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**NCPA COMMENTS ON PRE-RULEMAKING AMENDMENTS REGULATIONS
FOR ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO
STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of:
Amendments to Regulations Specifying
Enforcement Procedures for the
Renewables Portfolio Standard for
Local Publicly Owned Electric Utilities**

Docket No. 16-RPS-03

**NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON
PRE-RULEMAKING AMENDMENTS REGULATIONS FOR ENFORCEMENT
PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL
PUBLICLY OWNED ELECTRIC UTILITIES**

The Northern California Power Agency (NCPA)¹ offers these comments to California Energy Commission (CEC or Commission) on the *Pre-Rulemaking Amendments to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utility* (Proposed Amendments), dated August 4, 2016.

I. INTRODUCTION

NCPA appreciates the opportunity to discuss the proposed revisions with staff and stakeholders as part of the pre-rulemaking process, and provide these comments to facilitate the implementation of the necessary amendments to the renewable portfolio standard (RPS) program mandated by Senate Bill (SB) 350. While SB 350 did not fundamentally alter the overall program structure, it did adopt several significant changes to the program, including increasing the overall procurement mandate to 50% by 2030 and requiring that at least 50% of the renewable energy credits (RECs) retired for compliance come from procurement commitments of 10 years or longer beginning in 2021. It is important that the amendments to the RPS program mandated by SB 350 be implemented in a manner that is consistent with the legislative intent and ensures the continued viability of the RPS program and utilities' renewable energy procurement. In furtherance of these objectives, NCPA offers the comments set forth below. For ease of

¹ NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

review, the discussion items are listed in the order in which they appear in the Pre-Rulemaking draft.

- Annual procurement targets for the intervening years of each of the next three compliance period should be set at the maximum of the prior compliance period, until the final year of the compliance period;
- Implementation of PUC section 399.30(l) should avoid additional requirements not mandated by the statute;
- Long-term contracting requirements should reflect the practical implications associated with electricity procurement;
- RPS and integrated resource plan (IRP) reporting requirements should remain separate;
- Amendments to excess procurement rules should reflect the range of eligible resources and confirm the manner in which the compliance obligation is calculated;
- Provisions regarding delay of timely compliance for unanticipated curtailments should include clear direction regarding the manner in which increased greenhouse gas emissions will be determined;
- Provisions regarding delay of timely compliance due to transportation electrification but must be more fully developed to ensure meaningful implementation;
- In the event that the Commission issues a notice of violation, it is appropriate to provide the notice and full record of the proceeding to the POU simultaneously with providing it to the California Air Resources Board.

II. COMMENTS ON PRE-RULEMAKING PROVISIONS

A. Annual Procurement Targets

The proposed amendments set procurement targets for the compliance periods beginning on January 1, 2021 (Section 3204(a)). NCPA supports the proposed three-year compliance periods for compliance periods beginning in 2030. However, the Commission should not impose incremental increases for the intervening years of the first three post-2020 compliance periods. Annual procurement targets for the intervening years of each compliance period should be set at the maximum of the prior compliance period, until the final year of the compliance period. These intervening targets are not necessary and are unduly restrictive, and by requiring utilities to procure renewable energy using defined targets during intervening years, the regulation would increase compliance costs and restrict procurement flexibility. . Utilities are able to demonstrate

reasonable progress towards meeting the procurement mandates in other ways, including by presenting executed contracts for renewable energy development and procurement.

Although annual targets are part of the January 1, 2017 to December 31, 2020 compliance periods, incorporating similar incremental increases for the compliance periods from 2021 to 2030 complicates and restricts procurement of long-term resources. The increased RPS mandates are coupled with new rules requiring the utilities to meet at least 65% of their entire compliance obligation with long-term commitments. Utilities can meet this requirement through the extension of existing agreements, entering into new purchase agreements, or by developing their own renewable generation resources. Regardless of the route they choose, the increased long-term contracting commitment will change the procurement practices of the utilities. The development of more long-term commitments will not result in a gradual, annual increase in energy procurement, but rather is more likely to result in “chunks” of new renewable energy being added to the utilities’ portfolios. If a particular resource is not available during a time period that it is needed to meet a specific interim target, the POU may lose the opportunity to enter into that agreement. Alternatively, rather than lose the prospect to procure the resource, meeting arbitrary interim targets may necessitate the provision of greater quantities of renewable resources than utilities need to meet their load at any given time. While renewable procurement in excess of the RPS mandate for any given year is not necessarily bad in terms of meeting climate policy objectives, it could have an adverse impact on the electricity customers paying for those resources. The utilities should have the flexibility to procure these resources without arbitrary interim targets, as long as the final 40%, 45%, and 50% targets are met at the end of each compliance period, respectively.

Furthermore, the incremental targets impose additional cost burdens on the utilities, even in the absence of the complications associated with more stringent long-term commitment requirements. As demonstrated in the graphic below, the annual targets can increase compliance costs by millions of dollars. For example, assuming \$15 per REC for a PCC 1 resource, over the course of the three compliance periods, a POU with 800,000 megawatt load would spend nearly \$2.5 million more if required to meet annual incremental targets.

Costs for Procurement Req.

Load	800,000										
Current RPS Resources	212,000										
Needed Load (Load - RPS Res.)	588,000										
\$/PCC1	\$15										
Scenario 1											
		Compliance Period 1				Compliance Period 2			Compliance Period 3		
Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
RPS Req. (%)	34.8%	36.5%	38.3%	40.0%	41.7%	43.3%	45.0%	46.7%	48.3%	50.0%	
RPS RECs	278,400	292,000	306,400	320,000	333,600	346,400	360,000	373,600	386,400	400,000	
Costs of REC Total	\$4,176,000	\$4,380,000	\$4,596,000	\$4,800,000	\$5,004,000	\$5,196,000	\$5,400,000	\$5,604,000	\$5,796,000	\$6,000,000	
Costs of needed RECs	\$996,000	\$1,200,000	\$1,416,000	\$1,620,000	\$1,824,000	\$2,016,000	\$2,220,000	\$2,424,000	\$2,616,000	\$2,820,000	
Total RPS Costs	\$50,952,000										
Total costs for RECs needed	\$19,152,000										
Scenario 2											
		Compliance Period 1				Compliance Period 2			Compliance Period 3		
Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
RPS Req. (%)	33.0%	33.0%	33.0%	40.0%	40.0%	40.0%	45.0%	45.0%	45.0%	50.0%	
RPS RECs	264,000	264,000	264,000	320,000	320,000	320,000	360,000	360,000	360,000	400,000	
Costs of REC Total	\$3,960,000	\$3,960,000	\$3,960,000	\$4,800,000	\$4,800,000	\$4,800,000	\$5,400,000	\$5,400,000	\$5,400,000	\$6,000,000	
Costs of needed RECs	\$780,000	\$780,000	\$780,000	\$1,620,000	\$1,620,000	\$1,620,000	\$2,220,000	\$2,220,000	\$2,220,000	\$2,820,000	
Total Costs of RPS	\$48,480,000										
Total costs for RECs needed	\$16,680,000										
Difference between Scenarios											
		Compliance Period 1				Compliance Period 2			Compliance Period 3		
Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
RPS Req. (%)	1.8%	3.5%	5.3%	0.0%	1.7%	3.3%	0.0%	1.7%	3.3%	0.0%	
RPS RECs	14,400	28,000	42,400	0	13,600	26,400	0	13,600	26,400	0	
Costs of REC Total	\$216,000	\$420,000	\$636,000	\$0	\$204,000	\$396,000	\$0	\$204,000	\$396,000	\$0	
Costs of needed RECs	\$216,000	\$420,000	\$636,000	\$0	\$204,000	\$396,000	\$0	\$204,000	\$396,000	\$0	
Total Costs of RPS	\$2,472,000										
Total costs for RECs needed	\$2,472,000										

In light of the other changes in the overall RPS program, NCPA urges the Commission to remove incremental compliance targets proposed in section 3204(a).

B. Greater Than 50% Large Hydro

Cognizant of the important role that federal hydropower contracts play in the portfolios of some municipalities, one of the amendments to the RPS program adopted in SB 350 was new PUC section 399.30(l) recognizing the impacts on entities that receive more than 50% of their electricity from these large hydroelectric projects in any one year. Proposed section 3204(b)(7) is intended to implement PUC section 399.30(l).

However, the language set forth in proposed section 3204(b)(7) goes beyond the provisions of the statute and does not implement the new rules in a manner that meets the statutory intent. The statutory exception was purposely intended to ensure that those POU's that have an interest in specific large hydroelectric electric resources be able to continue to receive the value and benefit of those green resources. Implementation of the statute must be done in the

context of the very resources being addressed. For example, the provisions of PUC section 399.30(l) specifically reference electricity from the Central Valley Project (CVP), a hydroelectric project managed by the Western Area Power Administration (Western). The base resource contracts at issue for CVP are part of a broader arrangement under Western's Power Marketing Plan. As noted in the Federal Register where the 2025 Western Power Marketing Plan is published, Western proposes to *extend the resource contracts for existing customers*, consistent with the intent of the Energy Planning and Management Program (EPAMP) (10 CFR part 905) and the Power Marketing Initiative (PMI) of EPAMP, which provides a framework for extending a major portion of the power available at the time current contracts expire to existing customers, who will have a right to purchase 98 percent of their current Base Resource percentage amount.² This allocation is subject to some restrictions, all of which could reduce – but not increase – the base percentage allocation to customers extending their current agreements. These extensions, while meeting the statutory requirements set forth in PUC section 399.30(l), would not meet the extra statutory prescriptions proposed in new section 3204(b)(7).

In order to ensure that the regulation accurately reflects the statutory provisions of PUC section 399.30(l), NCPA recommends the following changes to the proposed text of 3204(b)(7)(A)4:

The generation is procured by a POU under an existing agreement effective as of January 1, 2015, or an extension or renewal of that agreement. For purposes of this subparagraph, an extension or renewal refers to an amendment to the existing agreement or extension to the existing agreement contemplated under the administration of such agreement or included in the Western Area Power Administration's Power Marketing Plan that is expressly authorized by the terms of the existing agreement and only extends the end date of the agreement pursuant to those terms. An extension or renewal may be executed after January 1, 2015, if expressly authorized by the terms of the existing agreement. In the event that the extension or renewal increases the percentage of the base resource allocated to the POU, this exception shall only apply to generation procured up to the maximum allocation under the terms of the existing agreement prior to the extension or renewal.

C. Voluntary Renewables Programs

NCPA supports implementation of PUC 399.30(c)(4) in a manner that allows the POUs to maximize the benefits of green pricing and shared renewable programs for the benefit of their customers. Proposed new section 3204(b)(8), however, would restrict or impede meaningful implementation of this provision and add unnecessary administrative costs. For some POUs, especially small POUs or those whose service territory is not geographically diverse, it may be

² 81 FR 27434-27437.

wholly impractical to develop such resources within its service territory. Making a demonstration that the resource could not be located in the POU's service territory would not be a good use of resources. Further, PUC section 399.30(c)(4) does not require such a demonstration, but only that the POU try to locate the resources in close proximity to the POU.

Green pricing and shared renewables programs offer a unique opportunity for communities and customers that may not otherwise be able to invest in renewable energy resources to directly participate in such programs. Recognition of the importance of this objective is part of both the California Public Utilities Commission oversight of the investor owned utilities, as well as the California Air Resources Board Cap-and-Trade Program voluntary renewable program. NCPA recommends that the regulatory language in proposed section 3204(b)(8) track closely with the statutory provisions and not make implementation of this provision unnecessarily restrictive, consistent with the state's overall objective in promoting green pricing and shared renewable programs.

D. 65% Long-Term Contract Requirement

Aside from increasing the overall renewable energy procurement requirement to 50% by 2030, the most significant program change mandated by SB 350 is found in the provisions of PUC 399.13(b) and 399.30(d) requiring utilities to procure at least 65% of their renewable energy through long-term contracts or ownership agreements. This mandate will have a significant impact on POU procurement activities. Greater investments and reliance on long-term commitments also presents greater challenges and risks when the resource commitment is not available as planned. That impact is exacerbated when the POU is smaller, therefore limited in the ability to seek out alternatives, especially on short notice. Because of these factors, it is important that the requirement be implemented in a way that recognizes foreseeable complications and acknowledges that unforeseen circumstances could significantly impact compliance. In order to address this, NCPA recommends the following changes to proposed section 3204(d):

3204(d)(1)(C): An electricity product classified as Portfolio Content Category 2 under the requirements of section 3203 (b) and qualifying electricity products eligible under the requirements of section 3202(a)(2) and (3) shall count toward the long-term procurement requirement of this subdivision if the electricity product is procured under a contract of at least 10 years in duration or an ownership agreement, even if the matching incremental electricity is not associated with a contract of at least 10 years in duration or an ownership agreement.

Add (D): For purposes of determining compliance with the requirements specified in this subdivision, electricity products that are qualified as excess procurement, pursuant to Section 3206 (a)(1), shall be counted in the compliance period in which the electricity products are applied.

Add (E): If a contract of 10 years or more in duration fails to deliver electricity products due to conditions that are beyond the control of the POU, then the POU may designate a replacement contract of any duration to replace that electricity, and all electricity products associated with the replacement contract may count toward the long term procurement requirement defined in this subdivision.

Add (F): If electricity products are procured by a joint powers agency formed and created pursuant to the provisions of Section 6500 et seq. of the Government Code on behalf of the POU, the POU's procurement will be deemed to meet the requirements of this section, provided that at least 50 percent of the aggregate renewable procurement that the JPA secures on behalf of all of its members is obtained through contracts of 10 years or more in duration or from ownership agreements.

E. RPS Reporting

1. RPS and IRP Reporting: Proposed changes to the RPS Regulation would modify the noticing requirements for POUs subject to the provisions of PUC section 9621. NCPA understands that the intent of this proposed revision is to avoid duplicative reporting and notice requirements for those POUs that will be developing integrated resource plans pursuant to PUC section 9621; NCPA appreciates any and all options to avoid duplicative and unnecessary reporting. However, NCPA does not believe that the RPS Regulation is the appropriate vehicle to mandate incorporation of the RPS procurement plan into the POU's actual IRP. The two documents serve entirely different purposes and span different planning and reporting timeframes.

The IRPs, for example, are designed around longer-term planning objectives, and are required to be updated every five years. RPS procurement plans may be updated more frequently and not necessarily during the same timeframe that the IRP is being prepared or updated. Additionally, while PUC section 9621(b)(2) requires that the integrated resource plan address the RPS mandate, that is but one element of the IRP. Furthermore, some POU integrated resource plans may not include all elements of the POU's separate RPS procurement plan, while others may. Due to these many differences, in order to ensure clarity and avoid confusion, the RPS Regulation should not proscribe or presuppose the nature of the IRP requirements.

The filing and notice requirements for the IRP are separately set forth in PUC section 9621(d). While they are the same requirements applicable to the RPS procurement plans, the two documents are – and should remain – separate. However, in the interest of avoiding duplicative requirements, the provisions of 3205(a)(3) can be waived for those POU's that do include their renewable energy resource procurement plans in their IRP filings. NCPA suggests the following revision to proposed section 3205(a)(4):

(4) Beginning January 1, 2019, a POU subject to the Public Utilities Code section 9621 ~~shall incorporate that includes~~ its renewable energy resources procurement plan into the POU's integrated resource plan developed and adopted pursuant to Public Utilities Code section 9621, shall be deemed to have complied with the ~~The~~ noticing requirements of paragraph (3) ~~shall be satisfied for elements of a POU's integrated resources plan intended to replace the POU's renewable energy resources procurement plan.~~

2. Reporting New or Updated RPS Procurement Plans. Although not yet signed by the Governor, SB 1393 (referred to as “SB 350 Clean-up”) was passed by the legislature and would make changes to the current reporting and notice requirements applicable to the POU's' renewable energy resource procurement plans. SB 1393 amended section PUC section 399.30(f) so that the provisions of section 3205(a)(3)(B) and (C) would no longer be required. NCPA recommends that the proposed amendments to the RPS Regulation incorporate the changes reflected in SB 1393. The proposed amendments can then be issued after September 30 (the last day for the Governor to sign or veto bills passed by the legislature during the last session).

F. Excess Procurement Provisions

The revisions to PUC section 399.13(a)(4)(B) and 399.30(d) change the eligibility for resources that may be used for determining excess procurement under section 3206(a)(1) of the RPS Regulations. NCPA supports these revisions. However, in order to avoid any confusion regarding the manner in which the POU's may elect to utilize the optionality of this provision, the regulations should clarify that POU's that elect to use the new excess procurement calculation before 2021 need not make such election until the time they submit their compliance filing. As such, NCPA recommends the following changes to section 3206(a)(1):

(F) If a POU meets the requirements of section 3204 (d) beginning January 1, 2017, the POU may elect for the provisions of section 3206 (a)(1)(C) to take effect for the compliance period beginning January 1, 2017. A POU shall designate the election to utilize this provision in its compliance filing.

Additionally, it is important that the regulations avoid unnecessarily restricting the eligibility of resources to count towards excess procurement or otherwise diminish the economic value of long-term procurement contracts. In order to clarify the manner in which REC attributes are attributed for compliance purposes, NCPA recommends that language be added to proposed new section 3206(a)(1)(I) clarifying that the PCC eligibility and long-term/short-term character of the electricity products used for excess procurement are applied to the compliance period in which the electricity products are applied for compliance.

(I) Electricity products that qualify as excess procurement and are applied to a future compliance period shall be included in the calculation of the RPS procurement requirements of the future compliance period to which they are applied. The length of the contract and the portfolio content category classification of the electricity from which the REC was derived is used to determine compliance for the compliance period for which the REC is applied.

G. Delay of Timely Compliance

1. Unanticipated Curtailments: Suggested amendments to section 3206(a)(2)(A)3 now restrict the use of unanticipated curtailments to delay of timely compliance “if the delay of timely compliance would not result in an increase in emissions of greenhouse gases.” In order to meaningfully rely on this provision, the regulations must provide clarity and direction regarding how it will be determined whether or not there was an increase in greenhouse gas (GHG) emissions. In the event that there is an unanticipated curtailment, the POU’s must know the metric by which increased GHG emissions will be calculated, otherwise, it will be impossible for the POU to determine whether or not they are in compliance. NCPA recommends that the regulation clearly state that the measure of increased GHG emissions is determined by the POU.

2. Transportation Electrification: NCPA applauds and fully supports the Commission’s recognition that transportation electrification may have an unanticipated impact on a POU’s retail sales during any given compliance period and the proposed addition of a provision that allows for delay of timely compliance for unanticipated increases in retail sales due to transportation electrification consistent with the provisions of PUC section 399.15(b)(5)(D) and 399.30(d)(2)(A). The state is moving toward greater and greater incentives to reduce emissions from the transportation sector, many of which have a profound impact on the electricity sector and the utilities. Not all of those changes are foreseeable, and even foreseeable changes to transportation electrification may not develop during the expected timeframes. As

such it is appropriate for the RPS regulation to acknowledge that there may be a delay in timely compliance due to unanticipated increases in retail sales attributable to transportation electrification.

Unfortunately, as proposed, Section 3206(a)(2)(A)4 is vague and ambiguous. While the provisions set forth therein reflect the skeletal structure of the statutory language, it is not sufficient to form the basis for setting a benchmark for determining what was in fact “unanticipated;” the metric for doing so must be certain and clearly defined. The “best-case implementation” must be known in advance and cannot potentially be subject to varying definitions that may come from more than one agency. Whatever “filings” are used to form the basis for determining the most recently available information must be static for comparison purposes, and must be based on a defined document from a specified agency. Referencing the “most recently available information filed with the [CEC], [CARB], or other relevant state agency,” is insufficient. The legislature left it to the regulatory agencies implementing the provision to clearly define which filings to which agencies would be controlling. Myriad filings may be made by multiple entities before at least three (and potentially more) “relevant state agencies.” For purposes of creating a means by which to measure whether a POU took appropriate actions or otherwise prudently planned for transportation electrification in its service territory, the proposed language is untenable.

Developing the appropriate measures, however, is an important and necessary task. In addition to the legislature’s recognition of the significance of transportation electrification in PUC section 399.15(b)(5)(D), the impacts of transportation electrification on the electric utilities have also been acknowledged in Health and Safety Code section 44258.5(b) and by CARB. While pushing for greater electrification of the transportation sector, SB 350 also calls out the impact on utilities in the context of recognizing the cost burden on utilities.³ CARB is also looking at this issue, and is seeking clarity regarding the type of data that can be used to measure and quantify these impacts from the perspective of increased GHG emissions. Likewise, the CEC has just requested that a new docket be opened to address the transportation electrification elements of IRP planning required of the POU’s under SB 350 (16-TRAN-01).

All of this highlights the significance of transportation electrification on the utilities, but also the need for clear and concise direction and a metric by which to measure and quantify those impacts. NCPA looks forward to working with the Commission staff to further develop this

³ Health and Safety Code section 44258.5(b).

provision so that potential unforeseen impacts of transportation electrification on a POUs' retail sales can be properly acknowledged in the context of RPS compliance.

H. RPS Enforcement

NCPA appreciates the proposed revision to Section 1240(h). In the event that a Notice of Violation is issued, it is appropriate for the affected POU to have a full copy of the record that is being forwarded to California Air Resources Board.

III. CONCLUSION

NCPA appreciates the opportunity to provide these comments on the Pre-Rulemaking Draft and to work with Staff and stakeholders on refinements to the proposed amendments. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Respectfully submitted, this 9th day of September 2016.

Respectfully submitted,



C. Susie Berlin, Esq.
LAW OFFICES OF SUSIE BERLIN

Attorneys for the:
Northern California Power Agency