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California Energy Commission PROPOSED REGULATIONS

INITIAL STATEMENT OF REASONS FOR ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES



CALIFORNIA
ENERGY COMMISSION

Edmund G. Brown, Jr., Governor

MARCH 2013

CEC-300-2013-001-SD

INITIAL STATEMENT OF REASONS

PROPOSED REGULATIONS

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**

California Energy Commission

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INTRODUCTION

The proposed regulations were developed by the California Energy Commission (Energy Commission) 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 Section 399.30 (l) directs the Energy Commission to adopt regulations specifying procedures for the enforcement of the Renewables Portfolio Standard (RPS) on local publicly owned electric utilities (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

¹ Assembly Bill 2227 repealed some of the reporting requirements for POUs in Public Utilities Code Section 399.30 and re-codified these requirements elsewhere in the Public Utilities Code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).

comply with this article, and for referral of violations to the California Air Resources Board (ARB) for penalties...”

The proposed regulations implement, interpret, and make specific the provisions in Public Utilities Code section 399.30 (l). The proposed 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 proposed 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 RPS was established to increase the amount of electricity generated from eligible renewable energy sources that is procured for California retail customers. An eligible renewable energy resource generally refers to an electrical generating facility or power plant that uses qualifying renewable energy resources, such as wind, solar, biomass, landfill gas, digester gas, geothermal, or small hydroelectric resources, to generate electricity. (Pub. Util. Code, § 399.12, subd. (e); Pub. Res. Code, § 25741, subd. (a).) Increased reliance on electricity generated from eligible renewable energy resources will reduce the amount of electricity generated and procured from nonrenewable energy sources, such as fossil fuel-based power plants, and may ameliorate air quality problems and improve public health by reducing the burning of fossil fuels for power generation purposes and the associated environmental impacts and by reducing in-state fossil fuel consumption.²

The RPS was established in 2002 as a result of SB 1078 (Stats. 2002, ch. 516), which required retail sellers of electricity (retail sellers)³ to increase their procurement of electricity from eligible renewable energy resources by at least 1 percent per year so that 20 percent of their retail sales are procured from eligible renewable energy resources by 2017. SB 1078 additionally required each governing body of a POU to be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources. SB 107 (Stats. 2006, ch. 464) accelerated the RPS goal for retail sellers to 20 percent

² Former Public Utilities Code Section 399.11(c), as enacted by SB 1078 (Stats. of 2002, ch. 516, sec.3). Section 399.11 was amended by SBX1-2 in 2011. Under SBX1-2 the intended benefits of the RPS include (1) displacing fossil fuel consumption within the state, (2) adding new electrical generating facilities in the transmission network within the Western Electricity Coordinating Council service area, (3) reducing air pollution in the state, (4) meeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation, (5) promoting stable retail rates for electric service, (6) meeting the state's need for a diversified and balanced energy generation portfolio, (7) assistance with meeting the state's resource adequacy requirements, (8) contributing to the safe and reliable operation of the electrical grid, including providing predictable electrical supply, voltage support, lower line losses, and congestion relief, and (9) implementing the state's transmission and land use planning activities related to development of eligible renewable energy resources. (Pub. Util. Code, § 399.11, subd. (b)(1)-(9).)

³ By statute, the definition of “retailer sellers” includes electrical corporations, community choice aggregators, and electric service providers, but excludes local publicly owned electric utilities. (Pub. Util. Code, § 399.12, subd. (j).)

renewables by 2010. SB 107 also required each POU in California to report to the Energy Commission on the POU's status of implementing an RPS program and the progress made toward achieving its RPS goals.

SB X1-2 adjusts the RPS goal of 20 percent by 2010 to an average of 20 percent for the years 2011 through 2013, increases the long term RPS goal to 33 percent by the end of 2020, and expands these requirements to include POUs as well as retail sellers. (Pub. Util. Code § 399.15, subd. (b), § 399.30, subd. (b) and (c).) SB X1-2 gives the Energy Commission new oversight responsibilities with respect to POUs, including adopting regulations for enforcement of the RPS procurement requirements of POUs. (Pub. Util. Code § 399.30, subd. (l).) SB X1-2 authorizes the Energy Commission to issue a notice of violation and correction for potential penalties to the ARB for a POU's failure to comply with the RPS requirements. (Pub. Util. Code § 399.30, subd. (m).)

SPECIFIC PURPOSE, RATIONALE, AND NECESSITY OF EACH PROPOSED REGULATION

The problem the Energy Commission is attempting to address with the proposed regulations is the inconsistent application and enforcement of the state's RPS to POUs. Prior to SB X1-2, POUs had discretion to establish and enforce their own RPS requirements. Unlike retail sellers, which were required to meet their RPS procurement requirements with electricity procured from eligible renewable energy resources certified by the Energy Commission, a POU could establish its own eligibility requirements for renewable resources to meet the POU's RPS procurement requirements. Similarly, POUs were not subject to the minimum annual procurement requirements, procurement plan requirements, reporting requirements, or enforcement requirements applicable to retail sellers. Nor were POUs subject to the penalties applicable to retail sellers for noncompliance. POUs had broad discretion to implement and enforce their own self-established RPS procurement requirements. As a result, the RPS requirements for POUs could vary from POU to POU and differ from the requirements applicable to retail sellers and enforced by the California Public Utilities Commission (CPUC).

Under SB X1-2, POUs are now subject to many of the same or similar RPS requirements as retail sellers.

The proposed regulations establish the rules and procedures by which the Energy Commission will assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. The proposed 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 proposed 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 ARB for potential penalties.

The benefits anticipated from this regulatory action are a more consistent application and enforcement of the state's RPS, which 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 proposed regulations will ensure POUs are subjected to a uniform set of rules for satisfying the RPS requirements. 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. If a POU and retail seller purchase the same electricity product 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.

Consistency in the application of the rules among POUs and between POUs and retail sellers 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.

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 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 .)

SB X1-2 establishes exemptions from various provisions in the statute for certain POUs. These exemptions are addressed in Public Utilities Code section 399.30, subd. (g) – (j).

The proposed regulations will help California realize the intended benefits of the RPS by ensuring POUs are subjected to a uniform set of rules for satisfying and enforcing the RPS requirements. The proposed regulations will be codified in Chapters 2 and 13 of Division 2 of Title 20 of the California Code of Regulations. Chapter 2 is an existing chapter that specifies rules of practice and procedures for the Energy Commission. The proposed regulations will add section 1240 to Article 4 of Chapter 2. Article 4 specifies procedures for initiating and adjudicating complaints of alleged violations of any statute, order, decision, or regulation adopted, administered, or enforced by the Energy Commission or for initiating and adjudicating investigations to determine the applicability of any such statute, order, decision, or regulation. The proposed regulations will also add sections 3200 through 3208 to Chapter 13, which is a new chapter.

Each section of the proposed regulations is addressed separately below, beginning with the proposed regulations in Chapter 13, sections 3200 through 3208, and then followed by the proposed regulations in Chapter 2, section 1240.

Chapter 13. Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

Section 3200 – Scope

Proposed section 3200 sets the scope of Chapter 13 as implementing enforcement procedures for the RPS for POUs as established in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. Section 3200 limits the scope of the proposed regulations to POUs. The term “POU” or “local publicly owned electric utility” is defined in section 3201 (r) of the proposed regulations.

This section is necessary to explain the application of the proposed regulations. The proposed regulations apply only to POUs, and do not apply to retail sellers. The CPUC is responsible for establishing the RPS procurement requirements for retail sellers, determining compliance for retail sellers, and imposing penalties for noncompliance of retail sellers. (Pub. Util. Code, §§ 399.13 – 399.17.)

In developing the proposed regulations, the Energy Commission worked with the CPUC to ensure the proposed regulations were consistent with the rules developed by the CPUC for the retail sellers. As noted earlier, POUs are now subject to many of the same or similar RPS requirements as retail sellers under SB X1-2, so it was and is appropriate to work with the CPUC to ensure a consistent application of the RPS rules for retail sellers and POUs. For example, both POUs and retail sellers may procure electricity products only from eligible renewable energy resources to meet their respective RPS requirements. (Pub. Util. Code, §399.15, subd. (a), and §399.30, subd. (a).) POUs and retail sellers are subject to the same RPS compliance periods ending on December 31, 2013, December 31, 2016, and December 31, 2020, and for each year thereafter. (Pub. Util. Code, §399.15, subd. (b), and §399.30, subd. (b).) POUs must adopt RPS procurement requirements “consistent” with the requirements for retail sellers under Public Utilities Code section 399.16. (Pub. Util. Code, §399.30, subd. (c)(3).) When adopting a procurement plan, a POU may adopt rules permitting the POU to apply excess procurement in one compliance period to subsequent compliance periods “in the same manner” as allowed for retail sellers under Public Utilities Code section 399.13. (Pub. Util. Code, §399.30, subd. (d)(1).) The POU may also adopt conditions that allow for delaying timely compliance “consistent with” the requirements for retail sellers under Public Utilities Code section 399.15 (b). (Pub. Util. Code, §399.30, subd. (d)(2).) The POU may also adopt cost limitations for RPS procurement expenditures “consistent with” the requirements for retail sellers under Public Utilities Code section 399.15 (c). (Pub. Util. Code, §399.30, subd. (d)(3).)

Moreover, a consistent application of the RPS rules for retail sellers and POUs will help provide market certainty for stakeholders participating in the California RPS and the renewable energy market by ensuring that stakeholders are purchasing standardized and independently verified electricity products, rather than electricity products that are defined differently by each POU.

Section 3201 – Definitions

Proposed section 3201 includes definitions for various terms used in the proposed regulations. These definitions are necessary to understand how the terms are used in the proposed regulations.

(a) Annual procurement target: The definition of this term is necessary to explain how a POU's procurement of electricity products from eligible renewable energy resources during the period from 2004 through 2010 will be determined to calculate the POU's historic carryover. SBX1-2 establishes procurement requirements for electricity products from eligible renewable energy resources starting on January 1, 2011, but allows procurement of electricity products from eligible renewable energy resources to "count in full" toward meeting a POU's RPS procurement requirements, provided the conditions of Public Utilities Code section 399.16 (d) are satisfied.

(b) Balancing authority: The definition of this term is necessary to explain what entities will schedule electricity from one balancing authority area to another and enter into dynamic transfer agreements with POUs. Documentation of energy schedules and dynamic transfers from one balancing authority to another may be used to verify the portfolio content category classification of an electricity product.

(c) Balancing authority area: The definition of this term is necessary to understand the definitions of Portfolio Content Category 1 (PCC 1) and Portfolio Content Category 2 (PCC 2), both of which include electricity products associated with electricity scheduled from one balancing authority area into another.

(d) Baseline: The definition of this term is necessary to explain how a POU's procurement of electricity products from eligible renewable energy resources during the period from 2004 through 2010 will be determined to calculate the POU's historic carryover. SBX1-2 establishes procurement requirements for electricity products from eligible renewable energy resources starting on January 1, 2011, but allows procurement of electricity products from eligible renewable energy resources to "count in full" toward meeting a POU's RPS procurement requirements, provided the conditions of Public Utilities Code section 399.16 (d) are satisfied.

(e) Bundled: The definition of this term is necessary to help identify which electricity products meet the definition of PCC 1 and PCC 2. Both categories include only bundled electricity products because Portfolio Content Category 3 (PCC 3) is explicitly defined in Public Utilities Code section 399.16 (b)(3) as "including unbundled renewable energy credits," implying that the other two portfolio content categories must include only bundled products.

(f) California balancing authority: The definition of this term is necessary to make clear which electric generating facilities will be considered to have their first point of interconnection with, have their first point of interconnection with distribution facilities used to serve end users within, have their electricity scheduled into, or have an agreement to dynamically transfer their electricity into, a California balancing authority. This clarification is necessary to help classify electricity products by portfolio content category.

(g) Commission: The definition of this term is necessary to provide a concise term by which to refer to the State Energy Resources Conservation and Development Commission. The Commission is the entity responsible for adopting and enforcing the proposed regulations.

(h) Compliance period: The definition of this term is necessary to establish the periods for which POU's must meet RPS procurement and reporting requirements.

(i) Compliance report: The definition of this term is necessary to explain what a POU must submit to the Energy Commission to demonstrate compliance with the RPS, and the date by which the report must be submitted.

(j) Electricity product: The definition of this term is necessary to define what must be procured by a POU as part of the POU's compliance with the RPS. The electricity product may be a bundled or an unbundled product.

(k) Eligible renewable energy resource: The definition of this term is necessary to explain which electricity generating facilities generate electricity products that may be considered eligible to count toward a POU's RPS procurement requirements.

(l) Executive Director: The definition of this term is necessary to clarify that the use of the term in the regulations refers to both the Energy Commission's Executive Director and to any Energy Commission designee of the Executive Director.

(m) Historic carryover: The definition of this term is necessary to explain which POU procurement associated with generation before January 1, 2011, may be claimed toward a POU's RPS procurement requirements for a compliance period. The allowance of historic carryover is implied by Public Utilities Code section 399.16 (d), which permits certain electricity products to "count in full." Electricity products that meet the definition of historic carryover but were not allowed to be claimed toward a POU's RPS procurement requirements for a compliance period would not be counted in full as permitted by statute.

(n) Megawatt-hour or MWh: The definition of this term is necessary to clarify the unit of measurement for tracking and reporting procurement to meet the RPS. Renewable Energy Credits (RECs) are retired to demonstrate compliance with the RPS and represent 1 MWh of electricity from an eligible renewable energy resource.

(o) NERC e-tag: The definition of this term is necessary to clarify what documentation may be required from a POU to verify classification in a particular portfolio content category. A North American Electric Reliability Corporation (NERC) e-tag is one of several possible sources for data necessary to verify electricity product classification.

(p) Ownership agreement: The definition of this term is necessary to clarify the execution date of an ownership agreement to identify the type of qualifying electricity product in section 3202. A qualifying electricity product may be classified as "count in full" or in one of the three portfolio content categories based in part on the execution date of the associated contract or ownership agreement.

(q) Portfolio balance requirement: The definition of this term is necessary to address the minimum and maximum percentages, as provided in Public Utilities Code section 399.16 (c), that POU's are required to meet when procuring electricity products through contracts or ownership agreements executed on or after June 1, 2010, to apply toward RPS procurement requirements.

(r) Portfolio content category: The definition of this term is necessary to describe the classification of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, for applying the portfolio balance requirement. This definition is also necessary to describe the classification of electricity products procured pursuant to a contract or ownership agreement executed before June 1, 2010, that did not meet the RPS eligibility rules that were in place at the time of execution. Classification of the latter electricity products into portfolio content categories differentiates such products from electricity products that are counted in full.

(s) POU or local publicly owned electric utility: The definition of this term is necessary to establish which entities will be subject to the provisions in these regulations. SBX1-2 directs the Energy Commission to establish regulations 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 the requirements of Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Public Utilities Code.

(t) Procure: The definition of this term is necessary to further clarify the definition provided in the Public Utilities Code section 399.11 (f) by establishing that procurement must come from eligible renewable energy resources to count toward compliance with the RPS.

(u) Renewable electrical generation facility: The definition of this term is necessary to establish the link between the terms "eligible renewable energy resource" and "renewable electrical generation facility." Any procurement that occurred prior to June 1, 2010, must have been from a renewable electrical generation facility to be certified by the Energy Commission as an eligible renewable energy resource. Additionally, any POU in a city and county that receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, must prove to the Energy Commission that the generation does not come from a renewable electrical generation facility.

(v) Renewable energy credit or REC: The definition of this term is necessary to further define "electricity products," which could include electricity and the associated renewable energy credits, procured from an eligible renewable energy resource, or unbundled renewable energy credits, procured without the associated electricity. These electricity products will be categorized in various portfolio content categories and applied toward the RPS for compliance. POU's must retire and report RECs to demonstrate compliance with the RPS procurement requirements.

(w) Renewables portfolio standard or RPS: The definition of this term is necessary to reference the standard established in Public Utilities Code section 399.12 (i), which requires retail sellers

and POU's to procure specific quantities of eligible renewable energy resources as specified in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Public Utilities Code. This law establishes new goals for the existing RPS policy and requires the Energy Commission to establish new rules and regulations to implement changes under the law.

(x) RPS-certified facility: The definition of this term is necessary to explain which facilities generate RECs that may be retired to demonstrate a POU's compliance with the RPS procurement requirements. A REC must be associated with electricity generated by an RPS-certified facility to be retired toward a POU's RPS procurement requirements.

(y) RPS Guidelines: The definition of this term is necessary to reference the guidelines established by the Energy Commission that address the eligibility, certification, and verification of eligible renewable energy resources for the RPS. While these regulations address compliance, reporting, and enforcement of the RPS, it is still necessary to discuss instances where eligibility of certain eligible renewable energy resources affects the way the resources are applied to the RPS procurement requirements or are reported to the Energy Commission. The Energy Commission's adoption of the RPS Guidelines is expressly exempt from the formal rulemaking requirements of the Administrative Procedures Act pursuant to subdivision (a) of Public Resources Code section 25747. These guidelines are set forth in the following Energy Commission guidebooks:

The *Renewables Portfolio Standard Eligibility Guidebook* explains the requirements and process for certifying eligible renewable energy resources for California's RPS. The *Renewables Portfolio Standard Eligibility Guidebook* also describes how the Energy Commission tracks and verifies RPS-eligible electricity generation for the RPS.

The *Overall Program Guidebook for the Renewable Energy Program* 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. The *Overall Program Guidebook* provides general information on applying for RPS certification and appealing the Energy Commission's decisions regarding RPS certification, as well as a glossary of terms that are used for the Renewable Energy Program elements and RPS.

(z) RPS procurement requirements: The definition of this term is necessary to establish which requirements of Public Utilities Code section 399.16 must be adopted by a POU for compliance with the requirements of Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Public Utilities Code.

(aa) RPS procurement target: The definition of this term is necessary to differentiate between the general procurement target that a POU must meet, and the procurement target for a POU meeting the criteria listed in Public Utilities Code section 399.30 (c).

(bb) Retail sales: The definition of this term is necessary to detail the calculation of retail sales when establishing the renewable energy products a POU must procure in each compliance period to comply with Public Utilities Code section 399.30 (c).

(cc) Retire: The definition of this term is necessary because 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. RECs must be retired to be reported to the Energy Commission to demonstrate compliance with the RPS.

(dd) Soft target: The definition of this term is necessary to explain the annual compliance target for a POU that meets the criteria in Public Utilities Code section 399.30 (j). While most POUs must comply with RPS procurement requirements on a compliance period basis, it is necessary to define a term for the annual target that can function as the annual compliance obligation for the purposes of 399.30 (j).

(ee) Unbundled REC: The definition of this term is necessary to establish how a REC is classified as unbundled to assist with the categorization of electricity products into the portfolio content categories.

(ff) Western Electricity Coordinating Council: The definition of this term is necessary to explain where a renewable energy resource may interconnect to be considered eligible for the RPS under SBX1-2.

(gg) Western Renewable Energy Generation Information System or WREGIS: The definition of this term is necessary because WREGIS is the tracking system established by the Energy Commission in accordance with Public Utilities Code section 399.25 to verify the procurement of electricity products from eligible renewable energy resources for the RPS.

Section 3202 – Qualifying Electricity Products

Proposed section 3202 specifies the requirements for electricity products to be counted toward a POU's RPS compliance. It also explains which electricity products must be classified under a portfolio content category, which must be included in the portfolio balance requirements, and which must be counted in full without being classified under a portfolio content category. In addition, this section provides the deadline by which an electricity product's associated RECs must be retired. This section is necessary to describe how the requirements for qualifying electricity products will be applied by the Energy Commission to determine a POU's compliance with the RPS under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Public Utilities Code.

Subdivision (a)(1). Proposed subdivision (a)(1) specifies that an electricity product procured on or after June 1, 2010, and associated with generation from an RPS-certified facility is an electricity product that qualifies for the RPS. The purpose of this subdivision is to capture all qualifying electricity products that are procured after June 1, 2010. Because the portfolio balance requirements, as established by Public Utilities Code section 399.16 (c), are applied only to

electricity products procured after June 1, 2010, products qualifying under section 3202 (a)(1) will both be classified into a portfolio content category and then included in the calculation of the procurement allocation requirements of Public Utilities Code section 399.16 (c).

Proposed subdivision (a)(2). This section specifies that an electricity product procured before June 1, 2010, that is associated with generation from a facility that meets the Energy Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU, and that has no contract modifications or amendments occurring after June 1, 2010, that would increase the nameplate capacity, expected quantities of annual generation from the facility, or substitute a different renewable energy resource for the facility, would qualify for the RPS. This section explains what "counts in full" includes for those electricity products qualifying under section 3202 (a)(2). Subdivision (a)(2) is based on the requirements of Public Utilities Code section 399.16 (d), which refers to the "rules in place." 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 Guidelines, 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 directly apply to POUs. However, 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 should apply the same way it applies to retail sellers and subject to same "rules in place."

Public Utilities Code section 399.16 (d) provides that procurement from all contracts or ownership agreements "originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article..." Because the count in full requirement applies to all of Article 16 of Chapter 2.3 of Part 1 of the Public Utilities Code, the requirements of Public Utilities Code section 399.16 (d) have been interpreted to apply to not only the procurement targets, but also the requirements for the portfolio content categories established in Public Utilities Code section 399.16 (b), as well as the calculation of excess procurement established in Public Utilities Code section 399.16 (a)(4)(B). Moreover, because Public Utilities Code section 399.16 (d) does not allow certain types of amendments, only generation qualifying under the original agreement will be counted in full under this provision. Electricity products qualifying under Subdivision (a)(2) must be procured prior to June 1, 2010, in accordance with Public Utilities Code section 399.16 (d) and therefore cannot count toward the portfolio balance requirements of Public Utilities Code section 399.16 (c).

Proposed subdivision (a)(3). This subdivision specifies that RPS-certified electricity products procured before June 1, 2010, that did not meet the Energy Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership

agreement was executed by the POU, qualify for the RPS. Subdivision (a)(3) is based on the requirements of Public Utilities Code section 399.16 (d), which allows only electricity products meeting certain requirements and from contracts or ownership agreements prior to June 1, 2010, to count in full toward the RPS procurement requirements. Subdivision (a)(3) is needed to cover any pre-June 1, 2010, procurement of qualifying electricity products that did not meet the requirements of Public Utilities Code section 399.16 (d) and therefore would be placed in a portfolio content category because they could not count in full. However, because these electricity products would also not meet the criteria of Public Utilities Code section 399.16 (c), which applies only to procurement after June 1, 2010, they would not be included in the calculation of portfolio balance requirements required by Public Utilities Code section 399.16 (c).

Proposed subdivision (b). This subdivision specifies that electricity products that are procured before June 1, 2010, and later resold will qualify only for section 3202 (a)(1). The rationale for this requirement is that if RECs are resold, and the resale was not part of the original contract, the resale will necessitate a new contract, which will change the contract date used to classify electricity products under section 3202. Electricity products that are resold after June 1, 2010, will only be able to qualify under section 3202 (a)(1) and will need to be classified into a portfolio content category.

Proposed subdivision (c). This subdivision specifies that RECs must be retired within 36 months from the initial month of generation of the associated electricity. Public Utilities Code section 399.21 (a)(6) establishes the 36 month limitation. Staff proposes using a monthly requirement rather than a daily requirement, because the electricity generation data that will be used to verify compliance is aggregated by month.

A prohibition on retiring RECs toward a future compliance period is appropriate because POUs already have a process through which RECs in excess of the RPS procurement target for a particular compliance period may be carried forward. That process and the applicable rules are specified in section 3206 (a)(1) and allow for excess procurement to be carried forward to subsequent compliance periods in accordance with Public Utilities Code section 399.13(a)(4)(B). Public Utilities Code section 399.13(a)(4)(B) includes restrictions on calculating excess procurement and applying it toward future compliance periods. Allowing RECs to be retired for a future compliance period would allow POUs to avoid the restrictions in Public Utilities Code section 399.13(a)(4)(B), which is not consistent with the intent of the law. This prohibition on REC retirement vis-a-vis Public Utilities Code section 399.13(a)(4)(B) is consistent with the CPUC's interpretation of Public Utilities Code section 399.13 (a)(4)(B) for retail sellers.

Proposed subdivision (d). This subdivision specifies that a REC may not be used to meet the procurement requirements for a compliance period preceding the date of generation of the electricity associated with that REC.

While Public Utilities Code section 399.21 (a)(6) establishes that RECs must be retired within 36 months from the initial month of generation of the associated electricity, the statute does not allow for retirement before the date of generation. Similarly, the requirements for excess

procurement set forth in Public 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.

Section 3203 – Portfolio Content Categories

Proposed section 3203 specifies the criteria that electricity products must meet to be classified under each of the three portfolio content categories.

Proposed subdivision (a)(1). This subdivision specifies which eligible renewable energy resource products will be considered to meet the requirements of PCC 1 . This subdivision is necessary to provide a clear and consistent definition of PCC 1 that will be used to determine compliance with the requirements of Public Utilities section 399.16 (b)(1). Public Utilities Code section 399.30 (c)(3) requires POUs to adopt procurement requirements consistent with Public Utilities Code section 399.16. Only electricity products that are procured bundled should count toward this category because the definition of PCC 3 explicitly includes unbundled RECs, implying that RECs counted toward the other two portfolio content categories must be bundled. Allowing the resale of the underlying electricity back to the eligible renewable energy resource is not allowed for electricity products classified as PCC 1, as it would be functionally equivalent to an unbundled REC transaction. This interpretation and application of the statute is consistent with the CPUC’s interpretation and application of Public Utilities Code section 399.16 (b)(1) for retail sellers.

The regulations specify that scheduling on an hourly or subhourly basis is required for generation scheduled into a California balancing authority because Public Utilities Code section 399.16 (b)(1) references the allowable use of ancillary services to maintain an “hourly or subhourly schedule,” implying that hourly or subhourly scheduling is required for PCC 1 products.

All scheduling and dynamic transfer agreements must be executed before the electricity products are generated, because all such agreements cover only future actions. The Energy Commission cannot accept a retroactive agreement as verification of a portfolio content category classification.

The definitions for the first point of interconnection to the transmission grid and the first point of interconnection to an electricity distribution system used to serve end users are the same as specified in the RPS Guidelines because these criteria are considered when the Energy Commission certifies an eligible renewable energy resource pursuant to Public Utilities Code section 399.25(a).

The remainder of the definition of PCC 1 is explicitly stated in the statute.

The requirements for PCC 1 products for POUs in subdivision (a)(1) are consistent with the requirements established by the CPUC for retail sellers in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, issued December 15, 2011. Consistent definitions of PCC 1 will reduce market uncertainty that results from applying different rules to electricity products depending on which utilities, retail sellers or POUs, purchase the electricity products. It will also result in the consistent designation of electricity that is purchased from same renewable generators, and thereby place retail sellers and POUs on equal footing when purchasing electricity from the same renewable generator. Consistent definitions also will ease the contracting process for utilities and renewable generators, thereby accelerating the development of new renewable facilities.

Proposed subdivision (a)(2). This subdivision specifies the criteria necessary for an electricity product originally qualifying in PCC 1, and subsequently resold, to remain classified in PCC 1. The rationale for this requirement is that the original contract for procurement of the electricity products must meet at least one of the criteria in section 3203 (a)(1)(A) – (D) because the electricity products must initially qualify as PCC 1 to continue to qualify as PCC 1 upon resale.

The resale contract must be for future electricity and RECs only, because PCC 1 products must be procured as bundled products, and a POU cannot procure electricity that has already been generated and used.

The contract must meet all qualifications of PCC 1 criteria, so the resale agreement must be for both the RECs and the associated energy (for example, a bundled product) for the electricity product to continue to meet the definition of PCC 1. Electricity is transferred in real time to ensure that substitute energy is not used.

Any electricity products that qualify as PCC 1 partly on the basis of being scheduled into a California balancing authority on an hourly or subhourly basis must maintain the original schedule upon resale.

The resale requirements for PCC 1 products for POUs in subdivision (a)(2) are consistent with the resale requirements established by the CPUC for retail sellers in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, issued December 21, 2011.

Proposed subdivision (b)(1) and (2). This section specifies which criteria electricity products must meet to be classified as PCC 2 products. This section provides a clear and consistent definition of PCC 2 that will be used to determine compliance with Public Utilities Code section 399.16 (b)(2).

Only bundled products should count toward this portfolio content category because the definition of PCC 3 explicitly includes unbundled RECs, implying that RECs counted toward the other two portfolio content categories must be bundled.

Electricity products must originate from outside of a California balancing authority because Public Utilities Code section 399.16 (b)(2) specifies that products in this portfolio content category must be “scheduled into a California balancing authority.”

To differentiate from PCC 3, electricity procurement must be incremental to the POU, and the POU must demonstrate that it is bringing new electricity procurement into the state, rather than pairing electricity deliveries under an existing procurement contract with RECs.

The substitute electricity must be scheduled into a California balancing authority in the same calendar year that the electricity from the eligible renewable energy resource is generated. This requirement was in place for retail sellers under the RPS Guidelines that were in effect when SB X1-2 was passed and was generally understood to be part of the definition of “firmed and shaped” in California. Electricity products for which the substitute energy is scheduled into a California balancing authority before the generation of electricity from the eligible renewable energy resource may be classified as PCC 2, as long as both the scheduling and the generation take place after the contract execution date for the substitute electricity. This arrangement, which has been the rule for retail sellers for several years, provides adequate flexibility to POUs in firming and shaping their PCC 2 resources.

To differentiate from PCC 3 electricity products, the electricity from the eligible renewable energy resource may not be sold back to that resource, as that would essentially create an unbundled REC product. The electricity from the eligible renewable energy resource must also be available to be procured by the POU and not already procured by another entity, to be a bundled product.

These requirements for PCC 2 products for POUs are consistent with the requirements established by the CPUC for retail sellers in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, issued December 15, 2011. Consistent definitions of PCC 2 will reduce market uncertainty that results from applying different rules to electricity products depending on which utilities, retail sellers or POUs, purchase the electricity products. It will also result in the consistent designation of electricity that is purchased from same renewable generators, and thereby place retail sellers and POUs on equal footing when purchasing electricity from the same renewable generator. Consistent definitions also will ease the contracting process for utilities and renewable generators, thereby accelerating the development of new renewable facilities.

Proposed subdivision (b)(3) and (4). These subdivisions specify the criteria necessary for an electricity product originally qualifying in PCC 2, and subsequently resold, to remain classified in PCC 2. For the electricity products to continue to be classified as PCC 2, the resale contract must meet all PCC 2 criteria, so the resale contract must maintain the substitute electricity scheduling, the substitute electricity must be incremental to the purchasing POU, the substitute electricity must be scheduled into a California balancing authority, and the resale contract must be for both the RECs and the associated substitute electricity.

In addition, the resale contract must be for future electricity and RECs only because PCC 2 products must be procured as bundled products and a POU cannot procure electricity that has already been generated and used. If the electricity products do not meet the aforementioned criteria, then those electricity products would no longer be eligible for PCC 2 and would be classified as PCC 3.

All electricity products that met the criteria for PCC 2 when initially procured must continue to meet all criteria for PCC 2 upon resale, including all contracting requirements. If the electricity products no longer meet the PCC 2 criteria, the electricity products would also not meet the criteria for PCC 1, so the only remaining classification is PCC 3.

The requirements for the resale of PCC 2 products for POUs in this subdivision are consistent with the resale rules for retail sellers established by the CPUC in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, issued December 15, 2011.

Proposed subdivision (c). This subdivision specifies which criteria electricity products must meet to be classified as PCC 3 products. This section provides a clear and consistent definition of PCC 3 that will be used to determine compliance with Public Utilities Code section 399.16 (b)(3). The inclusion of “unbundled renewable energy credits” in the statute’s description of PCC 3 implies that all unbundled RECs should be classified in this category. Public Utilities Code section 399.16 (b)(3) also provides that any electricity products that do not meet the definitions of PCC 1 or PCC 2 will be classified as PCC 3.

These requirements for PCC 3 products for POUs are consistent with the requirements established by the CPUC for retail sellers in its *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, issued December 15, 2011. Consistent definitions of PCC 3 will reduce market uncertainty that results from applying different rules to electricity products depending on which utilities, retail sellers or POUs, purchase the electricity products. It will also result in the consistent designation of electricity that is purchased from same renewable generators, and thereby place retail sellers and POUs on equal footing when purchasing electricity from the same renewable generator. This also will ease the contracting process for utilities and renewable generators, thereby accelerating the development of new renewable facilities.

This interpretation of the statute is consistent with the CPUC’s interpretation as described in *Decision 11-12-052*, adopted December 15, 2011.

Section 3204 – RPS Procurement Requirements

Proposed section 3204 specifies how each POU’s RPS procurement target will be calculated for each compliance period. It also states what a POU must demonstrate to be considered in compliance with the RPS procurement requirements, including those POUs with different compliance obligations under Public Utilities Code sections 399.30 (g), (i) and (j). Section 3204

also explains how deficits from each compliance period will be treated and details how each POU's portfolio content category requirements will be calculated for each compliance period. This section states what a POU must demonstrate to be considered in compliance with the RPS portfolio content category requirements, including those POUs with different compliance obligations under Public Utilities Code sections 399.30 (g), (h) and (j).

Proposed subdivision (a)(1). This subdivision explains the method the Energy Commission will use to calculate whether a POU's claimed procurement meets its RPS compliance obligation for the compliance period ending December 31, 2013. Public Utilities Code section 399.30 (c)(1) provides that a POU must procure a quantity of eligible renewable energy resources to equal an average of 20 percent of retail sales over the compliance period from January 1, 2011, to December 31, 2013, inclusive.

Because a POU may opt to use any historic carryover or excess procurement that meets the criteria in section 3206 to any subsequent compliance period, the POU may include historic carryover and excess procurement as electricity products that apply to its RPS procurement target for the compliance period it designates.

POUs may not apply surplus PCC 3 procurement toward their RPS procurement target because that would violate the maximum limit for PCC 3 procurement established in Public Utilities Code section 399.16 (c)(2), which applies to POUs via Public Utilities Code section 399.30 (c)(3). As noted earlier, Public Utilities Code section 399.30 (c)(3) requires POU procurement requirements to be consistent with Public Utilities Code section 399.16. While Public Utilities Code section 399.16 (e) allows retail sellers (and, by extension, POUs) to decrease their PCC 1 minimum requirements if there exist conditions allowing for the delay of timely compliance, there is no corresponding allowance to increase the PCC 3 maximum. When the excess procurement limitations of Public Utility Code section 399.13 (a)(4)(B) are read in conjunction with the limitations of Public Utilities Code section 399.16 (c)(2), it is clear that the statute intended to limit the PCC 3 procurement retired for RPS compliance in each compliance period, such that any PCC 3 procurement in excess of that limit may not apply toward a POU's RPS procurement target.

Proposed subdivision (a)(2). This subdivision explains the method the Energy Commission will use to calculate whether a POU's claimed procurement meets its RPS compliance obligation for the compliance period ending December 31, 2016. Staff found 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), while still allowing POUs the discretion to appropriate their resources in a manner that best meets their budgets and long-term goals. This approach differs from the approach taken by the CPUC for retail sellers but is consistent with Public Utilities Code section 399.30 (c)(2), which states:

"The quantities to be procured in 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 § 399.30, subd. (c)(2).)

Public Utilities Code section 399.30 (c)(2) does not require a specific amount of procurement in each of the intervening years but provides flexibility with the goal of reaching the procurement target by the end of the compliance period. Moreover, procuring an increasing quantity of electricity products during each intervening year of a compliance period does not guarantee that a POU will meet its required procurement target by the end of a compliance period. A POU that makes reasonable progress by procuring increasing quantities of electricity products during each of the intervening years may nevertheless come up short in reaching the 25 percent target by the end of 2016. Similarly, a POU that takes reasonable actions to increase its procurement during the second compliance period, but does not necessarily increase the quantities of electricity products procured during each of the intervening years, may ultimately meet the 25 percent target by the end of 2016.

In contrast, the “reasonable progress” parameters used by the CPUC presume retail sellers are procuring increasing quantities of electricity products during each intervening year of a compliance period. These parameters for retail sellers were established by the CPUC pursuant to Public Utilities Code section 399.15 (b)(2)(A) – (C), which imposes additional requirements on retail sellers. Specifically, Public Utilities Code section 399.15 (b)(2)(C) provides the following:

“Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.”
(Pub. Util. Code § 399.15, subd. (b)(2)(C).)

While Public Utilities Code section 399.30 (c)(1) applies an average of procurement over the entire compliance period for the first compliance period, Public Utilities Code section 399.30 (c)(2) contemplates a different method of assessing compliance in subsequent compliance periods. Specifically, Public Utilities Code section 399.30 (c)(2) states:

“The quantities to be procured in 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 § 399.30, subd. (c)(2).)

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).

In addition, staff determined that, in part because the POUs had not been subject to the steadily increasing annual procurement targets applied to retail sellers in 2004-2010, reasonable progress for the POUs would not necessarily follow a linear progression. Staff chose an RPS procurement target for the second compliance period that would reflect a minimum necessary to reach the

target set in statute of 25 percent by December 31, 2016. POU's will establish, and be asked to report on, reasonable progress for the second and third compliance periods as defined by their own governing boards.

Staff recognized the need for many POU's 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 POU's than for retail sellers.

POU's may not apply surplus PCC 3 toward their RPS procurement target, because that would violate the maximum limit for PCC 3 established in Public Utilities Code section 399.16 (c)(2), which applies to POU's via Public Utilities Code section 399.30 (c)(3). As noted earlier, Public Utilities Code section 399.30 (c)(3) requires POU procurement requirements to be consistent with Public Utilities Code section 399.16.

As also noted earlier, while Public Utilities Code section 399.16 (e) allows retail sellers (and, by extension, POU's) to decrease their PCC 1 minimum requirements if there exist conditions allowing for the delay of timely compliance, there is no corresponding allowance to increase the PCC 3 maximum. When the excess procurement limitations of Public Utility Code section 399.13 (a)(4)(B) are read in conjunction with the limitations of Public Utilities Code section 399.16 (c)(2), it is clear that the statute intended to limit the PCC 3 procurement retired for RPS compliance in each compliance period, such that any PCC 3 procurement in excess of that limit may not apply toward a POU's RPS procurement target.

Proposed subdivision (a)(3). This subdivision explains the method the Energy Commission will use to calculate whether a POU's claimed procurement meets its RPS compliance obligation for the compliance period ending December 31, 2020. Staff found 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 demonstrate reasonable progress for the third compliance period in accordance with 399.30 (c)(2) while still allowing POU's the discretion to appropriate their resources in a manner that best meets their budgets and long-term goals. This approach differs from the approach taken by the CPUC for retail sellers but is consistent with Public Utilities Code section 399.30 (c)(2) and appropriate for the reasons noted above for proposed subdivision (a)(2).

POU's may not apply surplus PCC 3 toward their RPS procurement targets because that would violate the maximum limit for PCC 3 established in Public Utilities Code section 399.16 (c)(2), which applies to POU's via Public Utilities Code section 399.30 (c)(3). As noted earlier, Public Utilities Code section 399.30 (c)(3) requires POU procurement requirements to be consistent with Public Utilities Code section 399.16.

Also, while Public Utilities Code section 399.16 (e) allows retail sellers (and, by extension, POU's) to decrease their PCC 1 minimum requirements if there exist conditions allowing for the delay of timely compliance, there is no corresponding allowance to increase the PCC 3 maximum. When the excess procurement limitations of Public Utility Code section 399.13 (a)(4)(B) are read in conjunction with the limitations of Public Utilities Code section 399.16

(c)(2), it is clear that the statute intended to limit the PCC 3 procurement retired for RPS compliance in each compliance period, such that any PCC 3 procurement in excess of that limit may not apply toward a POU's RPS procurement target.

Proposed subdivision (a)(4). This subdivision explains the method the Energy Commission will use to calculate whether a POU's claimed procurement meets its RPS compliance obligation for each compliance period after December 31, 2020. Public Utilities Code section 399.30 (c)(2) states that a POU must procure a quantity of eligible renewable energy resources equaling no less than 33 percent of retail sales for each compliance period after December 31, 2020.

POUs may not apply surplus PCC 3 toward their RPS procurement targets because that would violate the maximum limit for PCC 3 established in Public Utilities Code section 399.16 (c)(2), which applies to POUs via Public Utilities Code section 399.30 (c)(3). As noted earlier, Public Utilities Code section 399.30 (c)(3) requires POU procurement requirements to be consistent with Public Utilities Code section 399.16.

Also, while Public Utilities Code section 399.16 (e) allows retail sellers (and, by extension, POUs) to decrease their PCC 1 minimum requirements if there exist conditions allowing for the delay of timely compliance, there is no corresponding allowance to increase the PCC 3 maximum. When the excess procurement limitations of Public Utility Code section 399.13 (a)(4)(B) are read in conjunction with the limitations of Public Utilities Code section 399.16 (c)(2), it is clear that the statute intended to limit the PCC 3 procurement retired for RPS compliance in each compliance period, such that any PCC 3 procurement in excess of that limit may not apply toward a POU's RPS procurement target.

Proposed subdivision (a)(5). This subdivision provides detail on how a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law, shall calculate the annual retail sales upon which the RPS targets in section 3204 (a)(1)-(4) are based. Public Utilities Code section 399.30 (i) states that, for such POUs, the RPS procurement requirement calculations "shall be based on the authority's average retail sales over the previous seven years." The "previous seven years" has been interpreted to mean the seven years preceding the end of each year within the compliance period, as the RPS procurement requirements are calculated based on annual retail sales.

Proposed subdivision (a)(6). This subdivision specifies the Energy Commission's procurement verification policy for POUs deemed already in compliance with the RPS under Public Utilities Code section 399.30 (g). Because these POUs are deemed in compliance under statute, no verification is necessary beyond ensuring that the POU meets the statutory criteria in Public Utilities Code section 399.30 (g). Staff determined that written notice filed with the United States Secretary of the Interior or the Western Area Power Administration declaring the POU's intent to exercise its preference rights under the Trinity River Diversion Act and any integrated resource plan filed with the Western Area Power Administration confirming the POU's election to receive all of its electricity pursuant to its preference rights would be sufficient to determine that a POU met the criteria of Public Utilities Code section 399.30 (g). This documentation will

demonstrate that the POU is “a public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to section 4 of the Trinity River Division Act of August 12, 1955,” which is the criteria established in Public Utilities Code section 399.30 (g). Documentation must be submitted in a timely manner to ensure that a POU meets the criteria of Public Utilities Code section 399.30 (g) and continues to do so upon the refiling of notices and plans.

Proposed subdivision (a)(7). This subdivision explains the Energy Commission’s process for determining RPS procurement target compliance for a POU that meets the criteria in Public Utilities Code section 399.30 (j) and that has electricity demands unsatisfied by its hydroelectric generation in any given year of a compliance period. It also describes how the POU must demonstrate that it meets the criteria of 399.30 (j). A POU that meets the criteria in Public Utilities Code section 399.30 (j), but must procure eligible renewable energy resources due to unmet electricity demands, must meet all of its unmet demands with eligible renewable energy resources up to the “soft target” amounts used to calculate the RPS procurement targets of other POUs. Because 399.30 (j) establishes an annual compliance obligation, and most POUs must comply with RPS procurement requirements on a compliance period basis, staff determined that the “soft targets” established for other POUs would be an appropriate maximum requirement.

Staff determined that the portfolio balance requirements of Public Utilities Code section 399.16 do not apply to a POU that meets the criteria of Public Utilities Code section 399.30 (j) because section 399.30 (j) can be viewed as a stand-alone requirement, and because section 399.30 (j) does not include an express provision to meet the PCC allocation requirements of Public Utilities Code section 399.16. In addition, a POU that meets the criteria of Public Utilities Code section 399.30 (j) would be unable to appropriately plan ahead for adequate PCC 1 and PCC 2 procurement because the level of unmet electricity demand for a compliance calendar may not be known until the end of that year.

A POU must demonstrate that it has received at least an average of 67percent of its electricity demand in the seven years preceding the beginning of each compliance period from hydroelectric sources that the POU owns and operates to comply with the RPS procurement requirements described in section 3204 (a)(7). Staff selected a seven year average, because it provides a sufficient amount of time to resolve any issues with dry years during which hydroelectric generation is low, and it is parallel with the calculation of retail sales for joint powers authority POUs under 399.30 (i). Staff determined that it was necessary to assess whether a POU meets the criteria of 399.30 (j) at the beginning of each compliance period because any POU that does not meet those criteria will be subject to the requirements of section 3204 (a)(1)-(4) and (c)(1)-(9) of the proposed regulations, including multiyear compliance period RPS procurement targets.

Proposed subdivision (a)(8). This subdivision describes the portfolio balance requirements for POUs that meet the criteria of Public Utilities Code section 399.30 (h) and what the POU must do to demonstrate that it meets the criteria of Public Utilities Code section 399.30 (h). A POU that meets the criteria of Public Utilities Code section 399.30 (h) is not interconnected to a

California balancing authority, so it would be both impractical and prohibitively expensive to require such a POU to obtain at least 50 percent of its newer procurement from PCC 1. Subjecting a POU that meets the criteria of Public Utilities Code section 399.30 (h) to the portfolio balance requirements of section 3204 (c)(1)-(9) of the regulations would result in bundled electricity products from a resource located within the POU's own balancing authority area being labeled as PCC 3 and would subject that procurement to the PCC 3 maximum limits of Public Utilities Code section 399.16 (c)(2). Such a result is not consistent with intent of SBX1-2.

The portfolio balance requirement of Public Utilities Code section 399.16 (cross referenced and applicable to POUs via Public Utilities Code section 399.30(c)(3)) were tailored for application to utilities located within California balancing authority areas, and establish a preference for electricity products from renewable generators located within California balancing authority areas. Multi-jurisdictional utilities located outside a California balancing authority are explicitly exempt from the portfolio balance requirement pursuant to Public Utilities Code sections 399.17 . In enacting this law, the Legislature recognized that these multi-jurisdictional utilities, serving customers both in and outside a California balancing authority, are uniquely situated and entitled to different treatment than other utilities. It is impractical for these multi-jurisdictional utilities, when procuring electricity from eligible renewable energy resources located within their balancing authority to satisfy customer load, to comply with the portfolio balance requirements. Doing so would require these utilities to schedule procured electricity from within their balancing authority area away from their own customer load in order to meet the RPS procurement requirements. Similarly situated POUs should likewise be exempt from the portfolio balance requirements, as it is impractical to require such POUs to schedule electricity from eligible renewable energy resources in its balancing authority area away from their own customer loads in order to meet the POUs' RPS procurement requirements.

Proposed subdivision (b). This subdivision specifies that no deficits in any compliance period shall be carried forward to subsequent compliance periods. This requirement is based on the provision for retail sellers in Public Utilities Code section 399.15 (b)(9), which states, "Deficits associated with the compliance period shall not be added to future compliance periods." While there is no comparable provision for POUs in Public Utilities Code section 399.30, staff could find no rational basis for subjecting POUs to a different requirement given that the optional compliance measures of Public Utilities Code sections 399.13 (a)(4)(B) and 399.15 (b) and (c) are being applied equally to retail sellers and POUs. A POU's deficits should be applied only to the compliance period in which they are incurred. A POU should not be held in violation of the RPS in multiple compliance periods because of the same deficit.

Proposed subdivision (c). This subdivision specifies the minimum procurement requirement for PCC 1 products for the January 1, 2011, to December 31, 2013, compliance period. This subdivision is necessary to clarify the compliance obligation for PCC 1 for the compliance period ending December 31, 2013, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(1) specifies a portfolio balance requirement for PCC 1 of not less than 50 percent for this period. Staff determined that the PCC 1 requirement for this compliance period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target and not to any excess procurement.

This calculation is consistent with the retail seller rules established by the CPUC in its *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(2). This subdivision specifies the minimum procurement requirement for PCC 1 products for the January 1, 2014, to December 31, 2016, compliance period. This subdivision is necessary to clarify the compliance obligation for PCC 1 for the compliance period ending December 31, 2016, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(1) specifies a portfolio balance requirement for PCC 1 of not less than 65 percent for this period. Staff determined that the PCC 1 requirement for this compliance period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the retail seller rules established by the CPUC in its *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(3). This section states the minimum procurement requirement for PCC 1 products for the January 1, 2017, to December 31, 2020, compliance period. This section is necessary to clarify the compliance obligation for PCC 1 for the compliance period ending December 31, 2020, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(1) specifies a portfolio balance requirement for PCC 1 of not less than 75 percent for this period. Staff determined that the PCC 1 requirement for this period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute,

“procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(4). This section states the minimum procurement requirement for PCC 1 products for the calendar year ending December 31, 2021, and each calendar year thereafter. This section is necessary to clarify the compliance obligation for PCC 1 for the calendar year ending December 31, 2021, and each calendar year thereafter, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(1) specifies a portfolio balance requirement for PCC 1 of not less than 75 percent for this period. Staff determined that the PCC 1 requirement for this period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(5). This section states the maximum procurement requirement for PCC 3 products for the January 1, 2011, to December 31, 2013, compliance period. This section is necessary to clarify the compliance obligation for PCC 3 for the compliance period ending December 31, 2013, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(2) specifies a portfolio balance requirement for PCC 3 of not more than 25 percent for this period. Staff determined that the PCC 3 requirement for this period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(6). This section states the maximum procurement requirement for PCC 3 products for the January 1, 2014, to December 31, 2016, compliance period. This section is

necessary to clarify the compliance obligation for PCC 3 for the compliance period ending December 31, 2016, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(2) specifies a portfolio balance requirement for PCC 3 of not more than 15 percent for this period. Staff determined that the PCC 3 requirement for this period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(7). This section states the maximum procurement requirement for PCC 3 products for the January 1, 2017, to December 31, 2020, compliance period. This section is necessary to clarify the compliance obligation for PCC 3 for the compliance period ending December 31, 2020, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(2) specifies a portfolio balance requirement for PCC 3 of not more than 10 percent for this period. Staff determined that the PCC 3 requirement for this period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(8). This section states the maximum procurement requirement for PCC 3 products for the calendar year ending December 31, 2021, and each calendar year thereafter. This section is necessary to clarify the compliance obligation for PCC 3 for the calendar year ending December 31, 2021, and each calendar year thereafter, that the Energy Commission will consider consistent with Public Utilities Code section 399.16 (c).

Public Utilities Code section 399.16 (c)(2) specifies a portfolio balance requirement for PCC 3 of not more than 10 percent for this period. Staff determined that the PCC 3 requirement for this period should be applied to the portion of electricity products procured pursuant to a contract or ownership agreement on or after June 1, 2010, that is credited toward the RPS procurement

target. This level is appropriate because Public Utilities Code section 399.16 (c) explicitly applies the percentages to the “procurement credited towards each compliance period” that is associated with contracts executed on or after June 1, 2010. Based on a fair reading of the statute, “procurement credited towards each compliance period” should refer only to the amount applied to the RPS procurement target.

This calculation is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Proposed subdivision (c)(9). This section states the minimum procurement requirement for PCC 2 products for each compliance period. This section is necessary to clarify the compliance obligation for PCC 2 for each compliance period that the Energy Commission will consider consistent with Public Utilities Code section 399.16. Staff determined that there should be no PCC 2 percentage obligation for POU’s, as there is none for retail sellers in the statute. This determination is consistent with the CPUC’s *Decision Setting Compliance Rules for the RPS Program*, D.12-06-038, adopted June 21, 2012.

Section 3205 – Procurement Plans and Enforcement Programs

Proposed section 3205 specifies criteria for a POU’s procurement plans and enforcement programs, including the date by which the initial plans must be adopted, information that must be included in the plans and programs, public notification requirements for the adoption and revision of these plans and programs, and requirements of notifications and information that must be submitted to the Energy Commission regarding the adoption or revision of these plans and programs.

Proposed subdivision (a)(1). This subdivision specifies the requirement that POU’s must adopt an RPS procurement plan detailing how the POU will achieve its RPS procurement targets, and must submit the plan to the Energy Commission. This provision is based on the requirements of Public Utilities Code section 399.30 (a), which directs POU’s to “... adopt and implement a renewable energy resources procurement plan that requires the utility to procure minimum quantities of electric products from eligible renewable energy resources....” POU’s are given at least 60 days after the effective date of the Energy Commission’s regulations to adopt their procurement plans. Staff determined that 60 days was sufficient time for POU’s to respond to the requirements of the regulations and adopt procurement plans. The effective date of the regulations will be no sooner than 30 days after the adopted regulations are filed with the Secretary of State. Pursuant to Government Code section 11343.4, the effective date of the regulations will vary depending on the date the regulations are filed with the Secretary of State. If the adopted regulations are filed with the Secretary of State between March 1 and May 31, 2013, inclusive, the regulations will become effective on July 1, 2013. If the adopted regulations are filed with the Secretary of the State between June 1 and August 31, 2013, inclusive, the regulations will become effective on October 1, 2013. If the adopted regulations are filed with

Secretary of State between September 1 and November 30, 2013, inclusive, the regulations will become effective on January 1, 2014.

Proposed subdivision (a)(2). This subdivision outlines the procedure for adopting an RPS procurement plan for a POU meeting the criteria of Public Utilities Code section 399.30 (j). A POU that meets the criteria of Public Utilities Code section 399.30 (j) is excused from the RPS procurement requirements and portfolio balance requirements applicable to other POUs and is only required to procure eligible renewable energy resources to satisfy the POU's electricity demands unsatisfied by the POU's qualifying hydroelectric generation facilities in any given year. These qualifying hydroelectric facilities do not meet the definition of a "renewable electrical generation facility" pursuant to Public Resources Code section 25741.

The POU must detail how it will achieve its RPS procurement targets annually and must submit any new or updated procurement plan to the Energy Commission. A POU must develop a procurement plan to assess how it will meet its RPS procurement targets on an annual basis in accordance with the requirements of Public Utilities Code section 399.30 (j). This will ensure the POU develops a contingency plan in the event the qualifying hydroelectric generation facility that the POU relies upon to serve its electricity demand underperforms in any given year.

Proposed subdivision (a)(3). This subdivision specifies the requirement that each POU shall notify the Energy Commission of any public meeting to consider the POU's renewable energy resources procurement plan, to enable the Energy Commission to post the information on the Energy Commission's website. The POU may opt to provide the Energy Commission with the uniform resource locator (URL) that links to this information. The POU must notify the Energy Commission any time the provided URL has been changed to ensure accurate information is being provided to the public. The provisions of subdivision (a)(3) are based on the requirements of Public Utilities Code section 399.30 (f), which directs POUs to provide the specified information to the Energy Commission.

Proposed Subdivision (b)(1). This subdivision specifies that a POU must adopt a program for the enforcement of RPS procurement requirements by January 1, 2012. This section also sets forth information that must be included in the enforcement program and the requirements for submitting the enforcement program to the Energy Commission. The provisions of subdivision (b)(1) are based on the requirements of Public Utilities Code section 399.30 (e), which directs POUs to adopt a program for enforcement of Article 16 (commencing with Public Utilities Code section 399.11) by January 1, 2012. Staff determined that 30 days was sufficient time for POUs to submit adopted enforcement programs to the Energy Commission for posting on its website. The Energy Commission may refer to the adopted enforcement program of a POU, as well as any actions taken by a POU under its program, if the POU does not meet its RPS procurement requirements.

Proposed Subdivision (b)(2). This subdivision specifies requirements for providing public notice for the adoption or modification of a POU's enforcement program. The provisions of subdivision (b)(2) are based on the requirements of Public Utilities Code section 399.30 (e),

which directs POU's to provide public notice of meetings to adopt enforcement programs or substantive changes to such programs.

Proposed Subdivision (b)(3) and (4). These subdivisions specify the requirement that each POU shall notify the Energy Commission of any public meeting to consider the POU's enforcement program, to enable the Energy Commission to post the information on the Energy Commission's website. These provisions are based on the requirements of Public Utilities Code section 399.30 (f), which directs POU's to provide specified information to the Energy Commission related to a POU's renewable energy resources procurement plan. The POU may opt to provide the Energy Commission with the uniform resource locator (URL) that links to its RPS information; however, the POU must notify the Energy Commission any time the provided URL has been changed. This is to ensure accurate information is being provided to the public and that the Energy Commission has all necessary information to determine a POU's RPS compliance. Staff determined that it was necessary to require POU's to submit the same type of information for enforcement programs as is required for renewable energy resources procurement plans, to ensure the public is equally informed of a POU's proposed actions.

Proposed subdivision (c). This subdivision specifies the requirement that each POU shall provide information related to its renewable energy resources procurement status and plans to the Energy Commission, if the information is considered at a public meeting. The POU may opt to provide the Energy Commission with the uniform resource locator (URL) that links to this information. To ensure accurate information is being provided to the public, as contemplated by Public Utilities Code section 399.30 (f), the POU must notify the Energy Commission any time the provided URL has been changed. The provisions of subdivision (c) are based on the requirements of Public Utilities Code section 399.30 (f)(3), which directs POU's to provide the specified information to the Energy Commission.

Proposed subdivision (d). This subdivision specifies that a POU meeting the criteria of Public Utilities Code section 399.30 (g) is not required to provide the Energy Commission with a renewable energy resources procurement plan, enforcement program, or public notice or information concerning such plans and programs. A POU that meets the criteria of Public Utilities Code section 399.30 (g) is deemed in compliance with the RPS procurement requirements and, therefore, is not required to submit a procurement plan to demonstrate progress, and does not need to submit an enforcement program for non-compliance. The provisions of subdivision (d) are based on the requirements of the Public Utilities Code section 399.30 (h), which deems a POU to be in compliance with the RPS procurement requirements if the POU receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to section 4 of the Trinity River Diversion Act of August 12, 1955.

Section 3206 – Optional Compliance Measures

Proposed section 3206 specifies optional compliance measures that may, but are not required to, be adopted by a POU, including excess procurement, delay of timely compliance, cost limitation, a change in the portfolio balance requirements, and historic carryover. This section describes how these optional compliance measures must be adopted by a POU, what information must be included related to the adoption of these measures, how the Energy Commission must be notified of any action taken by a POU regarding these measures, how the Energy Commission will review a POU's optional compliance measures, if so requested by the POU, to determine conformance with the RPS statute and these implementing regulations, and what action the Energy Commission will take if a POU applies an optional compliance measure that the Energy Commission finds does not conform with the RPS statute or these implementing regulations.

Proposed Subdivision (a)(1)(A). This subdivision describes restrictions on excess procurement associated with PCC 3 and contracts of less than 10 years in duration. Public Utilities Code section 399.30 (d)(1) allows a POU to establish rules permitting it to apply excess procurement in one compliance period to subsequent compliance periods “in the same manner as allowed for retail sellers pursuant to section 399.13.” 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.

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 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 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.

POUs should also be held to the same prohibition as retail sellers, precluding procurement from contracts of less than 10 years in duration from counting as excess procurements. However, the procurement of electricity products from short-term contracts that are considered “count in full” in accordance with section 3202 (a)(2) will not be subtracted, as the procurement from these contracts is addressed differently in accordance with requirements of Public Utilities Code section 399.16 (d).

Subdivision (a)(1)(A) is necessary to explain how the excess procurement rules will be applied.

Proposed Subdivision (a)(1)(B). This subdivision describes when POUs may begin accruing excess procurement. POUs should be held to the excess procurement start date requirement specified for retail sellers in Public Utilities Code section 399.14 (a)(4)(B), which is January 1, 2011. Using the same start ensures the excess procurement rules for retail sellers are being applied in the same manner to POUs. The procurement that a POU claims to have been accrued prior to January 1, 2011, would not qualify as “excess procurement” under Public Utilities Code sections 399.14 (a)(4)(B) and 399.30 (d)(1) but may qualify as “historic carryover,” as described in section 3206 (a)(5).

Subdivision (a)(1)(B) is necessary to explain how the excess procurement rules will be applied.

Proposed Subdivision (a)(1)(C). This subdivision specifies that qualifying excess procurement may be applied toward any future compliance period or year, and not just the subsequent compliance period or year. This is consistent with Public Utilities Code section 399.13 (a)(4)(B), which allows retail sellers to apply excess procurement “to any subsequent compliance period.” This subdivision ensures the provisions for retail sellers in Public Utilities Code section 399.13 (a)(4)(B) are applied in the same manner to POUs.

Subdivision (a)(1)(C) is necessary to explain how the excess procurement rules will be applied.

Proposed Subdivision (a)(1)(D). This subdivision describes how the Energy Commission will calculate excess procurement for the compliance periods. Any procurement exceeding the procurement target, after prohibited procurement has been removed, is appropriate to define as “excess procurement” in accordance with Public Utilities Code section 399.13 (a)(4)(B). The formulas in this subdivision incorporate the restrictions on excess procurement described in Subdivision (a)(1)(A) and subtract them from the electricity products retired and applied toward the RPS procurement target. The subdivision also clarifies that excess procurement for a specified compliance period must be in excess of that compliance period’s RPS procurement target calculated in section 3204 (a).

Subdivision (a)(1)(D) is necessary to explain how the excess procurement rules described in Subdivision (a)(1)(A) will be applied.

Proposed Subdivision (a)(1)(E). This subdivision describes the specific excess procurement restrictions and methods of calculation for POUs that meet the criteria of Public Utilities Code section 399.30 (h). As section 3204 (a)(8) of these regulations exempts POUs that meet the criteria of Public Utilities Code section 399.30 (h) from meeting the portfolio balance requirements, it is necessary to change the excess procurement restrictions on PCC 3 electricity products for these POUs.

Public Utilities Code section 399.30 (h) applies to a POU that was in existence on or before January 1, 2009, provides retail electric service to 15,000 or fewer customer accounts in California, and is interconnected to a balancing authority located outside California, but within the region of the Western Electricity Coordinating Council. A POU that meets the criteria of Public Utilities Code section 399.30 (h) is not interconnected to a California balancing authority, as defined by these regulations, and therefore cannot satisfy the portfolio balance requirements

in the same manner as POU's that are interconnected to a California balancing authority. For these uniquely situated POU's, staff determined that unbundled RECs are the general equivalent of PCC 3 electricity products, so the same excess procurement restrictions that apply to PCC 3 electricity products in section 3206 (a)(1)(A)-(D) are applied to unbundled RECs for these POU's - namely, unbundled RECs cannot be counted as excess procurement, and any unbundled RECs that exceed the maximum limit for that compliance period must be subtracted from the excess procurement calculation.

For multi-jurisdictional utilities, which are exempt from the portfolio balance requirements under Public Utilities Code section 399.17, the CPUC determined in its *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program*, D1206038, that unbundled RECs, rather than PCC 3 electricity products, could not be counted as excess procurement, and any unbundled RECs that exceed an amount equal to the PCC 3 portfolio balance requirement for a compliance period will be subtracted from that compliance period's excess procurement calculation. This addresses the Legislature's intent to restrict the use of unbundled RECs for RPS compliance, and it is appropriate to implement similar excess procurement rules for the POU's located outside a California balancing authority.

Subdivision (a)(1)(E) is necessary to explain the application of the excess procurement rules for POU's that meet the criteria of Public Utilities Code section 399.30 (h).

Proposed Subdivision (a)(2)(A)(1). This subdivision specifies that POU's may adopt rules allowing for the delay of timely compliance, and that the reasons for the delay may include inadequate transmission. A POU adopting such rules is also required to find that it has taken all reasonable measures to ensure that inadequate transmission is prevented and/or overcome. Public Utilities Code section 399.30 (d) allows POU's to establish rules for the delay of timely compliance "consistent with subdivision (b) of section 399.15." Public Utilities Code section 399.15 (b)(5)(A) establishes the requirements for allowing a retail seller to delay timely compliance because of inadequate transmission. POU's should be subject to the same requirements of Public Utilities Code section 399.15 (b)(5)(A) to apply the statute to POU's consistently. Staff could find no reason for holding POU's to a different standard than retail sellers regarding rules for delaying timely compliance associated with inadequate transmission.

Proposed Subdivision (a)(2)(A)(2). This subdivision specifies that the reasons for the delay of timely compliance may include insufficient supply of eligible renewable energy resources, as well as permitting, interconnection, or other circumstances. A POU adopting such rules is also required to find that it has taken all reasonable measures to ensure that these reasons for delay are prevented and/or overcome. As noted earlier, Public Utilities Code section 399.30 (d) allows POU's to establish rules for the delay of timely compliance "consistent with subdivision (b) of section 399.15." Public Utilities Code section 399.15 (b)(5)(B) establishes the requirements for allowing a retail seller to delay timely compliance because of permitting, interconnection, or other circumstances. POU's should be subject to the same requirements of Public Utilities Code section 399.15 (b)(5)(B) to apply the statute to POU's consistently. Staff could find no reason for holding POU's to a different standard than retail sellers regarding the rules for delaying timely compliance associated with permitting, interconnection, or other circumstances.

Proposed Subdivision (a)(2)(A)(3). This subdivision specifies that the reasons for the delay of timely compliance may include unanticipated curtailment to address the needs of a balancing authority. A POU adopting such rules is also required to find that it has taken all reasonable measures to ensure that this reason for delay is prevented and/or overcome. As noted earlier, 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)(5)(C) establishes the requirements for allowing a retail seller to delay timely compliance because of unanticipated curtailment to address the needs of a balancing authority. POUs should be subject to the same requirements of Public Utilities Code section 399.15 (b)(5)(C) to apply the statute to POUs consistently. Staff could find no reason for holding POUs to a different standard than retail sellers regarding the rules for delaying timely compliance associated with unanticipated curtailment to address the needs of a balancing authority.

Proposed Subdivisions (a)(3)(A)-(B). These subdivisions specify that a POU may adopt a cost limitation on eligible renewable energy procurement, and that the adopted limitation must be set to prevent disproportionate rate impacts, must include the costs of all RPS procurement, and must not include indirect expenses. 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, in establishing these limitations, to rely on the 1) retail seller’s most recent procurement plan, 2) procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources, and 3) the potential that some planned resource additions may be delayed or canceled. In addition, Public Utilities Code section 399.15 (d) requires the CPUC, in establishing the cost limitations for retail sellers, to ensure 1) the limitation is set at a level that prevents disproportionate rate impacts, 2) the costs of all procurement credited toward achieving the RPS are counted toward the limitation, and 3) the procurement expenditures do not include any indirect expenses, including imbalance energy charges, sales of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.

POUs should be subject to the same requirements of Public Utilities Code section 399.15 (c) and (d) to apply Public Utilities Code section 399.15 (c) to POUs consistently. Staff could find no reason for holding POUs to a different standard than retail sellers regarding the rules for cost limitations.

Proposed Subdivision (a)(3)(C). This subdivision specifies what considerations must be taken into account when a POU adopts a cost limitation. The considerations are based on the requirements of Public Utilities Code section 399.15 (c) for retail sellers. For the reasons noted above, with respect to subdivision (a)(2)(C), these considerations should also apply to the cost limitation established for POUs. Staff could find no reason for POUs to be held to a different standard than retail sellers regarding the rules for cost limitation.

Proposed Subdivision (a)(3)(D). This subdivision requires a POU, when applying a procurement expenditure under its adopted cost limitation, to apply only those types of

procurement expenditure that are permitted under the POU's adopted cost limitation rule. A POU should not be allowed to apply unpermitted expenditures in determining whether the expenditure cap of its cost limitation rule has been exceeded.

Proposed Subdivision (a)(3)(E). This subdivision requires a POU, when adopting cost limitations, to describe what actions it will take if the cost limitation is exceeded. Public Utilities Code section 399.15 (f) states the following for retail sellers' cost limitations:

"If the cost limitation for an electrical corporation is insufficient to support the projected costs of meeting the renewables portfolio standard procurement requirements, the electrical corporation may refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation, unless eligible renewable energy resources can be procured without exceeding a de minimis increase in rates..."

(Pub. Util. Code § 399.15, subd. (f).)

POUs are not required to be consistent with Public Utilities Code section 399.15 (f) in setting their cost limitations, but staff determined that, if a POU adopts a cost limitation on RPS procurement expenditures, the POU must make clear what it intends to do if that limitation is exceeded so that the Energy Commission can properly evaluate whether the POU acted within its own adopted rules.

Proposed Subdivision (a)(4). This subdivision specifies under what conditions and to what extent a POU may reduce its compliance obligation under PCC 1 and the process by which a POU must notify the Energy Commission of such a reduction. This subdivision is based on the requirement of Public Utilities Code section 399.16 (e), which allows a retail seller to apply to the CPUC for a reduction of a procurement content requirement and authorizes the CPUC to reduce the procurement content requirements, subject to the following conditions: 1) retail seller must demonstrate it cannot comply with the procurement content requirements because of conditions beyond its control as required by the delay of timely compliance, and 2) the reduction of the procurement content requirement for PCC 1 may not be reduced below 65 percent for any compliance period after December 31, 2016. As part of the CPUC's enforcement process, the CPUC has deferred to a later decision the process by which retail sellers may request reductions in their portfolio balance requirements.

The provisions of Public Utilities Code section 399.16 (e) apply to POUs pursuant to Public Utilities Code section 399.30(c)(3), which directs POUs to "adopt procurement requirements consistent with Section 399.16." 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. This rationale is consistent with the CPUC's *Proposed Decision Setting Compliance Rules for the Renewables Portfolio Standard Program*, mailed April 24, 2012, before the discussion of portfolio balance requirement reductions was deferred to a later decision.

Staff also found it consistent with Public Utilities Code section 399.30 (f) to require all changes to procurement plans to be reported to the Energy Commission as outlined in section 3205 (a)(3), and the requirement of 10 days advance notice is consistent with state and local agency policies on public meeting notices.

Proposed Subdivision (a)(5). This subdivision specifies under what conditions and to what extent a POU may adopt rules allowing for procurement generated before January 1, 2011, to be applied to the POU's RPS procurement targets for the compliance period ending December 31, 2013, or subsequent compliance periods. It also specifies how historic carryover will be calculated. These rules are consistent with the rules adopted by the CPUC for retail sellers. in its *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program*, D1206038. 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.

Staff 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). Public Utilities Code section 399.16 (d) states, "Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article...." For a POU's procurement from a contract or ownership agreement originally executed prior to June 1, 2010, to "count in full," the POU must be allowed to carry forward any surplus procurement in excess of the 2004 – 2010 RPS procurement targets. Public Utilities Code section 399.21 (a)(6) establishes a 36 month period in which a POU may retire a REC toward its RPS procurement requirements, which implies that a POU may choose to retire a REC for use in a later compliance period than that in which the electricity associated with the REC was generated.

Prior to SB X1-2, POUs had discretion to establish and enforce their own RPS requirements. Unlike retail sellers, which were required to meet their RPS procurements requirements with electricity procured from eligible renewable energy resources certified by the Energy Commission, a POU could establish its own eligibility requirements for renewable resources to meet the POU's RPS procurements requirements. As a result, the RPS requirements for POUs could vary from POU to POU and differ from the requirements applicable to retail sellers and enforced by the CPUC. Staff has determined that, in order 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.

Proposed Subdivision (b). This subdivision specifies that any of the optional compliance rules a POU adopts in accordance with section 3206 needs to be included in a procurement plan or enforcement program if the POU intends to rely on the rules to satisfy or delay its RPS procurement requirements. The Energy Commission must ensure that the rules adopted by the POUs under this section of the regulations 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 optional compliance rules that are determined by the Energy Commission to be consistent with the statute may be applied. While there is no adoption date required for any rules, the rules may not be applied retroactively; therefore, rules adopted later in a compliance period will not necessarily be applied for the entire compliance period.

Proposed Subdivision (c). This subdivision requires rules and rule revisions adopted to be submitted to the Energy Commission within 30 calendar days after adoption, along with all reports, analyses, findings, and other information upon which the POU relied in adopting the rule or rule revision. POUs must submit background materials used and information relied upon to assist the Energy Commission in ensuring that rules adopted are consistent with the statutory language of Public Utilities Code section 399.30 (d), when used to satisfy or delay procurement requirements.

Proposed Subdivision (d). This subdivision provides a process by which a POU may request the Energy Commission to review an adopted optional compliance measure. Staff determined that the Energy Commission's role is to determine compliance at the end of each compliance period, while it is the role of the POU to adopt any necessary plans, programs, and optional compliance measures in advance of or during a compliance period. However, staff believes it is appropriate to provide interested POUs an opportunity to request and obtain the Energy Commission's determination of the compliance of any adopted optional compliance measures in advance of the end of the compliance period. It is especially important to allow POUs to make such requests because the Energy Commission will not consider the application of any optional compliance measures that the Energy Commission determines does not comply with the RPS, as outlined below in section 3206 (e). Allowing a POU to request Energy Commission review of its adopted optional compliance measures will enable the POU to modify any such measures, if necessary, to comply with the RPS and potentially avoid an RPS violation at the end of the compliance period.

Staff determined that 120 days was sufficient to determine the compliance of a POU's adopted optional compliance measures, but the Energy Commission's failure to respond within 120 days would not be deemed a determination of compliance in case of outstanding circumstances preventing the Energy Commission's timely review.

Proposed Subdivision (e). This subdivision specifies that the Energy Commission will not consider the application of any rule or rule revision adopted by a POU that the Energy Commission determines does not comply with the RPS statute, or these implementing regulations, in determining a POU's compliance with the RPS procurement requirements. The Energy Commission must ensure that the rules adopted by the POUs under this section of the regulations 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 consistent with the statute may be applied.

This subdivision 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 requirement.

Section 3207 – Compliance Reporting for POUs

Proposed section 3207 specifies the required timing and content of annual reports and compliance reports that POUs must submit to the Energy Commission. It also specifies the required timing and content of historic carryover reports for those POUs claiming historic carryover. In addition, it includes special reporting instructions for POUs that meet the criteria of Public Utilities Code section 399.30 (g) and (j).

Proposed Subdivisions (a)-(b). These subdivisions specify the reporting requirements that a POU adopting rules for historic carryover shall submit to the Energy Commission to verify that procurement claimed is eligible to count toward RPS procurement targets. The information requested of the POUs to verify historic carryover procurement will allow Energy Commission staff to determine whether the procurement claimed will indeed qualify for the POU's procurement targets, and whether the POU will be able to claim the procurement at the end of the compliance period. This information is required to be submitted by July 1, 2013, or within 30 days of the effective date of these regulations to balance the POU's need for ample time to prepare information with the Energy Commission's need to monitor POU compliance and provide early feedback as necessary.

Proposed Subdivision (c). This subdivision specifies information that each POU must submit to the Energy Commission in its annual report. The reason for the specific information requested is explained below. The Annual Report is required to be submitted by the later of September 1, 2013, or within 30 days of the effective date of these regulations, and annually thereafter to allow the Energy Commission to track POU compliance and provide feedback as necessary. The reason for the specific information requested is explained below.

Proposed Subdivision (c)(1). This subdivision specifies the information necessary for the Energy Commission to identify and contact the reporting POU. This information is necessary in the event the Energy Commission needs to discuss an aspect of the report with the POU.

Proposed Subdivision (c)(2)(A). This subdivision requires POUs to submit the amount of total retail sales to end-use customers for the reporting year in their annual report. Total retail sales are needed to verify compliance with Public Utilities Code section 399.30 (c)(1) – (2) and to assess the percentage of renewable procurement progress made in a given year.

Proposed Subdivision (c)(2)(B). This subdivision requires POUs to report the amount of procurement retired for the reporting year. The information collected will allow Energy Commission staff to verify compliance with Public Utilities Code section 399.30 (c)(1) – (2) and to assess how much procurement the POU is retiring toward its procurement requirements for the compliance period.

Proposed Subdivision (c)(2)(C). This subdivision requires POUs to submit WREGIS State/Provincial/Voluntary Compliance Reports and/or procurement claims using the interim tracking system annually to the Energy Commission. The information collected will allow Energy Commission staff to verify compliance with Public Utilities Code section 399.30 (c)(1-2). The WREGIS Compliance Report is a report generated by the WREGIS system to allow the POU to first verify its REC retirements, then to transmit the information to the Energy Commission in one report. This report will be a necessary component relied upon by the Energy Commission for verification of generation claimed by the POU toward its procurement requirements for the compliance period. The interim tracking system has been used by the Energy Commission to track and verify retail seller's procurement claims that are not tracked through WREGIS, and it will be necessary to continue to use the interim tracking system for the POUs for their procurement claims that are not tracked in WREGIS.

Proposed Subdivision (c)(2)(D). This subdivision requires POUs to submit an initial, nonbinding classification of retired electricity products in each portfolio content category, or qualifying to count in full toward its procurement targets. This information is necessary to help verify compliance with Public Utilities Code section 399.30 (c)(1-2) and to assess how the procurement the POU is retiring toward its procurement target is being distributed for the compliance period. The POU will be able to assign each retired REC into portfolio content categories. Energy Commission verification staff will then determine whether the RECs actually do qualify for the assigned portfolio content categories and will work with the POU to make adjustments to the assignments as necessary.

Proposed Subdivision (c)(2)(E). This subdivision requires POUs to submit a description of each of the RPS-certified facilities from which the POU is procuring electricity products. Public Utilities Code sections 9507 and 9508 give the Energy Commission authority to collect contract information from POUs. This is the supporting documentation that will be used in verification to prove that a resource is eligible for PCC 1 or 2. This will help the Energy Commission to determine how much electricity is being sold to POUs, and where that energy is coming from. It will also help to verify that facilities generating electricity products claimed by the POUs are RPS-certified and that the contract and other data related to these facilities is reported consistently by all POUs.

Proposed Subdivision (c)(2)(F). This subdivision requires POUs to submit documentation demonstrating the qualification for each portfolio content category assigned to retired electricity products. The information asked for in this section will be used to verify delivery arrangements, firming and shaping agreements, and other information specific to the requirements of each of the portfolio content categories.

Proposed Subdivision (c)(2)(G). This subdivision requires POUs to submit an explanation of public goods funds expenditures collected for eligible renewable energy resource development. The submission of this information is required by Public Utilities Code sections 9507 and 9508.

Proposed Subdivision (c)(2)(H). This subdivision requires POUs to identify any issues that have occurred that could delay compliance with RPS procurement requirements, and to explain what

actions the POUs will take to minimize the potential for noncompliance. Public Utilities Code section 399.30 (c)(2) requires that POUs shall ensure quantities of eligible renewable energy resources procured for all compliance periods after the compliance period ending December 31, 2013, will reflect reasonable progress in each of the intervening years, sufficient to meet their procurement targets for each compliance period. This provision will allow the Energy Commission to ensure that the POU and its governing board are taking proper steps to ensure reasonable progress in intervening years, and have proper plans in place for mitigating the risk of failing to comply with the RPS. The Energy Commission will evaluate this information when deciding whether the POU has fully complied with the statute and has successfully reached its procurement requirements.

Proposed Subdivision (c)(2)(I). This subdivision requires POUs to submit an attestation affirming that the information provided in the report is true and correct. The Energy Commission needs to ensure that the information provided by POUs is accurate and correct, especially in case a POU's information is reported on its behalf by a third party.

Proposed Subdivision (c)(3). This subdivision specifies the actions taken by a POU in the previous calendar year demonstrating reasonable progress that the POU must report to the Energy Commission as part of its annual report. As the RPS procurement targets in section 3204 (a) represent a minimum standard necessary for POUs to achieve 25 percent of retail sales by 2016 and 33 percent of retail sales by 2020, staff determined that POUs should demonstrate which qualitative measures they are taking to meet the RPS procurement requirements by the end of the compliance period. The POUs are not required to show annual quantitative procurement increases, so this provides an alternative way for the Energy Commission to evaluate whether the POU made reasonable progress throughout the compliance period.

This information will be especially useful if a POU is unable to meet its RPS procurement requirements due to cost limitations or delay of timely compliance conditions, because the Energy Commission will be able to use the reasonable progress information reported to determine whether the POU has taken all reasonable measures under its control to meet its requirements or whether the POU has not appropriately taken such measures and is in violation of the RPS.

Proposed Subdivision (c)(4). This section provides the actions planned by a POU demonstrating reasonable progress that the POU must report to the Energy Commission as part of its annual report. As the RPS procurement targets in section 3204 (a) represent a minimum standard necessary for POUs to achieve 25 percent of retail sales by 2016 and 33 percent of retail sales by 2020, staff determined that POUs should demonstrate which qualitative measures they are taking to meet the RPS procurement requirements by the end of the compliance period. The POUs are not required to show annual quantitative procurement increases, so this provides an alternative way for the Energy Commission to evaluate whether the POU made reasonable progress throughout the compliance period.

POUs' projections of planned reasonable progress measures will help the Energy Commission determine whether a POU was planning to manage known risks, to procure above the

minimum margin of procurement to compensate for known delays or insufficient supply, and to take all reasonable measures to maximize purchases of cost-effective procurement. This information will be especially useful if a POU is unable to meet its RPS procurement requirements due to cost limitations or delay of timely compliance conditions.

Proposed Subdivision (d). This subdivision requires each POU to submit information in addition to the information collected in annual reports at the end of each compliance period. The information collected is necessary to determine whether the POU has met the procurement requirements for the compliance period. This provision will ensure that the POUs participating in the RPS have met the RPS targets set forth in Article 16 (commencing with Public Utilities Code section 399.11) and will enable the Energy Commission to make compliance determinations for each POU.

Proposed Subdivision (d)(1). This subdivision requires POUs to submit the portfolio content category classification that electricity products were assigned to. This information is necessary to determine if the POU has met the portfolio balance requirements for the compliance period.

Proposed Subdivision (d)(2). This subdivision requires POUs to submit RPS procurement targets for each compliance period as part of compliance reporting. A POU must report the amount of procurement required to meet its RPS procurement target for a compliance period to allow the Energy Commission to assess whether the POU has retired an adequate amount of electricity products to meet that target, as defined in section 3204 (a). Requiring procurement to be reported in MWhs is consistent with current reporting requirements for retail sellers and with the functionality of the Western Renewable Energy Generation Information System, the system used to track and verify California RPS procurement claims for retail sellers and expected to be used for POUs.

Proposed Subdivision (d)(3). This subdivision requires POUs to include the amount of excess procurement and/or historic carryover from previous compliance periods that will be applied toward the current compliance period, if applicable. A POU must document the amount of procurement qualifying as historic carryover and excess procurement that is carried forward from previous compliance periods, so that the Energy Commission can accurately assess whether the POU has acquired enough procurement to meet its procurement requirements for the current compliance period, and track procurement that may be used in future compliance periods.

Proposed Subdivision (d)(4). This subdivision requires POUs to report the total aggregate amount of RECs retired in a compliance period to be counted toward RPS procurement targets. A POU may procure a certain amount of RECs in a compliance period but may choose to retire only a certain amount by the end of that compliance period. Energy Commission staff will assess only those RECs that have been retired for RPS compliance, not the total amount procured by the POU. This will allow the POU flexibility in determining the best way to manage its portfolio for RPS compliance.

Proposed Subdivision (d)(5). This subdivision requires a POU to report the amount of excess procurement from the current compliance period that the POU has determined will qualify to be carried forward into a future compliance period, if applicable. A POU must document the amount of procurement qualifying as excess procurement that will be carried forward from the current compliance period to future compliance periods, so that the Energy Commission can verify whether the procurement actually qualifies as excess procurement, under section 3206 (a)(1) of these regulations. The Energy Commission must also verify that the POU has acquired enough procurement to meet its procurement requirements for the current compliance period and track procurement that may be used in future compliance periods.

Proposed Subdivision (d)(6). This subdivision requires a POU to submit additional documentation to justify the application of measures adopted to delay timely compliance, if its compliance report indicates that it did not meet its RPS procurement requirements. If cost limitation measures were adopted by the POU, the POU must also report on the estimated total cost of its RPS procurement requirements for the preceding compliance period, and any actions taken in response to expenditures meeting or exceeding the cost limitation. This information is necessary to confirm that the POU's optional compliance measures have been applied correctly, based upon the requirement in the statute, and based upon the rules that the POU's governing board has adopted. The POU must provide detail on contingency plans and mitigation strategies for remedying the shortfall that triggered the application of the POU's adopted rules.

POUs must report cost limitations in dollars expended during the compliance period to provide the Energy Commission a standard measure for evaluating applied cost limitations. A POU may adopt its cost limitation using a different metric, such as percentage rate increases, but for the purposes of reporting to the Energy Commission, the more easily evaluated metric of dollars expended during the compliance period will be used. The POU must report the estimated cost of meeting its RPS procurement requirements to help the Energy Commission determine whether the POU responded appropriately to exceeding its adopted cost limitation.

Public Utilities Code section 399.15 (f) states the following for retail sellers' cost limitations:

"If the cost limitation for an electrical corporation is insufficient to support the projected costs of meeting the renewables portfolio standard procurement requirements, the electrical corporation may refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation, unless eligible renewable energy resources can be procured without exceeding a de minimis increase in rates..."
(Pub. Util. Code § 399.15, subd. (f).)

POUs are not required to be consistent with Public Utilities Code section 399.15 (f) in setting their cost limitations, but staff determined that, if a POU adopts a cost limitation on RPS procurement expenditures, the POU must make clear what it intends to do if that limitation is exceeded so that the Energy Commission can properly evaluate whether the POU acts within its own adopted rules.

Proposed Subdivision (e). This subdivision describes the process for a POU that qualifies under Public Utilities Code section 399.30 (g) to demonstrate to the Energy Commission that it meets statutory criteria. Public Utilities Code section 399.30 (g) applies to a "public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386)." Public Utilities Code section 399.30 (g) appears to apply to the Trinity Public Utility District. This subdivision is necessary to explain the compliance and verification process for those POUs that are deemed in compliance with the RPS under Public Utilities Code section 399.30 (g). Documentation demonstrating that a POU meets the criteria in Public Utilities Code section 399.30 (g) will serve to demonstrate compliance with the RPS.

Proposed subdivision (f). This subdivision requires a POU to demonstrate annually that it meets the criteria of Public Utilities Code section 399.30 (j) to qualify for special provisions of Public Utilities Code section 399.30 (j). Public Utilities Code section 399.30 (j) applies to a "local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to section 25741 of the Public Resources Code..." A hydroelectric generation facility that meets this criteria is defined as "qualifying hydroelectric generation facilities" in these regulations.

A POU that meet the criteria of Public Utilities Code section 399.30 (j) is excused from the RPS procurement requirements and portfolio balance requirements applicable to other POUs and is required to procure only eligible renewable energy resources to satisfy the POU's electricity demands unsatisfied by the POU's "qualifying hydroelectric generation facilities" in any given year. Public Utilities Code section 399.30 (j) appears to apply to the City and County of San Francisco.

A POU that demonstrates it meets the criteria of Public Utilities Code section 399.30 (j) must submit total retail sales information in each calendar year and show how much retail load was met by its qualifying hydroelectric generation. If the POU has electricity demands unsatisfied by its qualifying hydroelectric generation in any given year, the POU must demonstrate that its electricity demands were met with the procurement of electricity products from eligible renewable energy resources in order to meet the requirements of section 3204 (a)(7).

Proposed Subdivision (g). This subdivision establishes a "curing" period and process for POUs that submit incorrect or incomplete reports to the Energy Commission. Under the provision of subdivision (g), a POU that submits a timely, but incomplete or incorrect report to the Energy Commission, will be notified in writing of the report deficiencies and provided 10 business days from receipt of the written notice to provide the missing or correct report information. If the POU provides this information to the Energy Commission within the 10-day period, the POU would be excused for its initial failure to submit a complete and correct report; i.e. the Energy Commission would not process the POU's initial failure as a separate violation pursuant to sections 3208 and 1240 of the regulations. As part of the "curing" process a POU may request additional time from the Energy Commission's Executive Director to submit the missing or

correct report information. The Executive Director, based on the POU's demonstration of good cause, may grant the POU up to an additional 30 calendar days to submit the missing or correct report information to the Energy Commission. If the POU provides the missing or correct report information to the Energy Commission by the extended due date, the POU would be excused for its initial failure to submit a complete and correct report.

The "curing" period and process is consistent with the provisions included in the CPUC's former RPS Citation Program, which authorized CPUC staff to issue a citation and penalize a retail seller for failing to correct an incomplete or erroneous RPS report within 10 business days of receiving written notice of the report's deficiencies. The RPS Citation Program was implemented pursuant to CPUC Resolution E-4257, dated October 29, 2009. The RPS Citation Program is no longer in effect, but a similar program may be considered in the future by the CPUC.

Section 3208 – Enforcement

Proposed section 3208 specifies that any complaints against a POU to enforce a RPS requirement, the proposed regulations, or any Energy Commission order or decision pertaining to the RPS shall be filed in accordance with the procedures set forth in proposed section 1240.

A complaint may be issued for a POU's failure to comply with any of the requirements in the proposed regulations, including, but not limited to the following:

- Failure to meet an RPS procurement target for reasons other than the POU's adopted cost limitation and/or delay of timely compliance rules;
- Failure to meet a PCC 1 portfolio balance requirement for reasons other than the POU's adopted cost limitation and/or delay of timely compliance rules;
- Failure to adopt an RPS procurement plan by 60 calendar days after the effective date of the regulations, detailing how the POU will meet its RPS procurement requirements;
- Failure to submit procurement plans to the Energy Commission within 30 calendar days of adoption or revision;
- Failure to notify the Energy Commission, contemporaneous with posting notice of the public meeting, of the date, time, and location of any public meeting to consider the procurement plan;
- Failure to adopt an enforcement program by January 1, 2012, detailing actions the POU will take if it determines it will not meet its RPS procurement requirements;
- Failure to properly notice the public prior to the adoption of an enforcement plan/program;
- Failure to provide the Energy Commission with electronic copies of information considered by the POU governing board at a public meeting related to its RPS procurement status or future procurement or enforcement plans;

- Failure to provide the Energy Commission notice of an adopted optional compliance measure within 30 calendar days of the adoption;
- Failure to submit complete annual reports to the Energy Commission by September 1, 2013, or 30 calendar days after the effective date of the regulations, whichever is later, or by July 1 of any year thereafter;
- Failure to submit to complete compliance reports to the Energy Commission by July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter.

The assessment of a POU's compliance with the RPS procurement and reporting requirements will be conducted in conjunction with the Energy Commission's annual RPS verification process. During this process, Energy Commission staff verifies the RPS procurement claims of reporting retail sellers and POUs. Procurement claims that are verified represent the procurement amounts that may be applied toward satisfying a retail seller's or POU's RPS procurement requirements. The verification process is conducted pursuant to Public Utilities Code section 399.25, which directs the Energy Commission to develop and implement an accounting system to verify the RPS compliance of retail sellers and POUs. The verification process is intended to do the following:

- Verify the RPS-eligibility of the renewable electrical generation facilities from which each reporting retail seller or POU procured electricity products and the associated renewable attributes;
- Verify, to the extent possible, that the quantity of electricity generated by a renewable electrical generation facility was sufficient to cover the quantities of electricity products claimed to have been procured from the facility by retail sellers or POUs;
- Verify, to the extent possible, that the RPS procurement claimed by a retail seller or POU exclusively serves California's RPS and does not support another renewable energy regulatory or market claim;
- Verify, to the extent possible, that the RPS procurement claimed by a POU and classified as count in full meets the criteria for count in full;
- Verify, to the extent possible, that the RPS procurement claimed by a POU and classified in a portfolio content category meets the criteria for that portfolio content category;
- Identify the eligible and ineligible RPS procurement claims per retail seller and POU and the total amount of eligible RPS procurement;
- Provide analysis of RPS-eligible procurement claims, including availability of electricity generation data for verification, RPS-eligible procurement by renewable resource type, and procurement from new and repowered facilities.

The verification process is described in the RPS Guidelines and results in an annual or multi-year RPS verification.

If, in conjunction with the RPS verification process, staff determines a POU has failed to comply with an RPS requirement, the proposed regulations, or any Energy Commission order or

decision pertaining to the RPS, staff will recommend that a complaint be filed against the POU in accordance with proposed section 1240.

Chapter 2. Rules of Practice and Procedures.

Article 4. Complaints and Investigations.

Section 1240 – Renewables Portfolio Standard Enforcement

Proposed section 1240 specifies the process under which Energy Commission staff may file a complaint against a POU for failure to meet a requirement of the RPS or any regulation, order or decision adopted by the Energy Commission pertaining to the RPS for POUs. The section describes who may bring a complaint, who may participate or be party to a complaint proceeding, and the method and timing by which the complaint will be answered, by which a complainant may respond to that answer, and by which a hearing on the complaint proceeding will be held. Section 1240 also provides information regarding final decisions by the Energy Commission and the method and timing by which the Energy Commission will issue a notice of violation against a POU and refer the violation to the Air Resources Board to determine a penalty.

Section 1240 is included within, and takes advantage of, the Energy Commission's existing processes for adjudicating complaints as specified in Article 4 (sections 1230 – 1238) of Chapter 2 of Division 2 of Title 20 of the California Code of Regulations. These existing processes were established pursuant to Public Resources Code section 25210, which provides as follows:

“The commission may hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers and duties prescribed by this division [Division 15 of the Public Resources Code, commencing with section 25000] and, for those purposes, has the same powers as are conferred upon heads of departments of the state by Article 2 (commencing with section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.” (Pub. Res. Code § 25210.)

In turn, Government Code section 11180 provides as follows:

“The head of each department may make investigations and prosecute actions concerning:

- (a) All matters relating to the business activities and subjects under the jurisdiction of the department.
- (b) Violations of any law or rule or order of the department.

(c) Such other matters as may be provided by law.” (Govt. Code § 11180.)

Section 1240 is necessary to establish a public process under which the Energy Commission may issue and adjudicate a complaint against a POU for failing to meet the RPS requirements and for referring such violations to the ARB to determine appropriate penalties. A public process for this purpose is required by Public Utilities Code section 399.30 (l), which provides in pertinent part as follows:

“...The [Energy Commission’s] regulations shall 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 [Article 16 (commencing with Public Utilities Code section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code], and for referral of violations to the State Air Resources Board for penalties pursuant to subdivision (o).”⁴

(Pub. Util. Code § 399.30, subd. (l). Emphasis added.)

Proposed Subdivision (a). This subdivision specifies the scope of any complaints issued pursuant to section 1240 and is necessary to ensure the processes set forth in the section 1240 are not used for other matters.

Proposed Subdivision (b). This subdivision specifies how a complaint against a POU for failure to comply with the RPS will be filed, who may file a complaint, and what information must be included in the complaint. As noted above, Public Utilities Code section 399.30 (l) requires the Energy Commission to specify procedures for enforcement of the RPS as part of the regulations, and these procedures must include a public process under which the Energy Commission will issue a notice of violation and correction against a POU for failure to comply with the RPS requirements. This subdivision explains how the Energy Commission will begin that public process through filing an initial complaint.

Subdivision (b) specifies that only Energy Commission staff may file a complaint against a POU pursuant to section 1240. While this differs from the process specified in section 1231 of the Energy Commission’s regulations, which generally allows any person to file a complaint alleging a violation of an Energy Commission statute, regulation, order, or decision, staff determined it was reasonable to limit the complaint process for RPS violations 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. Members of

⁴ As noted earlier, AB 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 SBX1-2, have now been renumbered subdivisions (g) through (n). In making this change, AB 2227 inadvertently failed to correct the reference to penalties in “subdivision (o).” These penalties are now addressed in subdivision (m) as a result of the renumbering under AB 2227.

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.

Subdivision (b) is necessary to describe what information must be included within a complaint to begin the public process.

Proposed Subdivision (c). This subdivision specifies that outside parties may participate in the complaint proceeding against a POU by providing oral and written comments, but will not be allowed to intervene or otherwise be given party status. Outside parties may participate in the complaint proceeding in a meaningful way by offering oral and written comments. In addition, these outside parties may participate in the RPS verification process, which serves as the basis for any complaints filed by Energy Commission staff. Granting party status to outside parties would unduly complicate and delay complaint proceedings, particularly where the third party had competing interests with the POU or wanted to abuse the complaint proceeding to address an ancillary dispute with the POU.

Subdivision (c) is necessary to help ensure the complaint proceeding process is initiated for appropriate purposes and is not unduly complicated or delayed.

Proposed Subdivision (d). This subdivision specifies the process for a POU to respond to a complaint brought against it by the Energy Commission. This process for answering a complaint is consistent with the existing processes under section 1233 but provides a POU additional time to answer a complaint and permits the POU to include in its answer to the complaint any information it deems relevant to support findings of fact regarding any mitigating factors related to an alleged violation.

This subdivision also clarifies the process for submitting confidential information in a POU's answer. Any such information must be submitted in a separate filing to the Executive Director and submitted with a complete application for confidential designation pursuant to section 2505 of Title 20 of the California Code of Regulations. Section 2505 specifies the Energy Commission's process for designating records confidential. Records that are designated confidential pursuant to this process may be withheld from public disclosure in accordance with the California Public Records Act, Government Code section 6250, et seq.

Subdivision (d) is necessary to describe what information must and may be included in an answer to a complaint.

Proposed Subdivision (e). This subdivision specifies the process by which the Energy Commission responds to a POU's answer to a complaint. This process for response is consistent with the existing processes under sections 1233 and 1233.5 but provides both additional time and an additional opportunity to reply to the responses of the opposing party.

Subdivision (e) is necessary to help ensure Energy Commission staff and the POU, as parties to a complaint proceeding, have a thorough opportunity to raise all relevant issues and concerns pertaining to the complaint and any POU violations alleged in the complaint.

Proposed Subdivision (f). This subdivision specifies the process and timing for noticing and conducting a hearing to consider a complaint against a POU, and for issuing a decision on the complaint. This hearing process is consistent with the existing processes in place under section 1231 to deal with complaints against other entities subject to the Energy Commission's regulations.

Proposed Subdivision (g). This subdivision specifies that all decisions made by the full Energy Commission regarding complaints against a POU pursuant to section 1240 are final and not subject to reconsideration. This subdivision helps ensure the finality of the Energy Commission's decisions by clarifying that there is no right of reconsideration. This subdivision also helps expedite the processing and prosecution of a violation, to the extent the decision supports a notice of violation, by avoiding delays associated with requests for reconsideration. POUs will have sufficient time and opportunity to respond to an Energy Commission complaint within the structure and process specified in section 1240 (b-f).

This subdivision also specifies that the final Energy Commission decision will include all findings of fact, including any findings regarding any mitigating and aggravating factors, upon which the ARB will rely in assessing a penalty against the POU pursuant to Public Utilities Code section 399.30 (l) and (m). The final Energy Commission decision, and supporting record, will serve as the basis for any subsequent ARB penalties assessed against the POU. The ARB does not intend to re-adjudicate the Energy Commission's final decisions, any POU violations set forth in the decisions, or any findings of fact regarding the decisions. This bifurcated process is contemplated by Public Utilities Code section 399.30 (l) and (m), which directs the Energy Commission to determine POU violations and directs the ARB to determine POU penalties.

Subdivision (g) is necessary to help ensure the finality of any Energy Commission decisions and help avoid delays in the processing and prosecution of POU violations. It is also necessary to further clarify the respective roles of the Energy Commission and ARB in determining POU violations and assessing POU penalties.

Proposed Subdivision (h). This subdivision specifies the process and timing for referring a notice of violation against a POU to the ARB. A notice of violation against a POU shall be referred to the ARB no sooner than the statute of limitations has passed for filing a petition for writ of mandate to challenge the Energy Commission's final decision pursuant to Public Resource Code section 25901. Public Resources Code section 25901, subdivision (a), establishes a 30-day period during which an aggrieved entity may challenge an Energy Commission determination by filing a petition for writ of mandate in superior court to review the determination.

The purpose of this subdivision is to help ensure the finality of an Energy Commission decision before that decision is considered by the ARB in determining a POU's penalties under Public Utilities Code section 399.30 (m). If the Energy Commission's decision is challenged by a POU through a petition for writ of mandate pursuant to Public Resources Code section 25901, it would be premature for ARB to consider a notice of violation based that decision in determining a POU's penalties. If the POU is successful in challenging the Energy

Commission's decision, there may be no basis for the ARB to consider the notice of violation against the POU. This subdivision guards against this situation by specifying that, in the event a petition for writ of mandate is filed, a notice of violation shall not be forwarded to the ARB until the matter is fully and finally determined.

This subdivision also specifies the records and information that must be transmitted to the ARB, along with the notice of violation, to support the Energy Commission's determination of a violation.

Subdivision (h) is necessary to help ensure the finality of an Energy Commission decision before that decision is considered by the ARB in determining a POU's penalties.

CONSIDERATION OF PERFORMANCE STANDARDS AS AN ALTERNATIVE TO MANDATING THE USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT OR PRESCRIBING SPECIFIC ACTIONS AND PROCEDURES

The proposed regulations do not mandate the use of a specific technology or equipment. Additionally, the proposed regulations do not prescribe specific actions or procedures that POUs must take to comply with the RPS.

The proposed regulations do not require POUs to take certain actions to comply with the RPS. Instead, the proposed regulations establish the rules and procedures by which the Energy Commission will assess a POU's actions and determine whether those actions meet the RPS procurement requirements in the law. The proposed 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. POUs retain discretion under the law and the proposed regulations to develop and implement procurement rules, plans, and policies to satisfy their particular needs and RPS obligations.

However, the proposed regulations do require POUs to follow specified procedures for submitting various information and reports to the Energy Commission; so the Energy Commission may verify and determine compliance with the RPS requirements, and, if appropriate, issue a notice of violation and correction for a POU's failure to comply and refer the violation to the California Air Resources Board for potential penalties.

STUDIES, REPORTS, AND DOCUMENTS RELIED UPON

The Progress of California's Publicly Owned Utilities in Implementing Renewables Portfolio Standards. California Energy Commission. CEC-300-2008-005, December 2008.

<http://www.energy.ca.gov/2008publications/CEC-300-2008-005/CEC-300-2008-005.PDF>.

Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program. California Public Utilities Commission. D1112020, December 2011. http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/154695.PDF.

Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program. California Public Utilities Commission. D1112052, December 2011. http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/156060.PDF.

Decision Setting Compliance Rules for the Renewables Portfolio Standard Program. California Public Utilities Commission. D1206038, June 2012. http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/169704.PDF.

Renewables Portfolio Standard Eligibility Guidebook, Sixth Edition. California Energy Commission, CEC-300-2012-006-CMF, August 2012. <http://www.energy.ca.gov/2012publications/CEC-300-2012-006/CEC-300-2012-006-CMF.pdf>.

Overall Program Guidebook for the Renewable Energy Program, Fifth Edition. California Energy Commission, CEC-300-2012-005-ED5-CMF, August 2012. <http://www.energy.ca.gov/2012publications/CEC-300-2012-005/CEC-300-2012-005-ED5-CMF.pdf>.

Supporting Material for the Economic and Fiscal Impact Statement and Assessment for the Adoption of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

REASONABLE ALTERNATIVES, IF ANY, TO THE PROPOSED REGULATIONS THAT WERE CONSIDERED

No reasonable alternatives to the proposed regulations were considered. No reasonable alternatives were identified that were less burdensome and equally effective in achieving the purposes of the regulations that were also practical and in accordance with the law.

ALTERNATIVES TO IMPACTS ON SMALL BUSINESSES

No alternatives were considered regarding impacts to small business, because the proposed regulations will not directly impact any businesses. No business, including a small business, is legally required to comply with or enforce the proposed regulations. Nor will any business derive a direct benefit or detriment from the implementation of the proposed regulations. The proposed regulations would apply to a POU, which is a local agency and not an independently owned and operated business. For a discussion of the economic impacts of the proposed regulation, refer to the Energy Commission's *Supporting Material for the Economic and Fiscal Impact Statement and Assessment for the Adoption of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.*

SIGNIFICANT ADVERSE ECONOMIC IMPACTS ON BUSINESS

The Energy Commission has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, as a result of the proposed regulations. The Energy Commission is unaware of any legitimate cause and effect relationship between the proposed regulations and a significant statewide adverse economic impact directly affecting businesses. As noted above, no business, including a small business, is legally required to comply with or enforce the proposed regulations. Nor will any business derive a direct benefit or detriment from the implementation of the proposed regulations. For a discussion of the economic impacts of the proposed regulation, refer to the Energy Commission's *Supporting Material for the Economic and Fiscal Impact Statement and Assessment for the Adoption of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.*

IMPACT ON FEDERAL REGULATIONS

The proposed regulations neither duplicate nor conflict with any federal regulation or statute. The proposed regulations do not implement a federally mandated regulation or statute. The Energy Commission is unaware of any comparable federal regulation or statute establishing procedures for the enforcement of California's RPS on POUs.

