

## DOCKETED

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**On Renewables Portfolio Standard Pre-Rulemaking Amendments to Regulations**

*Additional submitted attachment is included below.*

September 9, 2016

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DOCKET 16-RPS-03**California Energy Commission  
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Docket No. 16-RPS-03  
1516 Ninth Street  
Sacramento, CA 95814-5512Re: Pacific Gas and Electric Company Comments on the Renewables Portfolio Standard Pre-Rulemaking Amendments to Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

Pacific Gas and Electric Company (PG&E) welcomes this opportunity to provide input on the California Energy Commission's (CEC) Renewables Portfolio Standard Pre-Rulemaking Amendments to Regulations for Enforcement Procedures for the Renewables Portfolio Standard [(RPS)] for Local Publicly Owned Electric Utilities (RPS Regulations).

**I. Summary of Recommendations**

PG&E appreciates the CEC's efforts to implement the new provisions in Senate Bill (SB) 350 relating to the RPS program. While it supports the timely implementation of SB 350, PG&E wishes to highlight that many of the changes to the RPS Program pursuant to SB 350 apply to all load-serving entities (LSEs) in California, and that the California Public Utilities Commission (CPUC) has not yet issued a final decision interpreting the RPS-related provisions of SB 350 for CPUC-jurisdictional LSEs (including investor-owned utilities (IOUs), community choice aggregators (CCAs), and direct access (DA) providers).<sup>1</sup> To that end, PG&E urges that there be close coordination between the CEC and the CPUC in the implementation of these important provisions to ensure parity in the regulations and enforcement procedures for all LSEs. To the extent the CEC and CPUC have contrasting interpretations of the relevant statutory changes; such differences must be reconciled before final regulations are issued for either POU or CPUC-jurisdictional LSEs. In the following comments, PG&E provides recommendations related to several implementation issues that impact all LSEs. However, PG&E's proposals are subject to the assumption that its proposals will be adopted by both the CEC and the CPUC.

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<sup>1</sup> The CPUC has issued a ruling seeking preliminary input from parties on many of the same statutory interpretation issues addressed in these pre-rulemaking draft RPS Regulations. *See* Administrative Law Judge's Ruling Requesting Comment on Implementation of Elements of Senate Bill 350 Relating To Procurement Under the California Renewables Portfolio Standard ("RPS"), filed in CPUC Rulemaking ("R.") 15-02-020 on April 15, 2016 (the "CPUC SB 350 Ruling"). However, the CPUC has not yet issued a proposed decision on these issues or taken further definitive action.

To the extent the CPUC adopts more stringent interpretations; the same interpretation should be applied to POUs.

PG&E agrees with most of the interpretative decisions that the CEC has made in this draft of the RPS Regulations. In particular, PG&E supports the CEC's interpretation found in Section<sup>2</sup> 3204(d)(1) of the statutory "10 years in duration" language, the proposal in Section 3205(a)(4) that RPS procurement plans should be incorporated into the new integrated resource plans going forward, and the requirement in Section 3206(a)(1)(F) that LSEs must demonstrate compliance with the new minimum long-term contracting requirement in the 2017-2020 RPS compliance period in order to avail themselves of the revised excess procurement rules during that period. The CEC should preserve these elements of the RPS Regulations as it moves forward in the rulemaking.

PG&E's comments below are limited to three issues requiring modification or clarification:

1. PG&E recommends the CEC clearly specify how the new minimum long-term contracting requirement will be implemented. Specifically, the plain language of SB 350 requires that any RPS-eligible products retired and counted toward RPS compliance in a given compliance period must satisfy all RPS procurement compliance requirements, including the 65% minimum long-term requirement.<sup>3</sup> The RPS Regulation should make this requirement just as explicit.
2. Clarifying changes should be made to the language in the draft RPS Regulations governing the methodology for calculating excess procurement in Section 3206(a)(1)(I) to specify that these provisions result in the 65% minimum long-term contracting requirement only being applied to RECs retired and applied for compliance in a given compliance period. Additionally, the changes should be made to clarify that the renewable energy credits (RECs) that are retired but are carried forward as excess procurement retain their long-term or short-term attribute, as well as Portfolio Content Category (PCC) classification.
3. PG&E strongly urges the CEC to modify the cost limitation language in Section 3206(a)(3). While SB 350 simplified the statutory provisions for cost limitations, the intent was not to eliminate any oversight or consistency on the determination of disproportionate rate impacts for California electricity customers. PG&E provides suggested language to ensure RPS cost limitation is subject to the appropriate review and uniformly enforced by the CEC and CPUC.

In support of PG&E's recommendations, PG&E is including several attachments filed previously at the CPUC that provide concrete examples of how the new RPS compliance rules should be applied in practice. Attachments A-1 and A-2 provide RPS compliance accounting tables found in prior CPUC decisions with redlines showing changes that are necessary to implement SB 350's changes in those

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<sup>2</sup> References in these comments to "Section" refer to the pre-rulemaking draft RPS Regulations posted by the CEC, unless otherwise noted.

<sup>3</sup> Cal. Pub. Util. Code § 399.13(b) ("Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resource." (emphasis added)).

specific examples. Attachment B provides a joint stipulation<sup>4</sup> submitted by the large IOUs in the CPUC's RPS docket and supported by The Utility Reform Network (TURN), the Coalition of California Utility Employees (CCUE),<sup>5</sup> and the Office of Ratepayer Advocates (ORA),<sup>6</sup> illustrating in detail how the revised RPS banking provisions enacted by SB 350 should be implemented for all LSEs. Given the broad support by parties participating in the CPUC's implementation proceeding for SB 350 of the joint stipulation in particular, PG&E urges the CEC to ensure that its regulations implementing the same statutory provisions are consistent with these methodologies and examples.

## **II. Specific Recommendations**

### **1. Minimum Long-term Procurement Requirement**

PG&E appreciates the CEC's efforts to include the new minimum long-term contracting requirement pursuant to SB 350 in the amendments to the RPS Regulations. However, PG&E believes the draft regulations do not go far enough in specifying how the long-term requirement will be implemented and enforced. The regulations should make it clear that an LSE can only meet the RPS procurement targets for each compliance period if it is in compliance with the 65% minimum long-term contracting requirement. In practice, this means that beginning in January 1, 2021 (or earlier if it wishes to avail itself of new banking rules early), an LSE must retire an amount of RECs equivalent to at least 65% of the procurement target for each compliance period from long-term contracts or from ownership agreements in order to satisfy Section 3204(a)'s procurement quantity requirements (PQR). Any failure to do so should result in a clear failure to meet the RPS procurement targets. The remaining 35% or less of the procurement target may come from RECs from contracts of any duration.

PG&E has provided numerical examples showing how these recommended interpretations would be carried out in practice. Attachment A-1 illustrates a scenario in which a retail seller has complied with all applicable RPS compliance requirements but has retired excess PCC renewable energy credits that it may neither credit toward RPS compliance nor bank for use in the future. Attachment A-2 illustrates an alternative scenario in which a retail seller fails to comply with its RPS requirements because it has failed to retire a sufficient quantity of RECs associated with long-term contracts.

### **2. Excess Procurement**

#### **a. REC PCC and Contract Length Attributes**

PG&E understands from the CEC's comments during the staff workshop on August 18, 2016 that Section 3206(a)(1)(I) is intended to ensure that the procurement attributes (i.e. long-term or short-term

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<sup>4</sup> Opening Comments Of Pacific Gas And Electric Company Regarding Administrative Law Judge's Ruling Requesting Comment On Implementation Of Elements Of Senate Bill 350 Relating To Procurement Under The California Renewables Portfolio Standard, filed in CPUC R.15-02-020 on May 5, 2016, Attachment B.

<sup>5</sup> Comments Of TURN and CCUE On The Administrative Law Judge's Ruling Requesting Comment On Implementation Of Elements Of Senate Bill 350 Relating To Procurement Under The California Renewable Portfolio Standard, filed in CPUC R.15-02-020 on May 5, 2016, p. 5.

<sup>6</sup> Reply Comments Of ORA, filed in CPUC R.15-02-020 on May 16, 2016, p. 8.

and PCC classification) of a REC retired for RPS compliance are counted only once, at the time the REC is applied towards the compliance period procurement target. PG&E agrees with this intent; however, there are multiple implications of this correct interpretation that should be made explicit in the regulations.

First, PG&E believes Section 3206(a)(1)(I) indicates that CEC is correctly applying the RPS procurement requirements only to the RECs which are both retired and applied for compliance in a given compliance period, rather than all RECs retired for a specific compliance period. As described above, because SB 350 requires that the procurement counted towards the RPS requirement satisfies the 65% minimum long-term contracting requirement, this requirement should be applied as a filter before RECs can be used to meet the compliance period procurement target. However, RECs retired in excess of the procurement target, but not applied towards the target, are not subject to the minimum long-term requirement in order to be banked.

Second, PG&E interprets Section 3206(a)(1)(I) to imply that each REC that is eligible for banking will retain its long-term or short-term attribute, as well as its PCC classification,<sup>7</sup> for purposes of implementing the separate long-term contracting requirement and portfolio balance requirements (PBR) in any future RPS compliance period in which that banked REC is used for compliance. PG&E believes the regulations should explicitly state this interpretation.

In order to clarify the intent of Section 3206(a)(1)(I) to reflect both of the above interpretations, PG&E recommends the following amendments:

Section 3206(a)(1)(I) RPS procurement requirements are only applicable to electricity products that are retired and applied towards the RPS procurement target in a compliance period. Electricity products that qualify as excess procurement shall retain their long-term or short-term attributes, as well as PCC classifications, which shall be included for the purposes of satisfying in the calculation of the RPS procurement requirements of the future compliance period to which they are applied.

#### **b. Excess Procurement Calculation Methodology**

While PG&E generally agrees with the CEC's approach in the draft RPS Regulations for determining the quantity of excess procurement, further clarification may be helpful to ensure consistency and accuracy. As described in more detail in the stipulation included as Attachment B, the amount of excess procurement that can be used in a future compliance period should be calculated by summing all eligible RPS procurement products defined in California Public Utilities Code Sections 399.16(b)(1)-(3) and 399.16(d) (PCC 0, 1,2 and 3) that are retired for RPS compliance in the Western Renewable Generation Information System (WREGIS) by the LSE in a particular RPS compliance period. This total quantity is applied towards the LSE's compliance period target in the following order: (1) all retired PCC 3 products in that compliance period that fall within the Portfolio Balance requirement (PBR); (2) all retired PCC 2 products in that compliance period that fall within the PBR; (3) all retired PCC 1 products in that compliance period that fall within the PBR ; and (4) any combination of remaining retired PCC 0

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<sup>7</sup> Banked RECs under the new post-2020 banking rules will either be classified as PCC 0 or 1 since the rules do not allow banking of PCC 2 or 3 RECs.

or PCC 1 RECs, at the LSE's discretion, would be applied to the remainder of the PQR. After applying (1)-(4) to the PQR, any retired PCC 1 and PCC 0 products in excess of the PQR as a result of this calculation are bankable excess procurement. Applying the PCC 0, 1, 2, and 3 products towards compliance in this manner complies with the statutory requirement that PCC 2 and PCC 3 products may not be counted as excess procurement.

### 3. Cost Limitation Rules

SB 350 revised the cost containment provisions in the RPS statute to remove nearly all guidance on how LSE-specific cost caps should be set, except that such caps shall "prevent disproportionate rate impacts."<sup>8</sup> Previously, the statute had dictated a number of additional factors or criteria that regulators and POU were to consider in establishing and approving claims of waiver due to cost. These included requiring POU to rely upon CEC-approved RPS procurement plans and protections that required POU to set forth planned actions in their cost limitation rules to avoid procurement exceeding the cost limitation.<sup>9</sup>

The pre-rulemaking draft of the RPS Regulations fails to provide adequate interpretative guidance to POU regarding how to establish cost containment rules that are consistent with those adopted by other POU and established by the CPUC for other LSEs. This could lead to inconsistent and potentially unreasonable implementation of cost limitation provisions across POU and other LSEs. The structure of the RPS makes clear that the RPS cost limitation provisions are intended to result in the same definition of disproportionate rate impacts being applied to all RPS-obligated LSEs.<sup>10</sup> An RPS Regulation that allowed POU to establish varying definitions would be not only counter to the intent of the law, but also poor public policy.

To address this concern PG&E strongly urges the CEC to modify the cost limitation language in Section 3206(a)(3). The best path would be for the CEC to work together with the CPUC in a joint rulemaking to define cost containment rules consistently for all LSEs, after which Section 3206(a)(3) could be revised to incorporate the detailed requirements and methodologies for establishing cost containment regulations.

Alternatively, and at a minimum, the RPS Regulations should be amended as follows to require that the CEC review and approve all POU cost containment rules before those rules can be relied upon in order to ensure consistency across POU:

*Section 3206(a)(3)*

*(A) A POU may adopt rules for cost limitations on the procurement expenditures used to comply with its RPS procurement requirements.*

*(B) Cost limitation rules shall ensure that the limitation is set at a level that prevents*

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<sup>8</sup> Cal. Pub. Util. Code §§ 399.15(c), 399.30(d)(2)(B).

<sup>9</sup> Current version of the RPS Regulations, §§ 3206(a)(3)(C), 3206(a)(3)(D).

<sup>10</sup> Cal. Pub. Util. Code § 399.30(d)(2)(B) (requiring POU cost containment provisions to be "consistent with subdivision (c) of Section 399.15.").

*disproportionate rate impacts.*

*(C) In establishing cost limitations, a POU shall consider all costs incurred toward achieving the RPS procurement requirements. The costs incurred toward achieving the POU's RPS procurement requirements shall not include the POU's costs to procure eligible renewable energy resources for the POU's voluntary green pricing or shared renewable generation programs as specified in section 3204 (b)(8).*

*(D) A POU's rule adopted pursuant to this section 3206(a)(3) must be submitted to the Executive Director of the Commission for review pursuant to section 3206(d). The Executive Director shall review the POU's request and make a recommendation for consideration and approval by the Commission. A POU rule submitted pursuant to this paragraph shall not become effective unless approved by the Commission.*

### **III. Conclusion**

PG&E thanks the CEC for the opportunity to submit these comments and looks forward to continuing to work with the CEC and the CPUC on these important changes to the statewide RPS Program.

Sincerely,

/s/

Wm. Spencer Olinek

**ATTACHMENT A-1**

**Table 6: Example Excess Procurement Calculation (Compliance Period 4) (No PQR Shortfall)**

*Notes: Category 1, 2 and 3 RECs meet the criteria of Sections 399.16(b)(1), 399.16(b)(2) 399.16(b)(3), respectively; Short-term contracts are less than 10 years in length. Formulas apply to CP 3 if minimum long-term is also met.*

<b>Data Table</b>	<b>Quantity of RECs</b>	<b>Portfolio Content Category Requirements for Compliance Period 1</b>
Procurement Quantity Requirement (PQR)	2,500	N/A
RECs from contracts executed prior to June 1, 2010	<del>1,000</del> 500	N/A
RECs from contracts executed after June 1, 2010	<del>2,000</del> 2,500	N/A
Long-Term Category 1	<del>900</del> 1,000	Minimum Category 1 is 1,500 <del>1,000</del> RECs (2,000 * <del>75</del> 50%) <sup>1</sup>
Short-Term Category 1	<del>100</del> 825	
Long-Term Category 2	<del>400</del> 175	N/A
Short-Term Category 2	<del>0</del> 100	
Long-Term Category 3	<del>600</del> 150	Maximum Category 3 is 200 RECs (2,000 * <del>10</del> 25%) <sup>24</sup>
Short-Term Category 3	<del>0</del> 250	
Total RECs Retired in Compliance Period 4 (2011-2013) (2021-2024)	3000	
<b>Example Excess Procurement Calculation for Compliance Period 4</b>	<b>Quantity of RECs</b>	<b>Calculation</b>
Total RECs Retired in the Compliance Period	3,000	
<u>Minimum Long-term Quantity Requirement</u>	<u>1,625</u>	<u>PQR * 65% (2500 *.65)</u>
<u>Long-Term RECs applied to PQR</u>	<u>1,625</u>	<u>150 Cat 3 + 175 Cat 2 + 800 Cat 1 + 500 Cat 0</u>
<u>Short-Term RECs applied to PQR<sup>2,3</sup></u>	<u>875</u>	<u>50 Cat 3 + 100 Cat 2 + 725 Cat 1</u>
<u>Procurement Quantity Requirement Shortfall</u>	<u>0</u>	<u>(2,500 - 1,625 - 875 = 0)</u>
<i>minus All RECs from Short Term Contracts Signed after June 1, 2010</i>	-100	
<i>minus Portion of retired RECs from Category 2 and 3 not credited toward the PQR (may not count toward excess procurement) Contracts above the Maximum Limit</i>	-200 -100	Total Category 2 and 3 RECs above PBR limit minus Maximum Allowed (2000-1525-200-275= 0 Cat 2) and (400 - 200 = 200 Cat 3) (600 - 500 =100)
Equals RECs Eligible for Excess Procurement	= 2,800	
<i>minus Procurement Quantity Requirement for Compliance Period</i>	-2,500	
• <i>Equals Excess Procurement from the Compliance Period</i>	= 300	<u>200 Long-Term Cat 1 + 100 Short-Term Cat 1</u>

<sup>1</sup> Minimum Category 1 and Maximum Category 3 calculations are based on total of Category 1, 2, or 3 products credited towards a compliance period and do not include any Category 0 products. Therefore, the calculation may be based on an amount less than the PQR for that compliance period. In this case, the total RECs applied to PQR less Category 0 is expressed as the formula: (1625+875)-500 = 2,000.

<sup>2</sup> To illustrate how the 65% minimum long-term requirement is met, it is useful to separate out the long- and short-term RECs that are applied to the PQR in Table 6 above. However, consistent with the Banking Stipulation in Attachment B, for the purposes of calculating excess procurement, RECs should be applied to the PQR in the following order (without regard to duration): Category 3, Category 2, and Category 1 within the PBR, and then any combination of remaining retired Category 0 or Category 1 RECs.

<sup>3</sup> “Short-Term RECs applied to PQR” is: (Long-Term RECs applied to PQR) X (.35/.65).

**ATTACHMENT A-2**

**Table 6: Example Excess Procurement Calculation (Compliance Period 4) (PQR Shortfall)**

*Notes: Category 1, 2 and 3 RECs meet the criteria of Sections 399.16(b)(1), 399.16(b)(2) 399.16(b)(3), respectively; Short-term contracts are less than 10 years in length. Formulas apply to CP 3 if minimum long-term is also met.*

<b>Data Table</b>	<b>Quantity of RECs</b>	<b>Portfolio Content Category Requirements for Compliance Period 1</b>
Procurement Quantity Requirement (PQR)	2,500	N/A
RECs from contracts executed prior to June 1, 2010	<del>1000</del> 500	N/A
RECs from contracts executed after June 1, 2010	<del>2000</del> 2,500	N/A
Long-Term Category 1	<del>900</del> 700	Minimum Category 1 is <u>1,385</u> <del>4,000</del> RECs (1,846 * <u>75</u> 50%) <sup>1</sup>
Short-Term Category 1	<del>400</del> 1,125	
Long-Term Category 2	<del>400</del> 175	N/A
Short-Term Category 2	<del>0</del> 100	
Long-Term Category 3	<del>600</del> 150	Maximum Category 3 is 184 RECs (1,846 * <u>10</u> 25%) <sup>27</sup>
Short-Term Category 3	<del>0</del> 250	
Total RECs Retired in Compliance Period 4 (2011-2013) (2021-2024)	3000	
<b>Example Excess Procurement Calculation for Compliance Period 4</b>	<b>Quantity of RECs</b>	<b>Calculation</b>
Total RECs Retired in the Compliance Period	3,000	
<u>Minimum Long-Term Quantity Requirement</u>	<u>1,625</u>	<u>PQR * 65% (2500 *.65)</u>
<u>Long-Term RECs applied to PQR</u>	<u>1,525</u>	<u>150 Cat 3 + 175 Cat 2 + 700 Cat 1 + 500 Cat 0</u>
<u>Short-Term RECs applied to PQR</u> <sup>2,3</sup>	<u>821</u>	<u>34 Cat 3 + 100 Cat 2 + 687 Cat 1</u>
<u>Procurement Quantity Requirement Shortfall</u>	<u>154</u>	<u>(2,500 - 1,525 - 821 = 154)</u>
<i>minus</i> All RECs from Short-Term Contracts Signed after June 1, 2010	-100	
<i>minus</i> Portion of retired RECs from Category 2 and 3 not credited toward the PQR (may not count toward excess procurement) <u>Contracts above the Maximum Limit</u>	<u>-216</u> <del>-400</del>	Total Category 2 and 3 RECs above PBR limit <u>minus</u> <u>Maximum Allowed</u> (1846-1387-184-275=0 Cat2) and (400 - 184 = 216 Cat 3) <del>(600 - 500 = 100)</del>
Equals RECs Eligible for Excess Procurement	= <del>2,800</del> <u>2,784</u>	
<i>minus</i> Procurement Quantity Requirement for Compliance Period	-2,500	
<u>Equals</u> Excess Procurement from the Compliance Period	= <del>300</del> <u>284</u>	<u>284 Short-Term Cat 1</u>

<sup>1</sup> Minimum Category 1 and Maximum Category 3 calculations are based on total of Category 1, 2, or 3 products credited towards a compliance period and do not include any Category 0 products. Therefore, the calculation may be based on an amount less than the PQR for that compliance period. In this case, the total RECs applied to PQR less Category 0 is expressed as the formula: (1525+821)-500=1,846.

<sup>2</sup> To illustrate how the 65% minimum long-term requirement is met, it is useful to separate out the long- and short-term RECs that are applied to the PQR in Table 6 above. However, consistent with the Banking Stipulation in Attachment B, for the purposes of calculating excess procurement, RECs should be applied to the PQR in the following order (without regard to duration): Category 3, Category 2, and Category 1 within the PBR, and then any combination of remaining retired Category 0 or Category 1 RECs.

<sup>3</sup> “Short-Term RECs applied to PQR” is: (Long-Term RECs applied to PQR) X (.35/.65).

## ATTACHMENT B: STIPULATION REGARDING RPS BANKING AMENDMENT

Senate Bill (SB) 350 (De Leon), Stats. 2015, ch. 547 includes changes to the way that load-serving entities (LSEs) can create a “bank” of excess Renewables Portfolio Standard (RPS) credit in one compliance period for use in any future RPS compliance period. These changes are codified in Section 399.13(a)(4)(B).<sup>7</sup> The Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (the “Stipulating Parties”) support the following legal interpretation of the new banking statutory provisions.

Once the new banking rules go into effect for an LSE, the language of Section 399.13(a)(4)(B) requires that the regulatory authority sum all eligible portfolio content category (PCC) 1, 2, and 3 products (as those are defined in Sections 399.16(b)(1)-(3), respectively)<sup>8</sup> retired by the LSE in a particular RPS compliance period and then determine the bankable excess PCC 1 procurement, if any, by applying (1)-(3) towards the LSE’s RPS procurement quantity requirement (PQR) for the compliance period in the following order: (1) all retired PCC 3 products in that compliance period that fall within the portfolio balance requirements (PBR) of Section 399.16(c); (2) all retired PCC 2 products in that compliance period that fall within the PBR of Section 399.16(c); and (3) all retired PCC 1 products in that compliance period that fall within the PBR of Section 399.16(c). After applying (1)-(3) to the PQR, any retired PCC 1 products in excess of the PQR as a result of this calculation are bankable excess PCC 1 procurement. Applying the PCC 1, 2, and 3 products towards compliance in this manner complies with the statutory requirement that PCC 2 and PCC 3 products will not be counted as excess procurement.<sup>9</sup>

The long-term contracting requirement found in Section 399.13(b)<sup>10</sup> is a separate, additional requirement with which all LSEs must comply. That requirement does not limit whether a Renewable Energy Credit (REC) is eligible to count as bankable excess procurement. However, each REC that is eligible for banking under these rules will retain its long-term<sup>11</sup> or short-term attribute for purposes of implementing the separate long-term contracting requirement in any future RPS compliance period in which that banked REC is used for compliance.

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<sup>7</sup> This and all subsequent references to statutory sections are to the California Public Utilities Code.

<sup>8</sup> As discussed below, this discussion and Examples 1 and 2 below include no procurement of PCC 0 products (as defined under Section 399.16(d)). However, as further explained below under “PCC 0 – Grandfathered Contracts,” PCC 0 products are eligible products that may be banked as excess procurement without limitation.

<sup>9</sup> Section 399.13(a)(4)(B)(ii).

<sup>10</sup> Section 399.13(b) was modified by SB 350 as follows: “A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. ~~The commission may authorize~~ Beginning January 1, 2021, at least 65 percent of the procurement a retail seller to enter into a contract of less than counts towards the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years<sup>2</sup> or more in duration ~~with an eligible renewable energy resource, if the commission has established, or in its ownership or ownership agreements for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years’ duration.~~” Except as stated within this Stipulation, the Stipulating Parties do not intend for this Stipulation to provide an interpretation of Section 399.13(b).

<sup>11</sup> The RPS statute defines “long-term” procurement as that resulting from “contracts of 10 years or more in duration” or an LSE’s “ownership or ownership agreements for eligible renewable energy resources.” Section 399.13(b).

### **Example 1: All Retired Procurement Meets PBR Limitations**

- (1) where an LSE has a PQR equal to 100 RECs in a given compliance period; and
- (2) where the PBR limitations require at least 75% of compliance from PCC 1 and allow no more than 10% of compliance from PCC 3; and
- (3) where the LSE retired the following types of RECs in the Western Renewable Energy Generation Information System (WREGIS) for compliance in that compliance period: 90 RECs from PCC 1; 15 RECs from PCC 2; and 10 RECs from PCC 3; then
- (4) the result would be banked excess procurement of 15 PCC 1 RECs.

This is because the retired PCC 3 and PCC 2 RECs would be applied to the PQR first (since they may not count as excess procurement), and the PCC 1 RECs would be applied last. Since the total number of RECs ( $90+15+10=115$ ) complies with the applicable PBR, and exceeds the PQR of 100, the last 15 PCC 1 RECs would not be needed in that compliance period to meet the PQR and would thus be banked for future use. The new banking rules further specify that the duration of the contracts that produce any of these RECs would no longer matter in the excess procurement calculation.

### **Example 2: Retired Procurement in Excess of PBR Limitations**

In the event that the LSE retires more PCC 3 or PCC 2 RECs than is allowed under the PBR limitations for the compliance period, the excess PCC 3 or PCC 2 RECs would not be eligible for banking. The following illustrative example explains the accounting:

- (1) where an LSE has a PQR equal to 100 RECs in a given compliance period; and
- (2) where the PBR limitations require at least 75% of compliance from PCC 1 and allow no more than 10% of compliance from PCC 3; and
- (3) where the LSE retired the following types of RECs in the WREGIS for compliance in that compliance period: 90 RECs from PCC 1; 25 RECs from PCC 2; and 20 RECs from PCC 3; then
- (4) the result would be banked excess procurement of 15 PCC 1 RECs.

To the extent the PCC 2 and PCC 3 RECs comply with the PBR limitations in Section 399.16(c), the statute provides that they shall not be deducted from an LSE's procurement for purposes of calculating excess procurement.<sup>12</sup> As with the first example, the retired PCC 3 and PCC 2 RECs that meet the PBR limitations would be applied to the PQR first (since they may not count as excess procurement), and the PCC 1 RECs would be applied last. Given the PQR of 100 RECs, a maximum of 10 PCC 3 RECs may be applied toward compliance. Because a minimum of 75 PCC 1 RECs must be applied under the PBR limitations, the remaining 15 RECs needed to meet the PQR ( $100 \text{ total PQR} - 10 \text{ PCC 3} - 75 \text{ PCC 1}$ ) may come from PCC 2. The 10 PCC 3 RECs outside of the PBR limitations ( $20 \text{ total retired} - 10 \text{ allowed}$ ) may not be credited towards compliance and may not be banked. Similarly, the 10 PCC 2 RECs that are excess due to the PBR limitations ( $25 \text{ total retired} - 15 \text{ needed}$ ) may not be banked. The banked excess procurement of 15 PCC 1 RECs is the result of subtracting the total retired PCC 1 RECs from the minimum required to be used for compliance ( $90 - 75$ ). As in the first example, the duration of the contracts that produce any of these RECs would no longer matter in the excess procurement calculation.

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<sup>12</sup> Section 399.13(a)(4)(B)(ii).

## **PCC 0 – Grandfathered Contracts**

For purposes of simplification, the examples described above assume no procurement of PCC 0 products (as defined under Section 399.16(d)). PCC 0 RECs may be banked as excess procurement without limitation. If an LSE retires PCC 0, PCC 1, PCC 2, and PCC 3 RECs in a compliance period, the retired PCC 3 and PCC 2 RECs in that compliance period that fall within the PBR of Section 399.16(c) would be applied to the PQR first (since they may not count as excess procurement), then all retired PCC 1 products in that compliance period that are needed to meet the minimum PBR of Section 399.16(c) would be applied to the PQR, and finally any combination of remaining retired PCC 0 or PCC 1 RECs, at the LSE's discretion, would be applied to the remainder of the PQR. After applying these steps to meet the PQR, any remaining retired PCC 1 or PCC 0 RECs are bankable excess.