and replace it with "c." The language of subdivision (c)(4) proposed in the Express Terms provided inaccurate references and was potentially confusing.

Subdivision (d)(5). This subdivision was modified to add "or section 3206 (a)(1)(E), as applicable" to the end of the subdivision. The language of subdivision (d)(5) proposed in the Express Terms stated that POUs must include the amount of excess procurement in their compliance reports, as determined by applying the calculation in section 3206 (a)(1)(D). However, some POUs are subject to a different excess procurement calculation in section 3206

(a)(1)(E). The modification to this subdivision ensures that subdivision (d)(5) applies to all POUs reporting excess procurement.

Subdivision (f). This subdivision was modified to delete "Notwithstanding" from the beginning of the subdivision and replace it with "In addition to the applicable reporting requirements in." The language of subdivision (f) proposed in the Express Terms provided an annual reporting requirement for a POU that meets the criteria in Public Utilities Code section 399.30 (j) and stated that the requirement was "notwithstanding section 3207 (a)-(d)," which, as a commenter stated, implied that a POU that met the criteria of Public Utilities Code section 399.30 (j) was exempt from the reporting requirements in section 3207 (a)-(d). The modification clarifies that the requirements of section 3207 (a)-(d) do, in fact, apply to a POU that meets the criteria of Public Utilities Code section 399.30 (j).

Subdivision (g)(1). This subdivision was modified to add the word "other" between the words "or" and "written" in the last sentence. The language of subdivision (g)(1) proposed in the Express Terms implies that e-mail is not considered written communication, so the modification was made to provide clarity.

Section 3208

Subdivision (b)(1). This subdivision was modified to remove ";" at the end of the subdivision. This change was made to correct a grammatical error and to conform to the Energy Commission's report style.

Subdivision (b)(2). This subdivision was modified to remove ";" at the end of the subdivision. This change was made to correct a grammatical error and to conform to the Energy Commission's report style.

Subdivision (b)(3). Two modifications were made to this subdivision. The first was to add "," between the words "disclosure" and "or." The second modification was to remove ";" at the end of the subdivision. Both changes were made to correct grammatical errors and to conform to the Energy Commission's report style.

Subdivision (b)(4). This subdivision was revised to add "," between the words "compliance" and "or." This change was made to correct a grammatical error and to conform to the Energy Commission's report style.

Updates to Discussion of Chapter 2. Rules of Practice and Procedures; Article 4. Complaints and Investigations.

Section 1240 – Renewables Portfolio Standard Enforcement

Subdivision (g). This subdivision was modified to delete the number from "3208" and replace it with the number "1240." The modification was made to correct the reference to section 1240. The language of subdivision (g) proposed in the Express Terms provided an incorrect section number and was potentially confusing.

UPDATED INFORMATIVE DIGEST

Pursuant to Government Code section 11346.9(b), and except for the changes noted below, the Informative Digest contained in the Notice of Proposed Action is incorporated by reference.

In the ISOR the Energy Commission explains the benefits anticipated from the proposed regulatory action and states:

> "The proposed regulations will also ensure the POU rules are consistent with the rules for retail seller to extent appropriate in accordance with SBX1-2. Consistent rules will help provide market uncertainty for stakeholder participating in the California RPS and renewable energy market."[4]

These statements include several typographical errors and should have stated:

> "The proposed regulations will also ensure the POU rules are consistent with the rules for retail seller**s** to extent appropriate in accordance with SBX1-2. Consistent rules will help provide market **certainty** for stakeholder**s** participating in the California RPS and renewable energy market."[5]

The Energy Commission believes the subject regulations will help provide market "**certainty**," rather than uncertainty, for stakeholders participating in the California RPS and renewable energy market, which in turn will help promote the underlying goals of the RPS.

Upon review of the public comments received on the 45-day language Express Terms, the Energy Commission developed changes to the 45-day language and made the proposed regulations, as revised, publicly available for comment as "15-Day Language" pursuant to Government Code section 11346.8. These changes were made in response to comments to provide additional clarity to the regulations, to address the application of Public Utilities Code

[4] ISOR, page 4.

[5] Changes noted in bold font.

section 399.18 and section 399.30 (j), and to better describe the criteria and requirements for optional compliance measures and reporting to the Energy Commission. Specifically, the changes made to the 45-day language:

- Clarified the definition of "procure" in section 3201.
- Clarified the use of RECs to meet a POU's RPS procurement requirements for a given compliance period in accordance with section 3202.
- Clarified the criteria for an electricity product to be classified as PCC 1 or PCC 2 under section 3203.
- Revised the RPS procurements requirements for the third compliance period for POUs under section 3204 to be more consistent with the procurement requirements for retail sellers.
- Revised the RPS procurement requirements under section 3204 for qualifying POUs that satisfy the exemption criteria of Public Utilities Code section 399.18 and section 399.30 (j).
- Clarified the submission requirements for adopted procurement plans and enforcement programs under section 3205.
- Clarified the criteria and requirements for the following optional compliance measures under section 3206:
    - Excess procurement;
    - Delay of timely compliance;
    - Cost limitations
    - Portfolio balance requirement reduction; and
    - Historic carryover.
- Revised and clarified the reporting deadline for historic carryover reports under section 3207 and clarified the reporting requirements for POUs that satisfy the requirements of Public Utilities Code sections 399.18, 399.30 (h), or 399.30 (j).

Based on the public comments received on the15-Day Language, the Energy Commission developed changes to the 15-Day Language and made the proposed regulations, as revised, publicly available for comment as "Second 15-Day Language" pursuant to Government Code section 11346.8. These changes were made to further clarify the criteria and requirements in the regulations for qualifying electricity products, PCC 1 and PCC 2 electricity products, and optional compliance measures, and to revise the reporting deadline for historic carryover reports. Specifically, the changes made to the 15-Day Language:

- Clarified the eligibility criteria under section 3202 for electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, when the procurement is retired by a POU that does not satisfy the requirements of Public Utilities Code sections 399.18, 399.30 (h), or 399.30 (j).

• Clarified the eligibility criteria under section 3202 for electricity products procured pursuant to a contract or ownership agreement executed before June 1, 2010, when the electricity product is associated with a contract of less than 10 years.
• Further clarified the criteria for an electricity product to be classified as PCC 1 under section 3203 when the electricity product is from an eligible renewable energy resource with a first point of interconnection outside a California balancing authority.
• Further clarified the criteria and requirements for the following optional compliance measures under section 3206:

- Excess procurement; and
- Historic carryover.

• Revised the reporting deadline for historic carryover reports under section 3207, so that reports are due within 90 calendar days of the effective date of the regulations, rather than within 30 calendars days of the effective date.

ALTERNATIVES DETERMINATION

The Energy Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

SUMMARY OF COMMENTS RECEIVED AND ENERGY COMMISSION RESPONSES

Pursuant to Government Code section 11346.9 (a)(3), the Energy Commission has summarized and provided responses to all of the comments received during the public comment period of the rulemaking that were directed at the regulations or the process by which they were developed. The summary of comments received and responses is provided in Attachment A to this FSOR, and addresses comments received on the original 45-Day Express Terms, the first 15-Day language changes, and the second 15-Day language changes. All of the comments received during the public comment period are compiled in the rulemaking file and have been Bates stamped for organizational and reference purposes.

The Energy Commission received numerous comments in the rulemaking, including written comments provided in response to the original 45-Day Express Terms, the first 15-Day language changes, and the second 15-Day language changes, and oral comments provided at the March 15, 2013, staff workshop and June 12, 2013, Energy Commission adoption hearing. In addition, the Energy Commission received oral comments concerning the subject regulations at its April 30, 2013, adoption hearing of revisions to the *Renewables Portfolio Standard Eligibility Guidebook*. Although the April 30, 2013, hearing was not for the purpose of the subject regulations, several entities commented on the regulations. Since these comments were received during the

comment period for the subject regulations, the Energy Commission has summarized the comments and provided responses in Attachment A.

To the extent possible, the Energy Commission has grouped and summarized overlapping and similar comments to provide a uniform and concise response and to avoid duplication.

In general, the comments are organized by the section of the regulations with which the comments are concerned, beginning with general comments that concern no particular section of the regulations. The comment summaries include the comment number of each comment included in the summary, the party or parties making the comment, and the Bates stamped page on which the comment may be found.

SUMMARY OF COMMENTS RECEIVED AND THE ENERGY COMMISSION'S RESPONSES

Table of Contents

Table of Commenters and Corresponding Comments

Abbrev.	Name of Commenter	Comment Nos./Date
Azusa	City of Azusa	1.1-1.2/April 16, 2013 21.1/May 6, 2013
CCSF	City and County of San Francisco	2.1-2.6/April 16, 2013 22.1-22.4/May 6, 2013 40.1-40.2/June 6, 2013 62.1-62.2/March 15, 2013 70.1/June 12, 2013
CE Generation	CE Generation, LLC	3.1/April 16, 2013 23.1/May 6, 2013
CMUA	California Municipal Utilities Association	4.1-4.26/April 17, 2013 24.1-24.6/May 6, 2013 57.1-57.4/March 15, 2013 65.1/April 30, 2013 41.1-41.13/June 6, 2013 69.1-69.5/June 12, 2013
CalWEA	California Wind Energy Association	25.1/May 1, 2013
IEP	Independent Energy Producers Association	26.1/May 6, 2013
Iberdrola	Iberdrola Renewables	5.1-5.3/April 16, 2013 27.1-27.2/May 3, 2013
Kirkwood	Kirkwood Meadows Public Utility District	6.1/April 17, 2013
LADWP	Los Angeles Department of Water and Power	7.1-7.21/April 17, 2013 28.1-28.12/May 6, 2013 42.1-42.15/June 6, 2013 55.1-55.6/March 15, 2013 63.1-63.3/April 30, 2013 67.1-67.2/June 12, 2013
LSA	Large-scale Solar Association	43.1-43.4/June 6, 2013 59.1/March 15, 2013 73.1-73.4/June 12, 2013
MSR	M-S-R Public Power Agency	8.1-8/April 16, 2013 29.1-29.3/May 6, 2013 44.1-44.3/June 6, 2013
NCPA	Northern California Power Agency	9.1-9.16/April 16, 2013

		30.1-30.6/May 6, 2013 45.1-45.6/June 6, 2013 56.1/March 15, 2013 72.1-72.5/June 12, 2013
Noble	Noble Americas Energy Solutions, LLC	31.1/May 6, 2013 60.1-60.2/March 15, 2013
PG&E	Pacific Gas and Electric Company	10.1-10.3/April 15, 2013 32.1-32.4/May 6, 2013 46.1-46.4/June 6, 2013 53.1-53.2/March 15, 2013 71.1-71.3/June 12, 2013
PWRPA	Power and Water Resources Pooling Authority	11.1/April 17, 2013
Pathfinder	Pathfinder Renewable Wind Energy and Zephyr Power Transmission, LLC	12.1-12.2/April 15, 2013 51.1/March 15, 2013
Powerex	Powerex Corp.	58.1/March 15, 2013
Riverside	City of Riverside	13.1-13.2/April 16, 2013 33.1-33.2/May 6, 2013 68.1/June 12, 2013
SCE	Southern California Edison Company	14.1-14.2/April 16, 2013 34.1-34.2/May 6, 2013
SCPPA	Southern California Public Power Authority	15.1-15.14/April 16, 2013 35.1-35.12/May 6, 2013 47.1-47.10/June 6, 2013 61.1-61.2/March 15, 2013 66.1/April 30, 2013 75.1-75.3/June 12, 2013
SEIA	Solar Energy Industries Association	76.1-76.4/June 12, 2013
SMUD	Sacramento Municipal Utility District	16.1-16.9/April 17, 2013 36.1-36.9/May 6, 2013 54.1-54.3/March 15, 2013 64.1/April 30, 2013
Small POU Group	Braun Blaising McLaughlin & Smith, on behalf: - City of Cerritos - City of Corona - City of Moreno Valley	17.1-17.3/April 16, 2013 50.1-50.2/March 15, 2013

	- City of Needles - City of Rancho Cucamonga - City of Victorville - Eastside Power Authority	
TURN	The Utility Reform Network	18.1-18.3/April 16, 2013 38.1/May 1, 2013 48.1-48.2/June 6, 2013
Joint Comments of TURN, CalWEA, CUE, NRDC, and LSA	The Utility Reform Network (comments submitted jointly with: - California Wind Energy Association - Coalition of California Utility Employees - Natural Resources Defense Council - Large-scale Solar Association	37.1-37.3/May 6, 2013
TID	Turlock Irrigation District	19.1-19.2/April 16, 2013
UCS	Union of Concerned Scientists	39.1-39.3/May 6, 2013 49.1-49.2/June 6, 2013 52.1-52.5/March 15, 2013 74.1-74.2/June 12, 2013
UCS/LSA	Joint comments from Union of Concerned Scientists and Large-scale Solar Association	20.1-20.10/April 16, 2013

General Comments

1. COMMENTS NO. 4.1, 7.21, 9.1, 15.1, 28.12, 30.2, 30.7, 45.4, 72.1: CMUA (see Comments[6], pg. 18), SCPPA (see Comments, pg. 138), NCPA (see Comments, pgs.92, 260, 270, 363, and 563), and LADWP (see Comments, pgs. 74, 247) all state that the regulations must show proper deference to POUs' governing boards. They argue that the proper authority to establish and enforce an RPS standard for a POU is the POU's local governing body, which is in the best position to know what types of resources and cost limitations are appropriate for its own customers. They also state that the Energy Commission's regulations must not exceed the specific regulatory authority granted to the Energy Commission or abrogate the authority of a POU's governing board. NCPA states that the Energy Commission should "include specific references to the authority granted to POUs and their governing board in the enabling legislation."

RESPONSE: No changes to regulations. The Energy Commission recognizes that the statute grants authority to POU governing boards to adopt their own RPS programs. This authority is discussed on pages 4 and 5 of the ISOR, which states:

> "While POUs still retain discretion under the law to develop and implement procurement rules, plans, and policies that meet their particular needs, they are now required to take certain actions to implement the RPS.
>
> Specifically, SB X1-2 requires the governing board of a POU take the following actions, unless otherwise exempted by the law. The governing board of a POU shall implement procurement targets for the POU that require the utility to procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods: January 1, 2011, to December 31, 2013, inclusive; January 1, 2014, to December 31, 2016, inclusive; and January 1, 2017, to December 31, 2020, inclusive. (Pub. Util. Code § 399.30, subd. (b).) The governing board of a POU shall ensure that quantities of eligible renewable energy resources to be procured for the first compliance period from January 1, 2011, to December 31, 2013, are equal to an average of 20 percent of the POU's retail sales. (Pub. Util. Code § 399.30, subd. (c)(1).) The governing board of a POU shall ensure that the quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of eligible renewable energy resources achieves 25 percent of the POU's retail sales by December 31, 2016, and 33 percent of the POU's retail sales by December 31, 2020. The governing board of a POU shall require that the POU procure not less than 33 percent of retail sales from eligible renewable energy resources in all subsequent years. (Pub. Util. Code § 399.30, subd. (c) (2).) The procurement requirement adopted by the governing board of a POU shall be consistent with the procurement requirements for retail sellers in Public Utilities Code section 399.16. (Pub. Util. Code § 399.30, subd. (c)(3).) When adopting a

[6] The Comment "pg." refers to the Bates stamped page number of the compiled public comments.

procurement plan, the governing board of a POU may adopt optional compliance measures, including rules permitting the POU to apply excess procurement in one compliance period to subsequent compliance periods, conditions that allow for delaying timely compliance, and cost limitations for procurement expenditures. (Pub. Util. Code § 399.30, subd. (d).) The governing board of a POU shall adopt a program for the enforcement of the RPS procurement requirements. (Pub. Util. Code § 399.30, subd. (e).) A POU must annually notify and provide information to its customers and the Energy Commission when the POU's governing board considers the adoption, status or changes to its procurement plan. (Pub. Util. Code § 399.30, subd. (f).) Lastly, a POU shall annually report information to the Energy Commission on the POU's procurement contracts for eligible renewable energy resources, expenditures of funds for eligible renewable energy resources, the resource mix used to serve its customers, and the POU's status and progress in implementing the RPS. (Pub. Util. Code §§ 9507 and 9508.)"[7]

It is not necessary or appropriate for the subject regulations to repeat or delineate POU authority. That authority is already identified in the statute. Moreover, the purpose of the regulations is to provide the rules and processes by which the Energy Commission will determine a POU's compliance with the RPS.

2. COMMENTS NO. 5.1, 14.1, 60.1: Iberdrola (see Comments, pg.42), SCE (see Comments, pg. 133) and Noble (see Comments, pg. 455) state that it is very important to maximize coordination and consistency among the regulations, the *RPS Eligibility Guidebook*, and the CPUC Decisions.

RESPONSE: No changes to regulations. The Energy Commission will continue to work with stakeholders and to coordinate with the CPUC to avoid redundancy and provide consistency in its RPS documents.

3. COMMENTS NO. 4.4, 9.3, 16.2, 30.3, 35.1, 36.5, 55.1, 57.1: CMUA (see Comments, pgs. 21 and 444), SMUD (see Comments, pgs. 159 and 298), SCPPA (see Comments, pg. 283), NCPA (see Comments, pgs. 97 and 262), and LADWP (see Comments, pg. 433) state that the regulations should not rely on the CPUC's process and decisions, as POUs have limited ability to influence and provide appropriate input to the CPUC's rulemaking. The Energy Commission should carefully deliberate on issues with specific application to POUs and should not merely adopt identical requirements to those adopted by the CPUC.

RESPONSE: No change to regulations. The Energy Commission has carefully deliberated each issue, and as a result, the regulations ensure the POU rules are consistent with the rules for retail sellers to the extent appropriate in accordance with SBX1-2. As explained on pages 3 – 5 of the ISOR, consistent rules will help provide market certainty for stakeholders participating in

[7] ISOR, pages 4-5.

the renewable energy market and California's RPS. If a POU and retail seller purchase an electricity product with the same characteristics from an eligible renewable energy resource, it makes no sense to characterize the product differently depending on which utility, POU or retail seller, purchases the electricity product. Likewise, it makes no sense to characterize the electricity product differently depending on which of two POUs purchased the electricity product.

4. COMMENTS NO. 9.16, 15.13: SCPPA (see Comments, pgs. 147) and NCPA (see Comments, pg. 113) urge the Energy Commission to avoid overlap between the regulations and the *RPS Eligibility Guidebook*, as requirements repeated in both documents, especially if the requirements differed, could cause confusion.

RESPONSE: No changes to regulations. The Energy Commission agrees with this comment and removed as much overlap as possible between the regulations and the *RPS Eligibility Guidebook*. Any remaining areas of overlap, such as with definitions, were retained to provide clarity within a single document for stakeholders. The Energy Commission will continue to work with stakeholders to avoid redundancy and provide consistency in its RPS documents.

5. COMMENT NO. 36.4: SMUD (see Comments, pg. 298) states that the Energy Commission did not allow sufficient time to consider the 45-day comments before posting the first 15-day language. Three days was insufficient time to consider the changes that were made in the first 15-day language.

RESPONSE: No change to regulations. The Energy Commission did issue the first 15-Day Language changes on April 19, 2013, after a brief turnaround from the 45-day language Express Terms comments due on April 16, 2013. However, most of the modifications made in the first 15-Day Language had been considered after the March 15, 2013, staff workshop, at which many similar comments were made to those written comments provided on the 45-day language Express Terms. One of the purposes of the March 15, 2013, staff workshop was to obtain preliminary comments from stakeholders on the Express Terms to determine whether modifications to the proposed regulations would be needed.

6. COMMENT NO. 24.1: CMUA (see Comments, pg. 212) says that the Energy Commission should not adopt regulations with simultaneous intent to initiate a process to amend regulations, as this would increase regulatory uncertainty.

RESPONSE: No change to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted. The Energy Commission does not intend to initiate a process to amend the regulations immediately after adoption. The

Energy Commission intends only to amend the regulations when it is deemed necessary due to changes in statute or new information discovered during the course of implementation.

7. COMMENT NO. 35.4: SCPPA (see Comments, pg. 286) states that the Energy Commission should not succumb to threats of litigation from stakeholders, because threats of litigation to sway the Energy Commission's decisions in this proceeding are inappropriate and belittle the hard work made by both the Energy Commission and the POUs in developing these regulations.

RESPONSE: No change to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted. The Energy Commission understands that litigation is always a possibility and is not persuaded to change its rules by any threats of litigation.

8. COMMENT NO. 40.1, 69.5, 75.3: CCSF (see Comments, pg. 321), CMUA (see Comments, pg. 559), and SCPPA (see Comments, pg. 574) request that FAQs be made available on the Energy Commission's website to provide POUs guidance on implementation.

RESPONSE: No change to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted. The Energy Commission plans to post FAQs to its website and will work with stakeholders to compile the necessary questions.

9. COMMENT NO. 41.6, 69.4, 70.1, 72.5: CMUA (see Comments, pgs. 326 and 559), CCSF (see Comments, pg. 560), and NCPA (see Comments, pg. 566) ask Energy Commission staff to work closely with individual POUs, as well as CMUA, NCPA, and SCPPA, to identify problems that may arise or any potential areas of confusion, because the regulations continue to generate significant confusion regarding the precise requirements.

RESPONSE: No change to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted. The Energy Commission plans to work with the POUs and other stakeholders during implementation to ensure that the regulations are consistently understood.

10. COMMENTS NO. 28.6, 35.9, 42.14, 47.8: LADWP (see Comments, pgs. 242 and 347) and SCPPA (see Comments, pgs. 291 and 376) comment that the *RPS Eligibility Guidebook* should not require meters with 2 percent or higher accuracy for eligible renewable energy resources to be RPS certified.

RESPONSE: No change to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted. The comment was directed at the Energy Commission's *RPS Eligibility Guidebook*, which specifies the requirements and process for certifying eligible renewable energy resources for California's RPS and describes how the Energy Commission tracks and verifies RPS-eligible electricity generation for the RPS. As explained in the ISOR, the Energy Commission's adoption of the *RPS Eligibility Guidebook* is expressly exempt from the formal rulemaking requirements of the Administrative Procedures Act pursuant to subdivision (a) of Public Resources Code section 25747.[8] In addition, this issue was raised and considered as part of the process to adopt the *RPS Eligibility Guidebook, 7th edition*.

11. COMMENTS NO. 4.5, 57.4, and 65.1: CMUA (see Comments, pgs. 22, 448, and 496) requests that the Energy Commission review the broader costs associated with meeting the portfolio balance requirements and *RPS Eligibility Guidebook* requirements on the timeline required in the regulations.

RESPONSE: No change to the regulations. The *Economic and Fiscal Impact Statement and Assessment* estimates the cost to the POUs of complying with the regulatory requirements specifically. These regulatory costs include the cost to POUs to prepare and submit various documents and reports to the Energy Commission for purposes of verifying and determining compliance with the RPS procurement requirements. The regulatory costs do not include costs to comply with the statutory requirements. As explained in the Supporting Material for the Economic and Fiscal Impact Statement and Assessment for the regulations, the costs to comply with the statutory requirements for the RPS exist and have existed irrespective of the subject regulations.[9] The timeline by which a POU must meet its portfolio balance requirements is explicitly required by statute and is not altered by the regulations.

12. COMMENT NO. 60.2: Noble (see Comments, pg. 455) recommends that the Energy Commission consider publishing where the differences are between the Energy Commission's regulations and the CPUC's decisions and the reasons for those differences, as it would help stakeholders to fully grasp the impact on the market.

RESPONSE: No changes to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted.

[8] Refer to definition of "RPS Guidelines" in the ISOR at pages 9 – 10.

[9] Refer to Supporting Material for the Economic and Fiscal Impact Statement and Assessment, pages 3 - 7.

13. COMMENT NO. 27.1: Iberdrola (see Comments, pg. 226) states that the Energy Commission should be able to adjust the RPS reporting forms as needed to accommodate market transactions that are allowable under law, but are not currently reflected in the forms.

RESPONSE: No change to the regulations. This comment is not directed at the proposed regulations or the process by which the regulations were adopted. The reporting forms are part of the Energy Commission's *RPS Eligibility Guidebook* and are outside the scope of this rulemaking.

14. COMMENT NO. 17.1: Small POU Group (see Comments, pg. 169) argues that small POUs should have more flexibility under the regulations and be treated differently from larger POUs, and disagrees with the Energy Commission's stated purpose of providing a consistent application and enforcement of the RPS to all POUs.

RESPONSE: No change to the regulations. The Legislature did not establish different RPS requirements for small POUs or otherwise exempt small POUs from the RPS requirements. In enacting SBX1-2[10] the Legislature was very selective in establishing exemptions, and provided the following specific exemptions:

> Public Utilities Code section 399.30 (g): Exempts a POU from the RPS if it receives all of its electricity pursuant to a preference right adopted and authorized pursuant to Section 4 of the Trinity River Act. The Energy Commission understands that this exemption is intended to cover Trinity Public Utility District.
>
> Public Utilities Code section 399.30 (h): Exempts certain out-of-state resources from the RPS eligibility requirements, which would otherwise apply, if the POU was in existence on or before January 1, 2009, provides retail electric service to 15,000 or fewer customer accounts in California, and satisfies other specified conditions. The Energy Commission understands that this exemption is intended to cover the City of Needles, Surprise Valley Electrification Corp., and Truckee-Donner Public Utility District.
>
> Public Utilities Code section 399.30 (i): Modifies the basis for calculating a POU's RPS procurement requirements if a POU is a joint power authority of irrigation districts established on or before January 1, 2005, and satisfies other specified conditions. The Energy Commission understands that this exemption is intended to cover the Power and Water Resources Pooling Authority and the Eastside Power Authority.
>
> Public Utilities Code section 399.30 (j): Modifies the basis for calculating a POU's RPS procurement requirements to cover only that portion of the POU's electricity demand unsatisfied by its hydroelectric generation in a given year. This exemption is limited to a POU that is a city and county and only receives greater that 67% of its electricity sources

[10] As subsequently revised by Assembly Bill 2227 (Stats. 2012, ch. 606, sec. 8).

from instate hydro that it owns and operates. The Energy Commission understands that this exemption is intended to apply to the City and County of San Francisco.

In addition, in enacting SBX1-2 the Legislature modified the definition of an "eligible renewable energy resource" in Public Utilities Code section 399.12 (e)(1)(A) to allow the generation from a small hydroelectric generation unit not exceeding 40 megawatts (MWs) in size to qualify for the RPS if the unit is operated as part of a water supply or conveyance system and a retail seller or POU procured electricity from the unit as of December 31, 2005. Prior to SBX1-2, the law allowed only small hydroelectric generation facilities less than 30 MWs in size and qualifying incremental generation from large hydroelectric generation facilities to qualify for the RPS.

In the absence of an express exemption for small POUs in SBX1-2, and in light of the specific exemptions noted above, the Energy Commission determined that it was not appropriate for it to establish special requirements or a blanket exemption for small POUs in the subject regulations.

In addition, all POUs may adopt optional compliance measures as outlined in section 3206 of the regulations to more easily comply with their RPS procurement requirements and avoid noncompliance.

Section 3201

15. COMMENT NO. 4.24: CMUA (see Comments, pg. 40) approves the definition of "retail sales" in the regulations.

RESPONSE: No change to the regulations. No response needed.

16. COMMENTS NO. 7.6, 15.2, 15.4, 55.3: SCPPA (see Comments, pg. 139) and LADWP (see Comments, pgs. 63 and 435) request the addition of definitions for the terms "firmed and shaped" and "substitute electricity." These terms are used in section 3203.

RESPONSE: Change to the regulations. In response to this comment the Energy Commission modified the requirements for Portfolio Content Category (PCC) 2 electricity products in section 3203 (b) of the subject regulations. Two modifications were made to section 3203 (b). First, the term "firmed and shaped" was deleted and replaced with "matched" and second, "substitute electricity to provide" was deleted from the phrase "substitute electricity to provide incremental electricity." These modifications were made to clarify the criteria for electricity products to qualify as PCC 2 under Public Utilities Code section 399.16 (b)(2). Section 399.16 (b)(2) specifies that electricity product must be "firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority." Although the law does not define "firmed and shaped," the practical application of

Section 399.16 (b)(2) requires that renewable electricity generated outside a California balancing authority be matched with an equivalent amount of incremental electricity scheduled into a California balancing authority in order for the renewable electricity to qualify as PCC 2. Replacing "firmed and shaped" with the term "matched" avoids confusion and potential ambiguity.

Additionally, Public Utilities Code section 399.16 (b)(2) requires that PCC 2 electricity products provide "incremental electricity" that is scheduled into a California balancing authority. The law does not refer to "substitute electricity". Referring to "substitute" electricity in subdivision (b) of section 3203 of the regulations was potentially confusing and unnecessary given the requirements of Public Utilities Code section 399.16 (b)(2). In addition, removing the reference to "substitute" electricity in subdivision (b) of section 3203 of the regulations helps differentiate "incremental" electricity, which is required for PCC 2 electricity products under of Public Utilities Code section 399.16 (b)(2), and "substituting electricity," which is required for PCC 1 electricity products under Public Utilities Code section 399.16 (b)(1).

17. COMMENTS NO. 7.5, 15.3, 24.5, 29.3, 44.3, 55.3: CMUA (see Comments, pg. 221), MSR (see Comments, pgs. 256 and 357), SCPPA (see Comments, pg. 139), and LADWP (see Comments, pgs. 62 and 435) request that the term "incremental electricity" be added to the definitions section of the regulations. This term is used in section 3203. MSR states that while the addition of this term does not make a substantive difference, it is not generally used and may cause confusion.

RESPONSE: No change to the regulations. "Incremental electricity" is defined in section 3203 of the subject regulations, the only section in which the term is used, so it is unnecessary to add this term to the definitions section. The Energy Commission disagrees that this term will cause confusion, as it is clearly defined within section 3203 and more accurately reflects statutory language.

18. COMMENTS NO. 24.5, 29.3, and 44.3: CMUA (see Comments, pg. 221) and MSR (see Comments, pgs. 256 and 357) request that the word "matched" be added to the definitions section of the regulations. This term is used in section 3203. MSR additionally notes that the term was not commonly used and may cause confusion.

RESPONSE: No change to the regulations. Adding "matched" to the definitions section is unnecessary, as the word is used as commonly defined in a dictionary.

19. COMMENT NO. 7.2, 7.3, 7.4, 7.7, 7.8: LADWP (see Comments, pg. 60) requests that the terms "distributed generation" and "count in full" be added to the definitions section of the regulation. LADWP also requests that the definition for the term "ownership agreement" be

modified to allow for test energy. LADWP also requests that the definition of "WECC" be modified to not include WECC as part of the North American Electric Reliability Corporation. Lastly, LADWP requests that the definition of "RPS-certified facility" be modified to include electrical generation facilities approved by a POU governing board before June 1, 2010, that do not meet the eligibility criteria in the *RPS Eligibility Guidebook*.

RESPONSE: No change to the regulations. The term "distributed generation" is used only once within the regulations, in section 3206 (a)(2)(A)(2.)(iv.). The term is commonly used and has a generally accepted definition in the energy industry, so the addition of a definition for this term in the regulations is not necessary. Moreover, the term "distributed generation facility" is defined in the *RPS Eligibility Guidebook* for RPS certification purposes.

The term "count in full" is effectively defined in section 3202 (a)(2) via the qualifying criteria, so adding a definition for this term to the definitions section is unnecessary.

No modifications are needed to the definition of "ownership agreement." The definition appropriately defines the conditions of an ownership agreement for purposes of the regulations. LADWP request that the term "ownership agreement" be modified to include test energy that might be procured by LADWP before LADWP actually takes ownership of an electrical generation facility. Test energy generally refers to electricity that has been generated by an electrical generation facility before the facility has been deemed to commence commercial operations. If a POU procures test energy from a facility (it intends to purchase) before the POU actually takes ownership of the facility, the POU should classify the purchase as procurement from a third party, rather than procurement under an ownership agreement.

No modifications are needed to the definition of "WECC." According to information on WECC's website (http://www.wecc.biz/About/Pages/default.aspx), "WECC is geographically the largest and most diverse of the eight Regional Entities that have Delegation Agreements with the North American Electric Reliability Corporation (NERC). The Fact Sheet on this website also indicates that WECC is one of the eight Regional Entities recognized by both NERC and the Federal Energy Regulatory Commission. It is not inappropriate for the definition of "WECC" to indicate WECC is part of NERC.

The term "RPS-certified facility" will not be modified as LADWP requests. The determinations of RPS eligibility and certification are based on criteria specified in the Energy Commission's RPS Guidelines (specifically, the *Renewable Portfolio Standard Eligibility Guidebook*), and not the subject regulations. An "RPS-certified facility" refers to a facility that has been certified as RPS eligible or has been granted limited certification by the Energy Commission in accordance with the *Renewable Portfolio Standard Eligibility Guidebook*. LADWP requests changes to the definition of "RPS-certified facility," so the term would include a facility that was approved by a POU governing board prior to June 1, 2010, even if that facility did not meet the RPS Guidelines to become RPS-certified. Such a change would conflict with the statutory requirements of Public Utilities Code section 399.16 (d), which provides that procurement contracts and ownership agreements originally executed prior to June 1, 2010, shall count in full toward the RPS

procurement requirement only if specified conditions are satisfied. These conditions include that the "renewable energy resource was eligible under the rules in place as of the date when the contract was executed." The "rules in place" refers to the Energy Commission's rules for RPS-certification, not rules that a POU may have adopted prior to June 1, 2010. The interpretation of Public Utilities Code section 399.16 (d) and its application is explained in the ISOR in the discussion of section 3202 (a)(2).

20. COMMENT NO. 58.1: Powerex (see Comments, pg. 453) requests that the Energy Commission modify the definition of the term "procure" to clarify that it includes acquisition of electricity products from third parties.

RESPONSE: Change to regulation. The definition of "procure" in subsection 3201 (t) was revised to include the suggested change.

21. COMMENT NO. 7.1: LADWP (see Comments, pg. 59) requests that the definitions in the regulations not deviate from definitions provided in statute.

Response: No change to regulations. The definitions in the regulations are consistent with those in statute and only differ when necessary to provide more clarity in the context of the regulations.

22. COMMENT NO. 7.9, 42.1, 47.2: SCPPA (see Comments, pg. 371) and LADWP (see Comments, pgs. 64 and 333) request that the definitions in the regulations be the same as those provided in the *Renewables Portfolio Standard Eligibility Guidebook*.

RESPONSE: No change to the regulations. The definitions in the regulations are consistent with those in the *Renewables Portfolio Standard Eligibility Guidebook* and only differ when necessary to provide more clarity in the context of the regulations.

Section 3202

23. COMMENTS NO. 20.1 and 39.1: Joint comments of UCS and LSA (see Comments, pg. 190) and UCS (see Comments, pg. 316) express concern that the timeframe in which a REC must be retired for compliance is internally inconsistent and is different than the way the CPUC defines the 36 month timeframe for REC retirement. UCS and LSA believe this difference will create confusion and lead to the different treatment of RECs by POUs and retail sellers, so the regulations should be changed to be consistent with the CPUC.

RESPONSE: No change to the regulations. Public Utilities Code section 399.21 requires that RECs must be retired "within 36 months from the initial date of generation of the associated generation." This language suggests that counting should begin following the month of generation. Also, in the Western Renewable Energy Generation Information System (WREGIS), RECs are only created on a monthly basis and therefore aren't available to be retired until after the end of the month of generation. For these reasons, the Energy Commission believes that its approach to counting 36 months is correct. Both POUs and retail sellers are aware of their respective REC retirement rules, and should be able to avoid purchasing RECs that have exceeded the applicable retirement timeframe.

24. COMMENTS NO. 1.1, 4.12, 9.8, 13.1, 15.5, 21.1, 33.2, 35.11, 41.13, 42.3, 47.3: Riverside (see Comments, pgs.130 and 278), CMUA (see Comments, pgs. 30 and 327), SCPPA (see Comments, pgs.140, 293, and 373), Azusa (see Comments, pgs. 2 and 200), NCPA (see Comments, pg. 105), and LADWP (see Comments, pg. 334) request that POUs be able to classify count in full electricity products in PCC 1 or PCC 2, if the products meet all necessary criteria, and apply them toward the POU's portfolio balance requirements. They state that the current interpretation is harmful to entities whose pre-June 1, 2010, contracts would otherwise qualify as PCC 1. An interpretation of "count in full" that mandates placing pre-June 1, 2010, RECs into a count in full category creates harsh and unnecessary financial consequences for POU ratepayers. This interpretation could result in supplementing or displacing existing, cost effective, RPS eligible pre-June 1, 2010, renewable energy generation with additional, expensive, and unneeded renewables.

RESPONSE: No change to regulations. Public Utilities Code section 399.16 (c) limits the application of the portfolio balance requirements to the procurement of electricity products under a contract or ownership agreement executed on or after June 1, 2010. Electricity products that were procured under a contract or ownership agreement executed prior to June 1, 2010, cannot count towards the portfolio balance requirements due to the execution date of the procurement contract or ownership agreement, but may be counted in full towards a POU's RPS procurement requirements in accordance with Public Utilities Code section 399.16 (d) and section 3202 (a)(2) of the regulations. The interpretation of Public Utilities Code section 399.16 (d) and its application is explained in the ISOR in the discussion of section 3202 (a)(2).

25. COMMENTS NO. 4.13, 7.10, 15.14, 35.10, 42.2, 61.2, 63.1, 66.1, 67.2, 75.2: CMUA (see Comments, pg. 31), SCPPA (see Comments, pgs. 148, 292, 456, 505, and 573), and LADWP (see Comments, pgs. 64, 334, 488, and 554) state that "rules in place" should refer to a POU's rules in place at the time of contract execution. CMUA includes a caveat that this new definition would only apply if the facility is eligible under current eligibility rules, e.g. existing 30-40 MW hydroelectric resources that are part of a water supply or conveyance system. SCPPA argues that using the Energy Commission's "rules in place" at the time of contract execution would

retroactively apply previous *RPS Eligibility Guidebook* requirements to POUs that were not subject to those rules prior to SB X1-2. SCPPA additionally argues that legislative committee hearing transcripts for SB X1-2 support its position, because the Legislature referred to grandfathering "all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010" and "all existing renewable energy contracts signed by June 1, 2010."

RESPONSE: No change to regulations. The "rules in place" are referenced in Public Utilities Code section 399.16 (d)(1) regarding the rules applicable to the eligibility of count in full procurement. Public Utilities Code section 399.16 is part of the statutory requirements that specifically apply to retail sellers, not POUs. It therefore follows that the "rules in place" should be interpreted to mean the rules adopted by the CPUC and the Energy Commission applicable to retail sellers. These rules include the Energy Commission's RPS eligibility requirements, as specified in the *RPS Eligibility Guidebook*, in place at the time the contract or ownership agreement was executed, because these were the rules that applied to retail sellers prior to the enactment of SBX1-2. This interpretation is consistent with the CPUC's interpretation of Public Utilities Code section 399.16 (d) for retail sellers. Public Utilities Code section 399.16 (d) does not apply directly to POUs. Public Utilities Code section 399.16 is cross referenced in Public Utilities Code section 399.30 (c)(3), which directs POUs to adopt procurement requirements "consistent with Section 399.16." If Public Utilities Code section 399.16 (d) is interpreted to apply to POUs at all, it must apply the same way it applies to retail sellers and subject to the same "rules in place."Applying the Energy Commission's RPS eligibility requirements to procurement retired to meet a POU's compliance obligations for January 1, 2011, or later does not retroactively apply RPS rules to POUs, as SCPPA contends. Rather, the regulations appropriately apply rules to POUs consistent with the rules established for retail sellers, as specified by statute. In addition, the Energy Commission does not believe that the legislative committee hearing transcripts for SB X1-2 supports the parties' position. While the legislative history of SBX1-2 specifically refers to "grandfathered" contracts, as SCPPA indicates in its comments, the language of the statute itself does not evince a desire by the Legislature to "grandfather" all contracts entered into by POUs prior to June 1, 2010. Had the Legislature intended to grandfather all such contracts it could have explicitly stated so in SBX1-2. Instead, SBX1-2 establishes grandfathering provisions for only certain contracts and ownership agreements, subject to requirements of Public Utilities Code section 399.16 (d).

The Legislature clearly did not intend to grandfather "all contracts," as that would include contracts and ownership agreements for all non-renewable resources as well. The reference to "existing renewable energy contracts" in the legislative history cited by SCPPA should properly be interpreted to mean contracts and ownership agreements with "eligible renewable energy resources" as defined in statute and the *RPS Eligibility Guidebook*. Otherwise, POUs would be allowed to claim (toward their RPS procurement requirements under SBX1-2) procurement that was not considered renewable at the time of the contract or ownership agreements. An example of this is procurement from large hydroelectric generation facilities greater than 30 megawatts (MW) in capacity. Prior to SBX1-2, the RPS statute for retail sellers allowed only procurement from small hydroelectric generation facilities 30 MW or less in capacity to qualify

for the RPS.[11] POUs were not subject to this size limitation for hydroelectric generation facilities under former Public Utilities Code section 387, which merely required that POUs implement and enforce a RPS program "that recognizes the intent of the Legislature to encourage renewable resources."[12] Public Utilities Code section 387 gave POUs discretion to establish their own RPS rules, which allowed POUs to use procurement from large hydroelectric facilities to meet their own self-established RPS programs. And POUs such as LADWP (a member of SCPPA) utilized procurement from its existing hydroelectric generation units[13] less than 40 MWs in capacity to meet its RPS requirements under Public Utilities Code section 387.

The law has now been revised under SBX1-2 to allow hydroelectric generation units of 40 MW or less in capacity to qualify for the RPS under certain circumstances. This exception to the 30 MW limitation[14] for small hydroelectric generation facilities is set forth in Public Utilities Code section 399.12 (e)(1)(A). Had the Legislature intended to "grandfather" all contracts and ownership agreements entered into by POUs prior June 1, 2010, as SCPPA and LADWP insist, there would have been no need to create an express exemption for hydroelectric units 40 MW or smaller in size. These 40 MW units would have qualified for the RPS under SBX1-2 by virtue of their existing contracts or ownership agreements under a POU's pre-June 1, 2010 RPS program. The fact that the Legislature created an express exemption for these 40 MW hydroelectric units indicates the Legislature did not intend to "grandfather" POU contracts and ownership agreements for such units.

26. COMMENTS NO. 16.5, 28.5, 35.6, 36.8, 47.5: SMUD (see Comments, pgs. 163 and 300), SCPPA (see Comments, pgs. 287 and 373), and LADWP (see Comments, pg. 242) request that section 3202 (d) be revised to allow POUs to retire a REC for a compliance period that precedes the date of generation. They state that this change would allow for compliance even if a POU inadvertently came up short in a compliance period due to unforeseen circumstances.

RESPONSE: No change to regulations. Public Utilities Code section 399.21 (a)(6) requires that RECs be retired "within 36 months from the initial month of generation of the associated electricity." The statute does not allow for retirement of a REC before the date the associated electricity is generated. Similarly, the requirements for excess procurement set forth in Public

[11] This requirements was set forth in then-existing Public Utilities Code section 399.12 (c) and Public Resources Code section 25741 (b)(1). Although not pertinent to this discussion, the law also allowed generation associated with certain efficiency improvements to hydroelectric facilities greater than 30 MW to qualify for the RPS under Public Utilities Code section 399.12.5.

[12] Former Public Utilities Code section 387 (a). Section 387 was repealed by SBX1-2.

[13] A hydroelectric generation facility is often comprised of multiple hydroelectric generation units. For example, a 60 MW hydroelectric generation facility may be comprised to three separate 20 MW generating units.

[14] The 30 MW limitation for small hydroelectric facilities remain in law under Public Utilities Code section 399.12 (e)(1)(A) and Public Resources Code section 25741 (a)(1).

Utilities Code section 399.13 (a)(4)(B) outline criteria to use excess procurement in future compliance periods, but do not establish an option to use excess procurement in past compliance periods. The procurement targets established in Public Utilities Code section 399.30 (c) require procurement of electricity products from eligible renewable energy resources during a specified compliance period. The inclusion of RECs associated with electricity that has not yet been generated, and is generated only after the compliance period ends, is not consistent with the procurement requirements of section 399.30 (c) or the intent of the statute.

27. COMMENTS NO. 5.3, 28.5, 35.6, 41.9, 47.4: Iberdrola (see Comments, pg. 44), SCPPA (see Comments, pgs. 287 and 373), CMUA (see Comments, pg. 327), and LADWP (see Comments, pg. 242) request that section 3202 (e) be revised to allow POUs to retire a REC to meet an RPS procurement requirement for a compliance period that precedes the date of procurement (for example, the POU could procure a 2013 vintage PCC 3 REC in early 2014 and retire it for the 2011-2013 compliance period).

RESPONSE: No change to regulations. Public Utilities Code section 399.30 (c)(2) specifies that procurement for the second and third compliance periods must be "sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020." This implies that procurement must occur prior to the end of a compliance period to count toward the RPS procurement requirements of that compliance period. And although it is not explicitly stated for the first compliance period, it stands to reason that the Legislature intended this procurement restriction to apply to all compliance periods and not only to the second and third.

Section 3203

28. COMMENTS NO. 2.5, 4.9, 8.7, 24.6, 41.10: MSR (see Comments, pg. 85), CMUA (see Comments, pgs. 25, 221, and 327), and CCSF (see Comments, pg. 9) state that RECs that were initially procured bundled and met all other criteria for PCC 1 or PCC 2 should continue to be classified as PCC 1 or PCC 2 if they are subsequently unbundled and sold to another entity. CMUA states that the Energy Commission should not rely on a desire to be consistent with the CPUC's decision on this issue, but should address how the Energy Commission's conclusion is supported by statute.

RESPONSE: No change to the regulations. Bundled products are required for PCC 1 and PCC 2 because PCC 3 in statute is defined to include unbundled RECs. PCC 1 and PCC 2 must exclude unbundled RECs to remain distinct categories and avoid a situation in which a REC could be classified in more than one PCC. This is discussed and explained in the ISOR. In order for a REC to be considered "bundled," it must be procured bundled by the POU retiring the REC for RPS

compliance. A POU that has procured only RECs, unbundled from the associated electricity, cannot be credited with having procured a PCC 1 or PCC 2 product, because PCC 1 and PCC 2 both require bundled procurement. At best, a POU that has procured only RECs may be credited with having procured a PCC 3 product.

29. COMMENTS NO. 12.2, 51.1: Pathfinder/Zephyr (see Comments, pgs. 128 and 422) supports section 3203 as written, stating that it appropriately establishes PCC definitions that are very similar to those established by the CPUC for retail sellers.

RESPONSE: No change to regulations. No response needed.

30. COMMENTS NO. 5.2, 27.2: Iberdrola (see Comments, pgs. 43 and 227) argues that the regulations should include language in the definitions for PCC 1 and PCC 2 in section 3203 making explicit that the electricity products could be originally procured on behalf of the POU by an entity with an affiliate that owns the associated eligible renewable energy resource.

RESPONSE: No change to the regulations. The arrangement Iberdrola proposes is not prohibited by the language in the regulations, as long as the POU retiring the REC for compliance meets the criteria for resale outlined for PCC 1 in section 3203 (a)(2) and for PCC 2 in section 3203 (b)(3). It is not necessary to state types of allowable transactions in the regulations. It would be more appropriate to provide examples in an informal document, such as FAQs, which could be posted to the Energy Commission's website.

31. COMMENTS NO. 4.3, 8.6, 15.10, 35.12, and 47.9: SCPPA (see Comments, pgs. 144, 294, and 377), CMUA (see Comments, pg. 20), and MSR (see Comments, pg. 84) request that the Energy Commission adopt a PCC checklist to provide POUs and developers more certainty on PCC classification.

RESPONSE: No change to the regulations. The requirements for each PCC are clearly stated within the regulations. Checklists and potential examples of allowable transactions under each PCC would be more appropriate as part of an informal document, such as FAQs, posted to the Energy Commission's website.

32. COMMENT NO. 41.8: CMUA (see Comments, pg. 326) states that the hourly scheduling and generation matching requirements for PCC 1 electricity products "scheduled into a California balancing authority" are likely to be costly and burdensome. CMUA requests that the Energy Commission take special note of complications that arise from this requirement during implementation and consider appropriate action to address any problems.

RESPONSE: No change to the regulations. The Energy Commission will continue to work closely with POUs during implementation and will endeavor to make all tracking and reporting requirements as simple as possible while still complying with statutory and regulatory requirements.

33. COMMENT NO. 54.1: SMUD (see Comments, pg. 431) requests that the regulations clarify how electricity products from distributed generation facilities within SMUD's service territory, for which SMUD owns the RECs, would be classified under the PCCs.

RESPONSE: No change to the regulations. The regulations do not classify different technologies or applications differently under section 3203. If an electricity product meets the criteria of PCC 1, then that electricity product will be classified as PCC 1. It is possible that one eligible renewable energy resource could produce more than one type of electricity product.

34. COMMENTS NO. 4.10, 8.7, 16.1, 36.6, 41.10, 54.2, 62.2: SMUD (see Comments, pgs. 152, 299, and 431), CMUA (see Comments pgs. 25 and 327), CCSF (see Comments pg. 459), and MSR (see Comments pg. 85) state that neither PCC 1 nor PCC 2 electricity products should be required to be procured bundled. CMUA argues that the Energy Commission should not rely solely on the CPUC's *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program* regarding how to classify unbundled RECs. CMUA additionally states that statutory construction, and the legislative history of both SB X1-2 and its predecessor, SB 722, clearly demonstrate that PCC 3 was intended for only those unbundled RECs associated with eligible renewable energy resources with a first point of interconnection outside the metered boundaries of a California balancing authority. CMUA also argues that an earlier CPUC Decision, D 10-03-021, defined "unbundled REC" to include a REC that was procured with the underlying electricity, but that electricity could not serve California customer load.

RESPONSE: No change to the regulations. Bundled products are required for PCC 1 and PCC 2, because PCC 3 in statute is defined to include unbundled RECs. PCC 1 and PCC 2 must exclude unbundled RECs to remain distinct categories and avoid a situation in which a REC could be classified in more than one PCC. In order for a REC to be considered "bundled," it must be procured bundled by the POU retiring the REC. Regarding statutory construction, Public Utilities Code section 399.16(b)(3) defines PCC 3 as "eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraphs (1) and (2) [i.e., PCCs 1 and 2]." The phrase "including unbundled renewable energy credits" would be incongruous if it were intended by the Legislature as an example of a type of electricity product that could be counted as PCC 3. Neither PCC 1 nor PCC 2 include examples, and using the phrase "including unbundled renewable energy credits" to mean anything other than "including **all** unbundled renewable energy credits" would render the inclusion of the phrase pointless.

In addition, while the legislative history of the SBX1-2 specifically refers to unbundled RECs associated with eligible renewable energy resources located outside a California balancing authority, as CMUA indicates in its comments, the language of the statute itself does not evince a desire by the Legislature to limit the application of PCC 3 to just unbundled RECs from resources located outside a California balancing authority. Had the Legislature wanted to treat unbundled RECs from resources located within a California balancing authority differently from resources located outside a California balancing authority it could have explicitly stated so in SBX1-2.

Regarding CMUA's point about the definition of "unbundled REC" established in CPUC Decision D 10-03-021: the CPUC's decisions do not apply to POUs, and even for retail sellers, D 10-03-021 is superseded by the CPUC's subsequent *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, D 11-12-052. The CPUC's definition of "unbundled REC" in decision 10-03-021 cited by CMUA refers to serving "California customer load," which no longer has any meaning under the portfolio content categories established by SB X1-2. The portfolio content categories are defined relative to California balancing authorities, not whether the electricity can serve California customer load.

35. COMMENTS NO. 4.11, 42.15, 55.6, 63.2, 64.1: CMUA (see Comments, pgs. 30), SMUD (see Comments, pg. 492), and LADWP (see Comments, pgs. 349, 437, and 489) argue that electricity products associated with generation consumed on-site by net energy metering customers should qualify as PCC 1.

RESPONSE: No change to the regulations. Electricity consumed on-site by net energy metering customers and not procured by the POU cannot be procured bundled with the associated REC, making the REC unbundled and thus classifiable as PCC 3. Electricity consumed on-site by net energy metering customers does reduce the retail sales of the POU and consequently lowers the POU's RPS procurement target, providing an additional benefit. Excess electricity products procured by a POU under a net energy metering agreement could qualify as PCC 1 if they are procured as a bundled product with the underlying electricity.

36. COMMENT NO. 3.1 and 23.1: CE Generation (see Comments, pgs. 14 and 209) asks for clarification within the regulations that the scheduling requirements in subsection 3203 (a)(1)(C) are not necessary for those eligible renewable energy resources with a first point of interconnection within a California balancing authority. CE Generation is concerned that the "netting limitation" in subsection 3203 (a)(1)(C) that allows only the lesser of hourly meter and hourly scheduled generation to be classified as PCC 1 will be applied to generation from resources with a first point of interconnection within a California balancing authority.

RESPONSE: Change to the regulations. The Energy Commission revised the language of subsection 3203 (a)(1)(C) to clarify that the scheduling requirements within that subsection are

necessary only for eligible renewable energy resources with a first point of interconnection outside the metered boundaries of a California balancing authority. Generation from eligible renewable energy resources with a first point of interconnection within a California balancing authority will not be subject to the "netting limitation."

37. COMMENTS NO. 4.21, 15.6, 36.2, 55.5: CMUA (see Comments, pgs. 39), LADWP (see Comments, pg. 436), SCPPA (see Comments, pg. 141), and SMUD (see Comments, pg. 297) argue that PCC 1 electricity products scheduled into a California balancing authority per subsection 3203 (a)(1)(C) should not be defined as the lesser of hourly scheduled and hourly metered data. The parties claim that a comparison of hourly scheduled and hourly metered data is not required by statute and is overly burdensome.

RESPONSE: No change to the regulations. Public Utilities Code section 399.16 (b)(1)(A) states that electricity produced by the eligible renewable energy resource must be "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category." The statute specifies that the import schedule must be hourly or subhourly, and it additionally specifies that "only the fraction of the schedule actually generated by the eligible renewable energy resource shall count." This means that, when comparing scheduled and generated data, only the lesser of the two amounts shall count as PCC 1. To meet this statutory requirement, this comparison can only be made using hourly scheduled and hourly metered data.

38. COMMENTS NO. 7.11, 28.4, and 42.4: LADWP (see Comments, pgs. 65, 241, and 335) argues that excess generation above the schedule, when the amount within the schedule would qualify as PCC 1, should always be classified as PCC 1, since the electricity products associated with excess generation above the schedule would still meet the interconnection and bundling requirements of PCC 1.

RESPONSE: No change to the regulations. The excess generation above the schedule does not meet the statutory requirement of being scheduled into a California balancing authority from an eligible renewable energy resource with a first point of interconnection outside a California balancing authority, so it could not be classified as PCC 1. In addition, LADWP's assertion that the electricity products associated with the excess generation would meet the interconnection requirements of PCC 1 suggests that LADWP believes that the scheduling requirements in subsection 3203 (a)(1)(C) apply to eligible renewable energy resources with a first point of interconnection within a California balancing authority. If that is the case, the new language in subsection 3203 (a)(1)(C) clarifying that the subsection applies only to eligible renewable energy

resources located outside the metered boundaries of a California balancing authority should address LADWP's concerns.

39. COMMENTS NO. 2.6, 22.3, 40.2: CCSF (see Comments, pgs. 9, 203, and 321) requests that a POU be allowed to "rebundle" a REC with the underlying electricity that had already been procured by the POU and consumed by the POU's customers, and, if all other criteria were met, classify that REC as PCC 1. The CPUC allows this arrangement for certain contracts between retail sellers and the Department of Water Resources.

RESPONSE: No change to the regulations. CPUC's Decision 11-12-052 allowed a very narrow exemption for three contracts executed by Department of Water Resources during the energy crisis, and the CPUC noted that there were no other contracts like those exempted, and that the contracts had little or no time left to run, so would have little impact on the administration of Public Utilities Code section 399.16. It would be inappropriate to apply this very narrow and specific exemption from a CPUC Decision to all POU procurement. PCC 1 electricity products must be bundled, which is defined in the regulations as an electricity product "that, when procured by the POU claiming the electricity product to satisfy its RPS procurement requirements, includes both the electricity and the associated renewable energy credits from an eligible renewable energy resource." The electricity and the REC must be procured together and cannot be procured separately and then subsequently rebundled.

40. COMMENT NO. 12.1: Pathfinder/Zephyr (see Comments, pg. 128) requests clarification regarding whether renewable generation that would otherwise qualify as a PCC 1 electricity product may be augmented by non-renewable generation to meet the schedule and still qualify as PCC 1 for the renewable portion only.

RESPONSE: No change to the regulations. The regulations state in subsection 3203 (a)(1)(C), "If there is a difference between the amount of electricity generated within an hour and the amount of electricity scheduled into a California balancing authority within that same hour, only the lesser of the two amounts shall be classified as PCC 1." Therefore, if the amount of renewable electricity generated in one hour is less than the amount of electricity scheduled for that hour and the renewable electricity generation is augmented by non-renewable electricity to meet the hourly schedule, the renewable portion would still qualify as PCC 1.

41. COMMENTS NO. 4.19, 7.13, 15.7, 16.7, 28.2, 35.8, 42.6, 47.6, 63.3: CMUA (see Comments, pg. 38), SMUD (see Comments, pg. 164), SCPPA (see Comments, pgs. 142, 290, and 374), and LADWP (see Comments, pgs. 67, 238, 337, and 490) argue that scheduling the incremental electricity into a California balancing authority within the same calendar year that the electricity from the eligible renewable energy resource is generated should not be a requirement for PCC 2. SCPPA and LADWP suggest instead requiring incremental electricity to be scheduled into a

California balancing authority within 12 months of the date the electricity from the eligible renewable energy resource is generated.

RESPONSE: No change to the regulations. Requiring scheduling within the same calendar year is consistent with the requirements of firmed and shaped electricity products prior to the adoption of SB X1-2, and is consistent with the definition of PCC 2 established by the CPUC for retail sellers in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, D 11-12-052. Requiring the incremental electricity to be scheduled into a California balancing authority within 12 months of the date the electricity from the eligible renewable energy resource is generated, as SCPPA and LADWP suggest, would be more difficult to administer; the 12 months could extend beyond the end of a compliance period and even beyond the reporting deadline for the compliance period report, and it would be more difficult for Energy Commission staff to track and verify than the calendar year requirement. In addition, the calendar year requirement will likely be less burdensome than presented by the commenters, because the incremental electricity scheduling can occur prior to the date the electricity from the eligible renewable energy resource is generated, as long as both occur within the same calendar year.

42. COMMENTS NO. 4.20, 7.12, 15.8, 16.6, 28.3, 35.5, 42.5, 47.7, 52.1, 55.4: CMUA (see Comments, pg. 38), SMUD (see Comments, pg. 163), SCPPA (see Comments, pgs. 143, 286, and 375), UCS (see Comments, pg. 423), and LADWP (see Comments, pgs. 66, 239, 336, and 435) argue that the resource providing incremental electricity should not be required to be located outside a California balancing authority, because the law only requires that the incremental electricity be scheduled "into" a California balancing authority; this scheduling can occur via transmission scheduling from a resource inside a California balancing authority or from one California balancing authority to another.

RESPONSE: No change to the regulations. Requiring the resource providing incremental electricity to have its first point of interconnection outside a California balancing authority is consistent with the requirements of firmed and shaped products prior to the adoption of SB X1-2, and it is consistent with the definition of PCC 2 established by the CPUC for retail sellers in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, D 11-12-052. Resources providing incremental electricity with a first point of interconnection outside a California balancing authority are also more likely to be truly "incremental" and procured for the purposes of firming and shaping the renewable electricity product. Electricity from a resource with a first point of interconnection within a California balancing authority, on the other hand, is more likely to be procured as business as usual for the purposes of meeting increased electricity demand rather than to firm and shape the renewable procurement.

43. COMMENT NO. 15.9: SCPPA (see Comments, pg. 144) suggests replacing the term "substitute resource" in subsection 3203 (b) with "substitute electricity."

RESPONSE: Change to the regulations. The Energy Commission replaced the term "substitute resource" with "resource providing the incremental electricity" and the term "substitute electricity" with "incremental electricity." The replacement terms more accurately reflected statutory language in Public Utilities Code section 399.16 and the Energy Commission's intent.

44. COMMENT NO. 16.8: SMUD (see Comments, pg. 165) argues that a POU should be able to sell the electricity from the eligible renewable energy resource back to that resource and still count the electricity products as PCC 2, because the distinction between PCC 2 and PCC 3 centers not on what happens to the underlying electricity after purchase, but on the timing and procurement structure of the incremental electricity.

RESPONSE: No change to the regulations. Resale of the electricity back to the eligible renewable energy resource would essentially make the REC an unbundled product, thus requiring its classification in PCC 3.

Section 3204

45. COMMENTS NO. 4.6, 8.5, 9.9, 19.2, 24.2, 28.1, 29.1, 30.1, 30.4, 35.7, 41.1, 41.2, 42.7, 44.1, 45.1, 47.1, 55.2, 61.1, 67.1, 69.1, 69.3, 72.4, 75.1: CMUA (see Comments, pgs. 22, 212, 324, and 558), Turlock (see Comments, pg. 187), NCPA (see Comments, pgs. 106, 259, 263, and 360), SCPPA (see Comments, pgs. 288, 369, 456 and 573), LADWP (see Comments, pgs. 234, 338, 435 and 552), and MSR (see Comments, pgs. 84, 251, and 355) support the target for the second compliance period and advocate for a target equal to the sum of 25 percent of 2017 retail sales, 25 percent of 2018 retail sales, 25 percent of 2019 retail sales, and 33 percent of 2020 retail sales. The parties argue that the statute does not mandate a specific numerical calculation or require specific procurement quantities during the intervening years of the second and third compliance periods, and it is not necessary for the POU's RPS procurement targets to be equal to those established by the CPUC for retail sellers. CMUA specifically objects to the higher third compliance period target on the following grounds: (1) SB X1-2 does not dictate a precise procurement quantity percentage during the second and third compliance periods; (2) the phrase "reasonable progress" necessarily provides a range of potential options; (3) SB X1-2 clearly provides the relevant regulatory authority with the discretion to choose the appropriate path and actions to demonstrate reasonable progress; (4) the Energy Commission's role for the POUs is to specify the minimum statutory requirement; and (5) the Energy Commission's previous interpretation reasonably defined the minimum statutory requirement by setting a "floor" for the procurement quantity requirements combined with a qualitative showing of reasonable progress.

MSR further argues that: 1) statute imposes targets for the end of the second and third compliance periods, and if intervening year targets were intended, this would have been stated;

2) the RPS procurement target for the first compliance period includes a clear mandate for all three years, so if similar treatment was intended for the second and third compliance periods, it would have been stated; 3) multi-year compliance periods allow for flexibility in procurement as long as the POU meets the final target at the end of the compliance period, and assigning specific targets to intervening years negates this flexibility; and 4) procurement is inherently lumpy, and entities should be allowed to develop long-term strategies to address variability, as doing so is important to the success of the RPS program, is recognized in statute, and was contemplated by the Energy Commission in the reasonable progress reporting in section 3207.

RESPONSE: No change to the regulations. The Energy Commission agrees, as stated in the Initial Statement of Reasons, that the POUs are not required to meet the same RPS procurement targets as retail sellers. Rather than requiring that POU governing boards adopt RPS procurement targets consistent with those established for retail sellers, as the statute requires for other RPS rules, the statute states the targets for POUs separately and uses slightly different language than is used to address the targets for retail sellers. Regarding CMUA's specific objections: (1) It is true that SB X1-2 did not provide specific quantities for the second and third compliance periods. However, Public Utilities Code section 399.30 (c)(2) states, "The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020." By specifying that the targets must reflect reasonable progress "in each of the intervening years," the statute implies that the RPS procurement target calculation should include steadily increasing percentages of retail sales in each year of the compliance period. (2) While "reasonable progress" could potentially refer to any number of values for years 2017-2019, the steady, linear increase specified in the regulations is the most common-sense approach and the most likely to reflect the intent of the Legislature in requiring that the quantities reflect reasonable progress "in each of the intervening years." The Energy Commission's interpretation is consistent with the CPUC's interpretation of similar statutory language for retail sellers in its *Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program*, D 11-12-020. (3) Public Utilities Code section 399.30 (b) states that the "governing board shall implement procurement targets" and Public Utilities Code section 399.30 (c) states that the "governing board of a local publicly owned electric utility shall ensure" that the quantities procured by the POU meet the targets provided in Public Utilities Code section 399.30 (c)(1) and (2). The statute does not expressly state that the POU governing boards determine what targets "reflect reasonable progress." And while the requirements for "reasonable progress" for POUs and retail sellers spring from different sections in the statute – from Public Utilities Code section 399.30 (c)(2) for POUs and from Public Utilities Code section 399.15 (b)(2)(B) for retail sellers – the pertinent language of sections 399.30 (c)(2) and 399.15 (b)(2)(B) is the same. Both sections require that the quantities procured in the second and third compliance periods "reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020." (4) The Energy

Commission's role, as provided in Public Utilities Code section 399.30 (l) and (m), includes issuing a "notice of violation and correction against a local publicly owned electric utility for failure to comply with this article." To do this, the Energy Commission must determine whether the POU complied with RPS statute, which includes determining the statutory requirements that a POU must meet, including RPS procurement targets. The Energy Commission has determined these statutory requirements in the regulations. (5) "Reasonable progress" in the statute is clearly tied to a quantitative showing: Public Utilities Code section 399.30 (c)(2) requires "quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years…" The statute states that the quantities reflect reasonable progress and makes no mention of a qualitative showing.

Regarding MSR specific objections: 1) the regulations do not impose intervening year targets, but instead provide a target ensuring that the quantity of procurement reflects reasonable progress to reach 33 percent by the end of 2020, as specified by statute; 2) rather than providing unambiguous language for the second and third compliance period RPS procurement targets, the statute provides language that must be interpreted in these regulations; the Energy Commission believes that its interpretation of this statutory language is correct for the reasons outlined above; 3) MSR mischaracterizes the language of the regulations; the RPS procurement target for 2017-2020 does not include annual targets; the 2017-2020 RPS procurement target merely provides a four-year procurement total that must be met by the end of 2020, as MSR argues should be the case; and 4) the 2017-2020 RPS procurement target does not preclude POUs from developing long-term strategies to address variability; the target reflects the lumpy nature of procurement, as it is a four-year procurement total; the POUs are not required to demonstrate specific levels of procurement for any particular year within the 2017-2020 compliance period.

While some commenters had argued that it is appropriate to subject POUs to the same "reasonable progress" requirements in the second and third compliance periods, consistent with the requirements for retail sellers, the Energy Commission did not modify the "reasonable progress" requirements for the second compliance period. As explained in the ISOR, POUs were not subject to the same RPS requirements as retail sellers prior to SBX1-2 and have not been subject to the same steadily increasing annual RPS procurement targets applied to retail sellers from 2004-2010. Consequently, a POU's reasonable progress during the early years of the RPS under SBX1-2 would not necessarily follow a linear progression. Moreover, the Energy Commission recognizes the need for many POUs to put their limited resources into contracting for and building new generating facilities that may not come on-line for several years, leading to procurement that may significantly vary more for POUs than for retail sellers.

46. COMMENTS NO. 10.1, 14.2, 18.1, 20.2, 32.1, 34.1, 37.1, 39.2, 43.2, 43.3, 46.1, 52.2, 53.1, 59.1, 71.1, 73.2, 73.3, 76.1, 76.3: SCE (see Comments, pgs. 133 and 279), Joint Comments of UCS and LSA (see Comments, pg. 193 and 567), UCS (see Comments, pgs. 317 and 423), PG&E (see

Comments, pgs. 117, 274, 365, 429 and 562), Joint Comments of TURN, CUE, CalWEA, NRDC, and LSA (see Comments, pg. 304), TURN (see Comments, pgs. 175), SEIA (see Comments, pg. 574 and 575), and LSA (see Comments, pgs. 352 and 454) argue that POUs should have the same RPS procurement targets for the second and third compliance periods as those established by the CPUC for retail sellers. The parties state that setting a lower target for the second compliance period places a heavier burden on one set of electricity customers than another and won't ensure that POUs make reasonable progress during that compliance period. UCS notes that the language in Public Utilities Code section 399.30 (c)(2), "The ***quantities*** of eligible renewable energy resources to be procured for all other compliance periods ***reflect reasonable progress in each of the intervening years*** sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020" [emphasis added], indicates that the targets for the second and third compliance periods should reflect steadily increasing percentages each year.

RESPONSE: No change to the regulations. The Energy Commission stated in the Initial Statement of Reasons "POUs are subject to the procurement requirements of Public Utilities Code section 399.30 (c), which does not include provisions similar to Public Utilities Code section 399.15 (b)(2)(C) and does not cross reference or require consistency with Public Utilities Code section 399.15 (b)(2)(C)." Public Utilities Code section 399.30 (n) also clearly states that "The [CPUC] has no authority or jurisdiction to enforce any of the requirements of this article on a local publicly owned electric utility." The decisions made by the CPUC have no bearing on the POUs, and the statute does not require POUs to adopt RPS procurement targets consistent with those applied to retail sellers. While the Energy Commission does agree with UCS's interpretation of the statute and modified the regulations to increase the RPS procurement target for the third compliance period accordingly, it would be extremely difficult for POUs to procure additional electricity products to comply with a higher target in the second compliance period, which begins a little more than six months after the adoption of the regulations. A higher target would be especially difficult because POUs often own their eligible renewable energy resources and have a longer delay before those resources can become commercially operational.

47. COMMENT NO. 49.1 and 74.1: UCS (see Comments, pgs. 384 and 569) supports the RPS procurement targets as drafted in the second 15-day language adopted by the Energy Commission.

RESPONSE: No change to the regulations. No response needed.

48. COMMENT NO. 7.14: LADWP (see Comments, pg. 69) argues that there should be no penalty for a POU that falls below the "soft targets" in an intervening year of a compliance period as long as it meets the "soft target" for the final year of the compliance period.

RESPONSE: No change to the regulations. LADWP mischaracterizes the RPS procurement targets in the regulations. There are no annual compliance obligations until 2021. For the compliance periods 2011-2013, 2014-2016, and 2017-2020, a POU must meet the total RPS procurement target as defined in section 3204 (a). For example, if a POU procures only 19 percent of its 2014 retail sales from eligible renewable energy resources but still meets its 2014-2016 RPS procurement target total, then the POU will be found in compliance with its RPS procurement target obligation.

49. COMMENT NO. 48.2: TURN (see Comments, pg. 381) states each POU should be held to a separate "reasonable progress" requirement for the second compliance period, even if the POU met its RPS procurement target. TURN believes that this requirement is already contemplated by the language in the regulations and would only require clarification from the Energy Commission in a separate document.

RESPONSE: No change to the regulations. The statute does not include a requirement that a POU demonstrate reasonable progress separate from procuring electricity products in quantities sufficient to meet the POU's RPS procurement targets. The term "reasonable progress" is only used once in Public Utilities Code section 399.30: "The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020." [Pub. Util. Code. sec. 399.30, subd. (c)(2).] Nowhere does the statute contemplate imposing a separate reasonable progress requirement on the POUs.

50. COMMENTS NO. 4.18 and 6.1: CMUA (see Comments, pg. 37) and Kirkwood (see Comments, pg. 48) argue that POUs that meet the criteria in Public Utilities Code section 399.18 (a)(1) should be exempt from the portfolio balance requirements as provided in Public Utilities Code section 399.18 (b).

RESPONSE: Change to the regulations. The Energy Commission agrees and added section 3204 (a)(9) in response to comments.

51. COMMENT NO. 2.1, 22.4: CCSF (see Comments, pgs. 5 and 204) supports the regulations' exemption of POUs that meet the criteria in Public Utilities Code section 399.30 (j) from the portfolio balance requirements in section 3204 (c).

RESPONSE: No change to the regulations. No response needed.

52. COMMENT NO. 2.2: CCSF (see Comments, pg. 6) requests that section 3204 (a)(7) be clarified to reflect that the affected POU will be found in compliance if it meets all electricity demand with its qualifying hydroelectric generation or if it procures electricity products to meet the unmet electricity demand as specified in 3204 (a)(7)(D).

RESPONSE: Change to the regulations. Subsection 3204 (a)(7) of the regulations was modified to include the suggested change.

53. COMMENT NO. 2.3: CCSF (see Comments, pg. 7) states that the definition of qualifying hydroelectric generation in subsection 3204 (a)(7)(A)(3) should be limited to that which does not meet the definition of renewable electrical generation facility, and should eliminate the requirement to not be RPS-certified. CCSF specifies that there are some hydroelectric facilities that do not qualify under Public Resources Code section 25741 but are RPS-certified under a different set of statute (for example, for incremental electricity resulting from efficiency improvements).

RESPONSE: Change to the regulations. Subsection 3204 (a)(7)(A)(3) of the regulations was modified to address CCSF's comments. The regulations now specify that a qualifying hydroelectric facility may be a facility that is not RPS-certified "based on the definition of a renewable electrical generation facility." This change accommodates the concern raised by CCSF and allows qualifying hydroelectric generation to be from a facility that is RPS certified based on criteria different than required for a renewable electrical generation facility. For example, qualifying hydroelectric generation may be from a facility that is RPS certified as an efficiency improvement to a large hydroelectric facility pursuant to Public Utilities Code section 399.12.5. However, the change to the regulations does not allow facilities certified as RPS-eligible based on the definition of a renewable electrical generation facility to be counted as qualifying hydroelectric facilities. Removing the requirement that the facility not be RPS-certified may have caused confusion on this latter point.

54. COMMENTS NO. 2.4, 22.1, 62.1: CCSF (see Comments, pgs. 8, 202, and 458) states that eligibility for Public Utilities Code section 399.30 (j) should be determined annually and not at the beginning of each compliance period, since the statute established a single year compliance obligation for an eligible POU.

RESPONSE: No change to the regulations. CCSF is conflating a POU's obligation if it meets the criteria of Public Utilities Code section 399.30 (j) and that same POU's obligation if it does not meet the criteria of Public Utilities Code section 399.30 (j). A POU that meets the criteria of Public Utilities Code section 399.30 (j) has a single year compliance obligation only as long as it meets those criteria. If a POU no longer meets the criteria of Public Utilities Code section 399.30 (j), then that POU will be subject to the same RPS procurement requirements as the majority of other POUs. These RPS procurement requirements include the portfolio balance requirements

and RPS procurement targets that cover the entirety of a compliance period. Allowing a POU to meet a single-year compliance obligation even if it does not meet the criteria in Public Utilities Code section 399.30 (j) would be applying to that POU a special exemption that has no basis in statute.

55. COMMENTS NO. 10.3, 32.3, 46.3, 71.3: PG&E (see Comments, pgs. 120, 275, 366, and 562) states that a POU that meets the criteria of Public Utilities Code section 399.30 (j) should still be subject to the portfolio balance requirements in subsection 3204 (c) and should be required to meet the entirety of its unmet electricity demand with its qualifying hydroelectric generation, even if that unmet electricity demand exceeds the soft target for that calendar year.

RESPONSE: No change to the regulations. Regarding the exemption from the portfolio balance requirement, Public Utilities Code section 399.30 (j) operates essentially as a stand-alone requirement, so it stands to reason that the portfolio balance requirement would not apply. In addition, it would be impractical for a POU that meets the criteria of Public Utilities Code section 399.30 (j) to procure adequate PCC 1 electricity products to meet the portfolio balance requirement, as PCC 1 must be procured bundled, and the POU will likely not know whether it needs to procure adequate PCC 1 electricity products until the end of the calendar year, or possibly even later. If the POU procured more than is necessary in advance, it could not then sell off the excess PCC 1, unless the POU was willing to take a loss and sell it as a PCC 3 product. Any excess that the POU kept may not be needed for years if its hydroelectric generation is sufficiently abundant. Regarding procurement up to the soft target, Public Utilities Code section 399.30 (j) is clearly intended to provide the affected POU a lower target to reach, while subjecting the POU to the same upper limit applicable to the rest of the POUs. It would be inconsistent for section 399.30 (j) to establish a special exemption for such a POU, allowing it to avoid procurement of renewable energy altogether because of the POU's qualifying hydroelectric generation, and then subjecting the POU to no upper limits on its annual procurements. This could lead to an absurd result whereby the POU was excused from procuring electricity products from any eligible renewable energy resources one year, and then potentially be required in a subsequent year to procure an amount that exceeded the upper limit required for all other POUs. The Energy Commission does not believe the Legislature intended this, and therefore found it reasonable to set the upper limit at the soft targets used to calculate the compliance period targets for the rest of the POUs.

Section 3205

56. COMMENTS NO. 4.25, 9.10, 15.11: CMUA (see Comments, pg. 41), SCPPA (see Comments, pg. 146), and NCPA (see Comments, pg. 108) request clarification that POUs that have already adopted procurement plans consistent with SBX1-2 will not be required to resubmit.

RESPONSE: Change to the regulations. The Energy Commission agrees that clarification is necessary and added, "A POU that has previously adopted a renewable resources procurement plan before the effective date of these regulations does not need to adopt a new renewable energy resources procurement plan and submit the plan to the Energy Commission if no changes are made to the plan after the effective date of the regulations" to section 3205 (a)(1).

57. COMMENTS NO. 15.11: SCPPA (see Comments, pg. 145) requests a change of the requirement to adopt a procurement plan "within 60 days of effective date" to a requirement to submit procurement plans to the Energy Commission within 30 days of adoption, without requiring adoption by a specific date.

RESPONSE: No change to the regulations. 60 days to submit a procurement plan was deemed to be sufficient time for POUs to respond to the requirements of the regulations and adopt procurement plans. Procurement plans should be submitted to the Energy Commission before the end of the compliance period for the purpose of determining compliance.

58. COMMENTS NO. 10.2, 32.2, 46.2, 53.2, 71.2: PG&E (see Comments, pgs. 120, 275, 366, 430 and 562) requests that the regulations be revised to provide that the Energy Commission will send electronic notices to the Energy Commission's RPS-related distribution lists regarding any submission that the Energy Commission receives from a POU in connection with the regulations.

RESPONSE: No change to the regulations. The Energy Commission intends to post various POU RPS information on its website in much the same manner as it posts pertinent information for other programs the Energy Commission implements. Stakeholders and members of the public are free to access such information from the Energy Commission's website.

59. COMMENTS NO. 56.1, 57.3: NCPA (see Comments, pg. 441) and CMUA (see Comments, pg. 447) say that materials that are provided to the Energy Commission are already publicly available, so there are no concerns with adding that information to a listserv or notifying parties that the information will be posted on the website.

RESPONSE: No change to the regulations. See response to comment 58 above. In addition, POU procurement plans and enforcement programs that have been adopted and submitted to the Energy Commission are posted on the Energy Commission website, and are updated whenever POUs provide new information. Interested parties are able to visit the website at any time. The regulations determine what POU action is required by the law, and is not the appropriate venue for detailing the notification process for the Energy Commission website.

60. COMMENTS NO. 9.10: NCPA (see Comments, pg. 108) states that the regulations properly recognize that adoption and implementation of POU procurement plans are within the exclusive purview of the POU. It also states that it is reasonable for the Energy Commission to have access to a copy of the most recent procurement plan.

RESPONSE: No change to the regulations. No response required.

61. COMMENT NO. 20.5: Joint comments of UCS and LSA (see Comments, pgs. 193 and 194) request that the Energy Commission require POUs to submit at least one procurement plan per compliance period, and require the plan to include rules regarding flexible compliance and information to address expected or existing challenges to meeting RPS obligations and steps taken to mitigate risks.

RESPONSE: No change to the regulations. SBX1-2 does not require POUs to adopt a new procurement plan every compliance period, and does not require that procurement plans address expected or existing challenges. POUs may update their procurement plans as often as needed, and may include the information they find necessary to detail how they will achieve their RPS procurement requirements. Pursuant to section 3205 (a)(1) of the regulations, a POU must submit its procurement plan, and any revisions or updates to the plan, to the Energy Commission within 30 days of adoption. If a POU adopts rules for flexible compliance (i.e. optional compliance measures as provided in section 3206), the POU must describe these rules in its procurement plan or enforcement programs and submit the rules or rule revisions, along with supporting information, to the Energy Commission within 30 days of adoption. This is required by section 3206 (b) of the regulations.

62. COMMENTS NO. 20.3, 52.3: Joint comments of UCS and LSA (see Comments, pg. 193) and UCS (see Comments, pg. 425) request clarification that if a POU distributes materials to its governing boards, these materials should be made available to the public "upon distribution" to the governing board consistent with the requirements of Public Utilities Code section 399.30 (f)(3).

RESPONSE: Change to the regulations. The Energy Commission agrees that clarification is needed and added "at the same time it is distributed to its governing board" to the language of section 3205 (c).

63. COMMENTS NO. 7.15, 42.8: LADWP (see Comments, pgs. 70 and 343) requests that POUs only be obligated to provide the Energy Commission with information each time the governing board is presented with a recommendation for decision making, not just consideration.

RESPONSE: No change to the regulations. Public Utilities Code section 399.30 (f)(3) requires POUs to submit information "upon distribution to its governing board … for its consideration

at a noticed public meeting….” The requirement in section 3205 (c) is consistent with the statutory language of 399.30 (f)(3).

Section 3206

64. COMMENTS NO. 4.14, 24.3, 30.6, 35.3, 36.3, 41.5: CMUA (see Comments, pgs. 31, 218 and 325), SMUD (see Comments, pg. 296), NCPA (see Comments, pg. 269), SCPPA (see Comments, pg. 284) state that electricity products associated with contracts of less than 10 years duration should not be subtracted from the excess procurement calculation. They explain that this provision relates to retail sellers specifically, as retail sellers are subject to a number of long-term contracting requirements that the POUs are not subject to. Applying this limitation to the POUs will decrease POU flexibility to procure from short-term resources at the end of a compliance period to make up for higher-than-expected retail sales. All short term RECS are created by investment in renewable resources. The procurement of long-term sustainable assets is a multi-year process, which can be further delayed due to permitting issues. Short term contracts are required to fill the gaps between the procurement and construction of long term facilities.

RESPONSE: No change to the regulations. “Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2)” was added back in as subdivision (a)(1)(A)(3). This language was included the original Express Terms, but was removed in the first 15-Day language change based on public comments suggesting it was not necessary, because the excess procurement rules for POUs merely needed to be consistent with the rules for retail sellers. The statute, however, requires more than mere consistency. Public Utilities Code section 399.30 (d)(1) permits a POU to use excess procurement from one compliance period in a subsequent compliance periods “in the same manner as allowed for retail sellers pursuant to [Public Utilities Code] Section 399.13.” The statutory language “in the same manner as” is more exacting than mere consistency (i.e. “consistent with”), and requires that the excess procurement rules for POUs be the same or very similar to the rules for retail sellers under Public Utilities Code section 399.13. Arguably, there would be more flexibility if the statute allowed POUs to adopt excessive procurement rules that were “consistent with” the rules for retail sellers, because in that case it would be possible to argue the rules could be different, and yet “consistent with” the intended purpose of the statute, given the differences between a retail seller and a POU.

65. COMMENTS NO. 25.1, 26.1, 31.1, 32.4, 34.2, 37.3, 38.1, 39.3: Noble (see Comments, pg. 271), UCS (see Comments, pg. 318), CalWEA (see Comments, pg. 223), IEP (see Comments, pg. 225), TURN (see Comments, pg. 313), PG&E (see Comments, pg. 275), SCE (see Comments, pg. 279),

Joint Comments of TURN, CUE, NRDC, and LSA (see Comments, pg. 308) object to the short-term contracting restriction being removed from the regulations in the first 15-day language. They state that the statutory language "in the same manner as" is clearly meant to be interpreted differently than "consistent with" used for other requirements. "The removal of the short term contract restriction for excess procurement is plainly illegal and must be rescinded prior to the adoption of final regulations. This change may lead to POUs executing short term contracts to run up their banks in anticipation of the third compliance period and thereby delay meaningful commitments to new renewable resource development by several additional years." UCS adds that the Energy Commission should not interpret a cross reference to other sections of statute as an invitation to create a completely different rule.

RESPONSE: Change to the regulations. "Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2)" was added back in as subdivision (a)(1)(A)(3). This language was included the original Express Terms, but was removed in the first 15-Day language change based on public comments suggesting it was not necessary, because the excess procurement rules for POUs merely needed to be consistent with the rules for retail sellers. The statute, however, requires more than mere consistency. Public Utilities Code section 399.30 (d)(1) permits a POU to use excess procurement from one compliance period in a subsequent compliance periods "in the same manner as allowed for retail sellers pursuant to [Public Utilities Code] Section 399.13." The statutory language "in the same manner as" is more exacting than mere consistency (i.e. "consistent with"), and requires that the excess procurement rules for POUs be the same or very similar to the rules for retail sellers under Public Utilities Code section 399.13. Arguably, there would be more flexibility if the statute allowed POUs to adopt excessive procurement rules that were "consistent with" the rules for retail sellers, because in that case it would be possible to argue the rules could be different, and yet "consistent with" the intended purpose of the statute, given the differences between a retail seller and a POU.

66. COMMENTS NO. 43.1, 46.4, 48.1, 49.2, 73.1, 74.2, 76.2: PG&E (see Comments, pg. 366), TURN (see Comments, pg. 381), LSA (see Comments, pgs. 352 and 567), UCS (see Comments, pgs. 384 and 570), and SEIA (see Comments, pg. 574) support reinstating the restriction on short-term contracts in the excess procurement calculation.

RESPONSE: Change to the regulations.

Public Utilities Code section 399.13 (a)(4)(B) establishes limitations on excess procurement for retail sellers, including a prohibition on counting PCC 3 procurement as excess procurement and a prohibition on counting procurement under contracts of less than 10 years of duration as excess procurement. The limitations of Public Utilities Code section 399.13 (a)(4)(B) should apply equally to POUs to ensure the rules for excess procurement for retail sellers are applied in the same manner to POUs.

See also response to comment 65.

67. COMMENTS NO. 37.2, 43.4, 73.4, 76.4: Joint comments of TURN , CUE, CalWEA, NRDC, and LSA (see Comments, pg. 307), LSA (see Comments, pgs. 353 and 567), and SEIA (see Comments, pg. 575) suggest that the reasonable progress requirement could be incorporated into the restrictions on carryover of excess procurement between the second and third compliance period, if the Energy Commission refuses to modify the second compliance period target.

RESPONSE: No change to the regulations. Establishing a different procurement target solely for the purposes of excess procurement would result in a strong disincentive to over-procure, and would result in lost procurement for those who do. In addition, it would be inappropriate to calculate excess procurement for POUs based on procurement that exceeds the RPS procurement target adopted for retail sellers. The Energy Commission can find no statutory rationale for calculating excess procurement for the second compliance period using a different RPS procurement target than that established for POUs in subdivision 3204 (a) for the second compliance period.

68. COMMENTS NO. 36.3: SMUD (see Comments, pg. 296) requests that if the excess procurement short-term contracting restriction is reinstated, procurement that meets the criteria of section 3202 (a)(3) be exempt from that restriction.

RESPONSE: No change to the regulations. The Energy Commission disagrees that procurement that meets the criteria of section 3202 (a)(3) be exempt from the excess procurement short-term contracting restriction in section 3206 (a)(1)(A). Procurement that qualifies as "count in full" in section 3202 (a)(2) and is associated with a contract less than 10 years in duration is exempt from being subtracted from the excess procurement calculation because this exemption is necessary for such procurement to truly "count in full" as provided by law. Procurement that meets the criteria of section 3202 (a)(3), however, does not qualify as "count in full" and is afforded no such exemption.

69. COMMENT NO. 41.5: CMUA (see Comments, pg. 325) request that the restriction on short-term contracts in the calculation of excess procurement be amended to avoid a severe penalty on PCC 3 procurement, as most, if not all, PCC 3 procurement is associated with contracts less than 10 years in duration.

RESPONSE: No change to the regulations. POUs should be held to the same prohibition precluding PCC 3 procurement from counting as excess procurement that is specified for retail sellers in Public Utilities Code section 399.13(a)(4)(B). While Public Utilities Code section 399.13(a)(4)(B) does not require subtracting all procurement from PCC 3 from the calculation of

excess procurement, any procurement in this category retired in excess of the maximum allowed in Public Utilities Code section 399.16 (c) will not be counted toward the RPS procurement targets in section 3204 (a), and, as noted above, may not be counted toward a future compliance period as excess procurement. Therefore, all procurement in this category retired in excess of the maximum PCC 3 procurement allowed in Public Utilities Code section 399.16 (c) must be subtracted from the excess procurement calculation. In addition, nothing in the statute permits carving out an exemption for PCC 3 electricity products that are also associated with contracts less than 10 years in duration. Public Utilities Code 399.13 (a)(4)(B) states, "In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration." In specifying the "total amount of procurement associated with contracts of less than 10 years in duration," the statute clearly did not contemplate providing an exemption to PCC 3 electricity products associated with contracts less than 10 years in duration.

70. COMMENTS NO. 57.2: CMUA (see Comments, pg. 446) requests clarification regarding the excess procurement calculation for section 3202 (a)(3) electricity products.

RESPONSE: Change to the regulations. The Energy Commission agrees that clarification was needed, and added language to section 3206 (a)(1)(A) to specify that electricity products that meet the criteria of section 3202 (a)(3) and are classified as PCC 3 may not be counted as excess procurement, but will not be subtracted from the calculation of excess procurement.

71. COMMENTS NO. 20.7, 49.3, and 52.4: UCS (see Comments, pg. 390 and 426) and Joint comments of UCS and LSA (see Comments, pgs. 195) request that 3206 (a)(2)(A) be revised to make the language consistent with the standard established in Public Utilities Code section 399.15 (b)(5). The current language would allow POUs to delay compliance as long as they can make a finding that "reasonable cause" exists for such a delay, while the language should be "conditions beyond the control of the POU." After the change was incorporated, UCS commented to support it.

RESPONSE: Change to the regulations. Public Utilities Code section 399.30 (d)(2) permits a POU to adopt rules allowing for the delay of timely compliance consistent "consistent with subdivision (b) of Section 399.15." Public Utilities Code section 399.15 (b)(5) in turn provides that a retail seller's noncompliance with the RPS may be waived if it demonstrates the specified conditions "are beyond the control of the retail seller" and will prevent compliance.

The language in the original Express Terms allowed a POU to delay timely compliance based on a finding that "reasonable cause" exists. This language was not in line with the statutory requirements, so was modified accordingly.

72. COMMENTS NO. 28.8: LADWP (see Comments, pg. 245) suggests that the Energy Commission use "reasonable cause" for delay of timely compliance, instead of the change to "conditions beyond the control of the POU." It writes that "reasonable" is a term that better aligns with the factors already identified in section 3206 (a)(2).

RESPONSE: Change to the regulations. See response to comment 71. The Energy Commission agreed with UCS that the regulations should remain consistent with statutory language, and revised section 3206 (a)(2)(A) to read "conditions beyond the control of the POU."

73. COMMENTS NO. 7.17, 28.7, 42.9, 47.10: LADWP (see Comments, pgs. 72, 244, and 343) and SCPPA (see Comments, pg. 378) request that "change of law" be added to section 3206 (a)(2) as cause for delay of timely compliance. They requested that the Energy Commission be cognizant that changes, whether they be considered miniscule or not, have a significant effect on procurement decisions made by POUs and will impact meeting compliance.

RESPONSE: No change to the regulations. Public Utilities Code section 399.30 (d) allows POUs to establish rules for the delay of timely compliance "consistent with subdivision (b) of section 399.15." Public Utilities Code section 399.15 (b) does not include "change in law" as an allowable cause for the delay of timely compliance. The Energy Commission could find no reason for holding POUs to a different standard than retail sellers regarding rules for delaying timely compliance associated with change of law.

74. COMMENTS NO. 8.3, 9.6, 30.9, 45.5, 72.2: MSR (see Comments, pg. 81) and NCPA (see Comments, pgs. 101, 270, 363, and 564) state that 3206 (a)(3) should not include a requirement for POUs to ensure that their cost limitations meet the criteria of Public Utilities Code section 399.15 (d). These parties argue that if the Legislature wanted the POUs to apply both Public Utilities Code section 399.15 (c) and (d), the Legislature would have referenced both sections in Public Utilities Code section 399.30 (d)(3).

RESPONSE: No change to the regulations. Public Utilities Code section 399.30 (d) allows POUs to establish rules for cost limitations for procurement expenditures "consistent with subdivision (c) of section 399.15." Public Utilities Code section 399.15 (c) directs the CPUC to establish limitations on procurement expenditures for retail sellers, and Public Utilities Code section 399.15 (d) refers back to 399.15 (c).

POUs should be subject to the same cost limitation requirements as retail sellers, that is, of both Public Utilities Code section 399.15 (c) and 399.15 (d), to apply Public Utilities Code section 399.15 (c) to POUs consistently. The Energy Commission believes the Legislature intended the factors of Public Utilities Code section 399.15 (c) and (d) to be read together, and that it is both reasonable and appropriate to apply the factors of section 399.15 (d) when evaluating POU cost limitations. Moreover, the Energy Commission could find no reason for holding POUs to a different standard than retail sellers regarding the rules for cost limitations.

75. COMMENTS NO. 17.2, 50.1: Small POU Group (see Comments, pgs. 170 and 419) requests that the Energy Commission include reasonable accommodations which would not subject the small POUs to unnecessary and unduly complex oversight in the adoption of their cost limitation provisions. It argues that some of the cost limitations for small POUs will differ from those adopted by other utilities in the state because they'll be fashioned to deal with some of the risks and financial responsibilities these small POUs are assuming.

RESPONSE: No change to the regulations. All POUs may adopt a cost limitation rule, but the Energy Commission will determine whether the adopted rule is consistent with Public Utilities Code section 399.30 (d) before a POU is allowed to apply the rule. The statute does not contain any language allowing for an exemption of a POU based on size or by its de minimis contribution to the RPS. However, all POUs can adopt cost limitations on the procurement expenditures used to comply with their RPS procurement requirements.

76. COMMENTS NO. 50.2: Small POU Group (see Comments, pg. 421) requests that small POUs be allowed to adopt cost limitations that would excuse the obligation to buy additional PCC 1 and PCC 2 electricity products, but in exchange the small POUs would continue to purchase sufficient PCC electricity products to meet their RPS procurement targets.

RESPONSE: No change to the regulations. All POUs may adopt a cost limitation that would excuse the obligation to buy any additional electricity products, although the Energy Commission will determine whether the adopted rule is consistent with Public Utilities Code section 399.30 (d) before a POU is allowed to apply the rule. The statute does not contain any language allowing a POU to purchase more PCC 3 electricity products than the maximum allowable portfolio balance requirement to meet the procurement target.

In addition, the following language was removed from subdivision (a)(4)(D): "5. If applicable, an explanation of why the reduction was needed as a result of cost limitations adopted by the POU as provided in section 3206 (a)(3)." This modification was made to align the requirements of subdivision (a)(4)(D) with the requirements of Public Utilities Code section 399.16 (e), which allows a reduction in the portfolio balance requirements if a retailer seller demonstrates that it cannot comply with the portfolio balance requirements "because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15." Public Utilities Code section 399.15 (b)(5) establishes requirements for the delay of timely compliance with the RPS. It does not establish requirements for cost limitations for the RPS. Therefore, the language of subdivision (a)(4)(D)(5) was deleted to make rules for portfolio balance reductions consistent with the statutory requirements.

The language in original Express Terms required POUs to explain why a reduction in the portfolio balance requirements was needed based the cost limitation rules established by a POU. Since cost limitations are not a consideration when implementing a portfolio balance

requirements, it was unnecessary and potentially ambiguous to require POUs to explain why a reduction in portfolio balance requirements was needed as a result of the POU's cost limitations.

77. COMMENTS NO. 4.15, 16.9, 36.9, 41.7, 54.3: CMUA (see Comments, pgs. 33 and 326) and SMUD (see Comments, pgs. 166, 300, and 432) request a change to section 3206 (a)(4) to allow for an increase in PCC 3 procurement, in addition to a reduction in PCC 1 procurement under Public Utilities Code section 399.16 (e). They point out that Public Utilities Code section 399.16 (e) refers to the entire subdivision (c) when allowing a reduction in a procurement content requirement, which includes both PCC 1 and PCC 3.

RESPONSE: No change to the regulations. Because Public Utilities Code section 399.16 (e) refers specifically to a reduction in procurement content requirements, reduction of the obligation may only be applied by decreasing the minimum requirement of PCC1, not by increasing the maximum requirement of PCC3. Section 3206 (a)(4) of the regulations is consistent with the statute, since the statute permits only a "reduction of a procurement content requirement," and does not expressly authorize an increase in a portfolio content category. A reduction in PCC 1 would provide options for a POU to procure additional PCC 2 products consistent with Public Utilities Code section 399.16 (c) while still observing the maximum procurement limits for PCC3 products specified in Public Utilities Code section 399.16 (c)(2). In addition, the discussion of this subdivision in the ISOR refers to the CPUC's Proposed Decision *Setting Compliance Rules for the Renewables Portfolio Standard Program*, dated April 24, 2012. The portions of this Proposed Decision dealing with the reduction of the portfolio balance requirements were not included in the final Decision adopted by the CPUC (Decision 12-06-038), and implementing this element of SB X1-2 for retail sellers has been deferred by the CPUC for consideration in a future CPUC decision. Because of this, the CPUC's position on this matter is unknown.

78. COMMENT NO. 4.16: CMUA (see Comments, pg. 36) requests that the Energy Commission retain the language from section 3206 (a)(4)(D)(5) of the original Express Terms allowing POUs to also use cost limitation, and not just delay of timely compliance conditions, as a rationale for a reduction in the portfolio balance requirements. This language was deleted in the first 15-day language.

RESPONSE: No changes to the regulations. The deletion of section 3206 (a)(4)(D)(5) from the language of the original Express Terms is maintained. Public Utilities Code section 399.16 (e) allows a retail seller to reduce its portfolio balance requirements "because of conditions beyond the control of the retail seller" as provided in section 399.15 (b)(5), which defines delay of timely compliance conditions. Staff could find no reason for holding POUs to a different standard than retail sellers regarding the reduction of portfolio balance requirements.

79. COMMENTS NO. 18.2, 20.6, 52.5: UCS (see Comments, pg. 427), Joint comments of UCS and LSA (see Comments, pg. 195), and TURN (see Comments, pg. 179) request changes to the regulations to require POUs to apply to the Energy Commission to reduce their portfolio balance requirements. The current language in the regulations allows POUs to reduce their PCC 1 requirement without advance Energy Commission approval. They argue that this is inconsistent with Public Utilities Code section 399.16 (e), which requires retail sellers seeking a reduction in their portfolio balance requirements to apply to the CPUC for approval. TURN states that the Energy Commission must preserve its authority to review any modifications to the portfolio balance requirements.

RESPONSE: No change to the regulations. The statute does not require POUs to apply to the Energy Commission to seek a reduction in the portfolio balance requirements, unlike the provisions in Public Utilities Code section 399.16 (e), which require retail sellers to request such a reduction from the CPUC. POUs may adopt rules allowing for a reduction of PCC 1, but the Energy Commission will determine whether the adopted rule is consistent with Public Utilities Code section 399.16 (e). If the rule is not consistent with the requirements of Public Utilities Code section 399.16 (e) the Energy Commission will not apply the POU rules in determining the POU's compliance with the RPS. This is specified in section 3206 (e) of the regulations, which provides: "*In determining a POU's compliance with the RPS procurement requirements, the Commission will not consider the application of any rule or rule revision adopted by a POU under this section 3206 that the Commission determines does not comply with Public Utilities Code section 399.30, these regulations, or any applicable order or decision adopted by the Commission pertaining to the RPS.*"

See also response to comment no. 90, below.

80. COMMENT NO. 17.3: Small POU Group (see Comments, pg. 171) requests that the Energy Commission expressly acknowledge the authority of the governing boards to adjust the portfolio balance requirements under SBX1-2. It states that certain existing provisions may be implemented by the very small POU's governing boards; including rights to alter PCC requirements of 399.16 (c) pursuant to 399.16 (e).

RESPONSE: No change to the regulations. All POUs may adopt rules allowing for a reduction of the PCC 1 portfolio balance requirements, but the Energy Commission will determine whether the adopted rules are consistent with Public Utilities Code section 399.16 (e), and if not, will not apply the POU rules in determining the POU's compliance with the RPS. See also response to comment 79.

81. COMMENTS NO. 1.2, 4.7, 4.8, 8.8, 9.15, 11.1, 13.2, 15.12, 16.3: Riverside (see Comments, pg. 131), CMUA (see Comments, pg. 23), SCPPA (see Comments, pg. 146), Azusa (see Comments, pg. 3), NCPA (see Comments, pg. 112), PWRPA (see Comments, pg. 125), SMUD (see Comments, pg. 160), and MSR (see Comments, pg. 86) recommend that the 36 month retirement

rule not be applied to RECs counted as historic carryover. They suggest that the 36 month rule only be applied to RECs associated with generation on or after January 1, 2011. Riverside, CMUA, and SCPPA also comments that "retire" should not be limited to retirement within WREGIS or the interim tracking system, if the 36 month rule remains.

RESPONSE: Change to the regulations. See response to comment 82 below.

82. COMMENTS NO. 24.4, 29.2, 30.5, 33.1, 35.2, 36.1, 68.1: SMUD (see Comments, pg. 296), CMUA (see Comments, pg. 221), NCPA(see Comments, pg. 268), Riverside (see Comments, pgs. 277 and 556), SCPPA (see Comments, pg. 284), and MSR (see Comments, pg. 255) all support the removal of the 36 month retirement rule for historic carryover RECs

RESPONSE: Change to the regulations. The Energy Commission agrees with the commenting POUs and removed the 36 month retirement requirement for historic carryover. However, all RECs must be retired and reported to the Energy Commission within 90 calendar days after the effective date of the regulations to qualify as historic carryover.

83. COMMENTS NO. 4.8: CMUA (see Comments, pg. 23) agrees with the following portions of historic carryover provisions: POUs must use only procurement from facilities that were eligible at the time of the contract or ownership agreement execution, procurement from 2004-2010 must exceed the requirements applicable to a retail seller during that period, and POUs must submit documentation showing that the procurement was committed for use by the POU and not double counted.

RESPONSE: No change to the regulations. No response needed.

84. COMMENTS NO. 19.1: Turlock (see Comments, pg. 184) suggests that the historic carryover calculation only include the surplus above the annual procurement target (APT) for any year from 2004 through 2010 and that historic carryover should not account for any deficits in those years.

RESPONSE: No change to regulations. As discussed in the ISOR, for historic carryover to be utilized by a POU, the pre-January 1, 2011, procurement must meet the same requirements applicable to procurement for retail sellers, including rules in the Energy Commission's RPS Guidelines for certifying renewable electrical generation facilities for the RPS and for tracking and verifying generation from such facilities. The Energy Commission determined that allowing POUs to apply historic carryover to subsequent compliance periods was necessary to provide POUs with the full benefit implied in Public Utilities Code sections 399.16 (d) and 399.21 (a)(6). However, to implement consistent and fair RPS rules for POUs, historic carryover must be calculated based on the RPS rules that were in place at the time for retail sellers for that historic carryover to apply to a POU's RPS procurement requirements for a future compliance

period. Historic carryover is a benefit for those POUs with generation in excess of the annual procurement targets for all years 2004 through 2010. Allowing POUs to disregard procurement deficits in any years 2004 through 2010 and only consider the procurement from those years when the POUs had a surplus would not be consistent with the rules for retail sellers and would provide an unfair advantage to certain POUs.

85. COMMENT NO. 20.9: Joint comments of UCS and LSA (see Comments, pg. 197) express concern about how historic carryover procurement will be appropriately verified if the generation does not need to be tracked in WREGIS. They state that the Energy Commission has not yet demonstrated how it will ensure generation will be accurately tracked and verified, including how it will ensure no double counting. The parties also state that POUs should not be allowed to sell their historic carryover.

RESPONSE: No change to the regulations. The regulations determine what POU action is required by the law. The Energy Commission will continue to work with stakeholders on the implementation of the regulations. The Energy Commission's verification of retail seller and POU procurement claims will be conducted in accordance with the process specified in the *Renewables Portfolio Standard Eligibility Guidebook*. The Energy Commission does not believe that a change to the regulations is necessary to preclude a POU from selling its historic carryover. Historic carryover must be both procured by the POU claiming the historic carryover and generated during 2004-2010; a POU that procures RECs associated with 2004-2010 generation after 2010 may not claim those RECs to meet its RPS procurement requirements. In addition, once a POU has retired and reported 2004-2010 procurement as historic carryover, and the historic carryover has been verified by the Energy Commission, the POU has claimed that procurement toward its RPS procurement requirements and may not sell it.

86. COMMENTS NO. 16.4, 36.7: SMUD (see Comments, pgs. 162 and 300) requests that RECs procured between June 1, 2010, and January 1, 2011, should be allowed to apply toward the 2010 APT, even if they do not qualify for historic carryover.

RESPONSE: Change to the regulations. The Energy Commission agrees with SMUD's proposed change and has revised the regulations to delete from subdivision 3206 (a)(5)(B) the requirement that RECs applied towards the 2004-2010 APTs be procured before June 1, 2010. Historic carryover was established so that a POUs' procurement from a contract or ownership agreement originally executed prior to June 1, 2010, would "count in full," but RECs applied towards the APT are not carried forward, and therefore do not need to qualify as count in full.

87. COMMENT NO. 41.4: CMUA (see Comments, pg. 325) supports allowing procurement from contracts executed after June 1, 2010 to count towards the APT because it fits the purpose and intent of historic carryover provisions.

RESPONSE: Change to the regulations. See response to comment 86 above.

88. COMMENTS NO. 30.5: NCPA (see Comments, pg. 268) requests that the reporting date for historic carryover be delayed from 30 to 90 days after the effective date of the regulations.

RESPONSE: Change to the regulations. The Energy Commission agrees with NCPA's proposed change and modified section 3206 (a)(5)(E) and section 3207 (b) to provide POUs 90 day to report historic carryover.

89. COMMENTS NO. 41.3, 44.2, 45.2, 69.2: CMUA (see Comments, pgs. 324 and 558), NCPA (see Comments, pg. 362), and MSR (see Comments, pg. 356) support the extension for historic carryover reporting. The extension will protect against unforeseen complications.

RESPONSE: Change to the regulations. See response to comment 88 above. The Energy Commission agrees that reporting on seven years of data will be a time-consuming task for POUs applying for historic carryover, and has revised the due date for reporting historic carryover in section 3206 (a)(5)(E) and section 3207 (b) to 90 days after the effective date of the regulations.

90. COMMENTS NO. 4.2, 7.16, 8.1, 8.2, 9.2, 9.4, 9.5, 30.8, 42.10, 45.6, 72.3: CMUA (see Comments, pg. 20), NCPA (see Comments, pgs. 96, 98, 99, 270, 363, and 564), MSR (see Comments, pgs. 79), and LADWP (see Comments, pgs. 70 and 345) ask that the Energy Commission only ensure that POUs have followed the necessary steps laid out in statute to adopt optional compliance measures and not assess reasonableness of the measures or reject a POU's application of the properly adopted measures. They argue that the scope of these measures is defined in the applicable statutory provision, and is not subject to further interpretation or requirements in the regulations. They argue the Energy Commission's authority is limited to determining whether POUs abide by their procurement plans and enforcement programs. NCPA specifically requests that any references to the Energy Commission's discretion to apply a lawfully adopted alternative compliance measure be stricken from section 3206 (e).

RESPONSE: No change to regulations. The Energy Commission, based on the authority granted in Public Utilities Code section 399.30 (l), must ensure that the rules adopted by the POUs under section 3206 are consistent with statutory language in Public Utilities Code section 399.30 (d), if the POU intends to use the rules to satisfy or delay its procurement requirements. Only those rules that are determined to be consistent with the statute may be applied to satisfy, reduce or delay a POU's compliance with the RPS procurement requirements. This determination does not preclude a POU from adopting rules that do not comport with the RPS requirements. It does, however, preclude a POU from taking advantage of such rules in order to avoid an RPS

procurement requirement. Consequently, if the Energy Commission determines a POU's rules do not comport with the requirements of the statute the Energy Commission will not apply those rules in determining the POU's compliance with the RPS procurement requirements.

However, in determining whether a POU's rules comport with the requirements of the statute, the Energy Commission will recognize the POU's authority and discretion under Public Utilities Code section 399.30 over procurement matters, including i) the mix of eligible renewable energy resources procured by the POU and those additional generation resources procured by the POU for purposes of ensuring resource adequacy and reliability, and ii) the reasonable costs incurred by the POU for eligible renewable energy resources owned by the POU.

91. COMMENTS NO. 4.17, 9.7: CMUA (see Comments, pg. 36) and NCPA (see Comments, pg. 104) request that section 3206 (d) be revised to delete the language that allows the Executive Director to request additional information from the public to make a determination. They argue that allowing input from third parties disregards the authority that the POU has to adopt a discretionary measure.

RESPONSE: No change to the regulations The Energy Commission must ensure that the optional compliance measures adopted by the POUs are consistent with statutory requirements of Public Utilities Code section 399.30 (d), if the POU intends to use the rules to satisfy or delay its RPS procurement requirements. The Energy Commission may need additional information, either from the POU or from a third party, to determine whether the rule adopted by the POU is consistent with statutory requirements. If additional information is needed, it is appropriate for the Energy Commission to request it from the POU or from other parties.

92. COMMENTS NO. 8.4, 9.7, 41.11: MSR (see Comments, pg. 83), NCPA (see Comments, pg. 104), and CMUA (see Comments, pg. 327) request additional certainty in section 3206 (d) regarding timing and criteria for the Energy Commission's review of a POU's rule or rule revisions. The parties indicate that the optional review established in section 3206 (d) fails to provide certainty or specificity to the POU regarding the timing or the review or the criteria that will be utilized. They argue this provision needs more specificity, including a date certain for the Energy Commission's reply, and the scope of review used to make the determination. NCPA also recommends that the last sentence of section 3206 (d) be deleted. This sentence provides that the failure of the Executive Director to make a determination on a POU's rule within 120 days of receipt of the POU's request for review shall not be deemed a determination that such rule is consistent with the requirements of Public Utilities Code section 399.30.

RESPONSE: No change to the regulations. Section 3206 (d) states that the Energy Commission's Executive Director shall make a determination, to the extent reasonably possible, within 120 days of receipt of a complete request for review. The Energy Commission will review optional compliance measures submitted pursuant to section 3206 (d) to ensure consistency with the

requirements of Public Utilities Code section 399.30. As there are currently 45 POUs, each of which could adopt five separate optional compliance measures[15], and the Energy Commission does not know the volume of review requests that will be submitted at one time, it is not possible to provide more certainty regarding the review schedule.

93. COMMENT NO. 20.4: Joint comments of UCS and LSA (see Comments, pg. 194) state that POUs should assess noncompliance risk before flexible (optional) compliance measures are adopted. The Energy Commission should require POUs to submit rules regarding flexible compliance, as allowed in 399.30(d) in their procurement plans. The plans should be submitted within 60 days of the effective date of these regulations, and the POUs should update their plans to address the 2nd compliance period beginning 1/1/14 and the 3rd compliance period beginning 1/1/17.

RESPONSE: No change to the regulations. There is no statutory requirement for POUs to assess noncompliance risk before adopting flexible compliance measure. Likewise, there is no statutory requirement for POUs to assess noncompliance risk in their procurement plans, or for POUs to update their procurement plans on a compliance-period basis. However, section 3207 (c)(2)(H) requires POUs to include in their annual reports a description of any identified issues that occurred that have the potential to delay the POU's timely compliance with the RPS procurement requirements, and planned actions to minimize the delay of timely compliance.

94. COMMENT NO. 20.8: Joint comments of UCS and LSA (see Comments, pg. 197) suggest that there be a ten-day public notice requirement for the adoption of optional compliance measures. They argue that Public Utilities Code section 399.30 (e) requires that public notice be given before any meeting is held to make a substantive change to the program and that a public notice requirement is necessary to ensure transparency and consistent application of the notice requirement.

RESPONSE: No change to the regulations. Section 3206(b) requires that all optional compliance measures be in place in a POU's enforcement program or procurement plan if the POU intends to rely on the rules to satisfy or delay its RPS procurement requirements. Section 3205 details the public notice requirements for the adoption or update of procurement plans and enforcement programs. All new or updated optional compliance measures the POU adopts will need to follow these public notice requirements.

[15] These optional compliance measures include: 1) rules to utilize excess procurement in accordance with section 3206 (a)(1), 2) rules to delay timely compliance in accordance with section 3206 (a)(2); 3) rules establishing cost limitations in accordance with section 3206 (a)(3); 4) rules for reducing the portfolio balance requirements in accordance with section 3206 (a)(4); and 5) rules to utilize historic carryover in accordance with section 3206 (a)(5).

Section 3207

95. COMMENTS NO. 4.26, 9.11, 15.13: CMUA (see Comments, pg. 41), SCPPA (see Comments, pg. 147), and NCPA (see Comments, pg. 109) request that reporting be streamlined with other mandatory reporting to the Energy Commission to minimize reporting requirements.

RESPONSE: No change to the regulations. Subsection 3207 (c) states, "The format for the annual report shall be specified by the Energy Commission, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Energy Commission. If the annual report refers to information provided to the Energy Commission through existing reports, the annual report shall reference the information by identifying the name, submittal date, and page number of the existing report." The Energy Commission believes that this language adequately addresses the parties' concerns.

96. COMMENT NO. 9.12: NCPA (see Comments, pg. 110) requests that the reporting requirements be revised so that annual reports are submitted only during the intervening years of a compliance period and only one report would be submitted after each compliance period.

RESPONSE: No change to the regulations. Compliance period reports will include all information required in annual reports, as well as some additional information. In the year following the end of a compliance period, a POU must submit only one report – the compliance period report. This is specified in section 3207 (d) of the regulations.

97. COMMENTS NO. 9.13, 45.3: NCPA (see Comments, pgs. 111 and 363) requests more time in which to submit the 2011 and 2012 annual reports, ideally after December 31, 2013.

RESPONSE: No change to the regulations. The Energy Commission believes that the due date for the 2011 and 2012 annual reports provides POUs enough time to compile and submit reports on 2011 and 2012 data, and it also allows the Energy Commission's RPS verification staff to begin work on verifying the 2011 and 2012 data in advance of receiving the first compliance period report. Beginning this verification work in advance may also help the POUs in preparing their first compliance period reports.

98. COMMENT NO. 22.2: CCSF (see Comments, pg. 203) requests that "in addition to the requirements of section 3207 (a)-(d)" in subsection 3207 (f) be changed to "in addition to the applicable requirements of section 3207 (a)-(d)."

RESPONSE: Change to the regulations. Subsection 3207 (f) of the regulations has been modified to include the suggested change.

99. COMMENTS NO. 4.22, 4.23, and 41.12: CMUA (see Comments, pgs. 40 and 327) supports the concept of a cure period for annual and compliance period reports that are incorrect or incomplete, but requests that the cure period be revised to require POUs to reply to the Energy Commission within 10 business days of receiving a notice of an incomplete or incorrect report. CMUA suggests that the POU could then provide in reply a target date for submitting complete information, not to exceed 60 days from the receipt of notice. Barring that change, CMUA urges the Energy Commission to reconsider the length of the cure period once the Energy Commission has had more experience collecting RPS reports from the POUs.

RESPONSE: No change to the regulations. The Energy Commission believes that 10 business days from receipt of the notice of incomplete or incorrect information is sufficient time for submitting completed or corrected materials. This timeline is equivalent to that given to the retail sellers by the CPUC under the previous RPS program to submit additional information, and it was found to be adequate.

100. COMMENTS NO. 7.18, 28.9, 42.11: LADWP (see Comments, pgs. 73, 245, and 346) suggests a provision be added to subsection 3207 (g) to allow a grace period in which a POU can self-report missing information, correct information, or supplement information as it becomes available. LADWP states that a reasonable time frame for this grace period could be 90 days.

RESPONSE: No change to the regulations. Providing POUs with a 90 day grace period upfront essentially delays the reporting deadline by 90 days. In addition, a POU may provide the Energy Commission with completed and corrected information in response to a notice from the Energy Commission indicating that the POU has submitted a report with incomplete or incorrect information. The process by which the Energy Commission may notify a POU of an incorrect and incomplete report, and by which the POU may respond, is described in section 3207 (g)(1) of the regulations. The POU may also request up to 30 calendar days of additional time to report completed or corrected information, and this process is described in section 3207 (g)(2) of the regulations.

101. COMMENT NO. 20.10: Joint comments of UCS and LSA (see Comments, pg. 197) support the addition of reasonable progress reporting requirements and the requirement for POUs to identify actual or potential problems that may delay compliance.

RESPONSE: No change to regulations. No response needed.

Section 3208

102. COMMENTS NO. 7.19, 28.10, and 42.12: LADWP (see Comments, pgs. 73, 246, and 346) suggests that the Energy Commission add language to section 3208 to include a time period of three years for the Energy Commission to commence an enforcement action against a POU.

RESPONSE: No change to regulations. The RPS statute does not establish a limitation on enforcement actions. Moreover, given the time it takes for reporting and verification of RPS procurement, three years may not be sufficient to discover a deficiency.

Section 1240

103. COMMENTS NO. 18.3: TURN (see Comments, pg. 180) states that individuals and stakeholders should be allowed to file a complaint against a POU. TURN indicates that the current language fails to accomplish the goal of allowing any member of the public to initiate a complaint against a POU alleging noncompliance with the RPS rules. TURN suggests that section 1240 be modified to conform to section 1231 of the California Code of Regulations, Title 20.

RESPONSE: No change to regulations. The Energy Commission determined it was reasonable to limit the complaint process for RPS violations to Energy Commission staff, because complaints for RPS violations would spring from staff review during the RPS verification process. If staff determines, as part of the RPS verification process, that a POU has complied with the RPS requirements, a complaint against the POU should not be filed or pursued. Allowing third parties to initiate the complain process could encourage frivolous complaints by parties motivated by business interests, rather than a POU's lack of compliance, and create unnecessary work and consume precious staff time and resources for the Energy Commission and POU. Members of the public are free to participate in the RPS verification process and may offer comments in that process to address POU compliance issues and/or staff's assessments of POU compliance.

104. COMMENTS NO. 9.14: NCPA (see Comments, pg. 111) supports the Energy Commission as the sole entity that can file a complaint. NCPA states that the limitation in no way impairs the public's ability to participate in proceedings regarding the POU's RPS programs, either the verification process or the compliance proceedings.

RESPONSE: No changes to regulations. See response to comment 103 above.

105. COMMENTS NO. 7.20, 28.11, and 42.13: LADWP (see Comments, pgs. 74, 247, and 347) states the Chief Counsel should have authority to grant an extension of time to a POU for answering a complaint or replying to a response. LADWP suggested that the authority be provided in section 1240, subsections (d) and (e), respectively.

RESPONSE: No change to regulations. There is already a process under the Energy Commission's existing regulations for seeking an extension of time. The Energy Commission Chair or the presiding member of an Energy Commission committee delegated to oversee a complaint proceeding has authority to regulate the conduct of the proceeding, including an extension of time, pursuant to the Energy Commission's regulations in the California Code of Regulation, Title 20, sections 1203 and 1204. An additional process for seeking extensions of time is not needed.

Various E-mail Correspondence

106. COMMENT NO. 82: Conscious Ventures (see Various E-mail Correspondence, pg. 603) asked for rationale regarding the removal of the short-term contracting restriction from the calculation of excess procurement in the first 15-day language of the Express Terms. Conscious Ventures also asked whether the Energy Commission would release a revised statement of reasons.

RESPONSE: No change to regulations. Rationale for all changes made to the original Express Terms is provided in the FSOR. The short-term contracting restriction was reinstated in the calculation of excess procurement in the second 15-day language. See also response to comment 65.

107. COMMENT NO. 81: Noble Solutions (see Various E-mail Correspondence, pg. 601) commented that the regulations should be aligned with CPUC decisions because the Electric Service Providers (ESPs) and Community Choice Aggregators (CCAs), both of which must procure consistent with CPUC decisions, are more similar to POUs than they are to investor-owned utilities (IOUs). Noble Solutions states that POU comments arguing for the language of the regulations differing from that of CPUC decisions rely on the difference between POUs and IOUs. However, POUs have not provided arguments explaining why they should be treated differently than ESPs and CCAs.

RESPONSE: No change to regulations. POUs are subject to different sections of the Public Utilities Code than retail sellers, including ESPs and CCAs. The statute recognizes the unique situation of the POUs and expressly does not subject POUs to the oversight of the CPUC, though the sections of the Public Utilities Code that apply to POUs often require consistency with the sections of the Public Utilities Code that apply to retail sellers.

108. COMMENT NO. 83: Stateside Associates (see Various E-mail Correspondence, pg. 605) requested clarification on the deadline for the first 15-day comment period and asked if a summary of the 15-day language changes was available.

RESPONSE: No change to regulations. Staff clarified that 15-day comments were due May 6 and that no summary of changes was available.

109. COMMENT NO. 84: Modesto Irrigation District (see Various E-mail Correspondence, pg. 607) requested clarification on when the regulations are expected to become effective.

RESPONSE: No change to regulations. Staff explained the process for filing regulations with OAL, OAL's review period, and how the effective date is triggered by the date the approved regulations are filed with the Secretary of State.

110. COMMENT NO. 85: City of Anaheim (see Various E-mail Correspondence, pg. 611) asked how the regulations would treat generation associated with a repowered facility with a contract or ownership agreement executed before June 1, 2010.

RESPONSE: No change to regulations. Staff explained, based on the proposed regulations at that time, that the generation associated with the contract or ownership agreement executed before June 1, 2010, would qualify under section 3202 (a)(2) and would count in full. The generation associated with the repowering, however, would qualify under section 3202 (a)(1) and would be classified in PCCs and subject to the portfolio balance requirements.

111. COMMENT NO. 86: UCS (see Various E-mail Correspondence, pg. 614) supported the revision to the third compliance period RPS procurement target in the first 15-day language of the Express Terms, but asked for rationale regarding the removal of the short-term contracting restriction from the calculation of excess procurement.

RESPONSE: No changes to regulations. The short-term contracting restriction was reinstated in the calculation of excess procurement in the second 15-day language. See also response to comment 65.

112. COMMENT NO. 88: Stateside Associates (see Various E-mail Correspondence, pg. 617) asked whether there would be second 15-day language of the Express Terms.

RESPONSE: No change to regulations. Staff replied that comments on the first 15-day language were being reviewed and that the Energy Commission planned to adopt the regulations in early June 2013.

113. COMMENT NO. 87: Stoel Rives (see Various E-mail Correspondence, pg. 615) asked why consideration of the regulations was removed from the May 8, 2013, Business Meeting agenda.

RESPONSE: No change to regulations. Staff explained that the Energy Commission needed more time to consider the comments on the first 15-day language.

114. COMMENT NO. 89: Modesto Irrigation District (see Various E-mail Correspondence, pg. 619) asked when POUs would need to begin retiring RECs for compliance with their RPS procurement requirements.

RESPONSE: No change to regulations. Staff provided the expected due dates for the first annual report and the historic carryover report based on the proposed regulations at that time.

115. COMMENT NO. 80: Susie Berlin (see Various E-mail Correspondence, pg. 599) requested clarification on section 3202 (a)(3) of the regulations.

RESPONSE: No change to regulations. Staff explained, based on the proposed regulations at that time, that 3202 (a)(3) applies to electricity products associated with contracts or ownership agreements executed before June 1, 2010, that did not meet the RPS eligibility requirements that were in place at the time of contract or ownership agreement execution, but do meet the current RPS eligibility requirements.

116. COMMENT NO. 77: Iberdrola (see Various E-mail Correspondence, pg. 593) requested that an employee be added to the Renewable listserver.

RESPONSE: No change to regulations. Staff added the employee to the Renewable listserver.

117. COMMENT NO. 79: Manuel Moya (see Various E-mail Correspondence, pg. 597) requested a draft of original Express Terms.

RESPONSE: No change to regulations. Staff provided a link to the website where the Express Terms could be found.

118. COMMENT NO. 78: NextEra (see Various E-mail Correspondence, pg. 595) requested that three employees be added to the Renewable listserver.

RESPONSE: No change to the regulations. Staff added the employees to the Renewable listserver.