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Joint POU CEC RPS LTR Comment Letter

The California Municipal Utilities Association (CMUA), Northern California Power Agency (NCPA), and Southern California Public Power Authority (SCPPA) (collectively the "Joint POU") respectfully submit these comments to the California Energy Commission on potential revisions to CEC's Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities to incorporate options for implementing the Senate Bill 350 (2015) provision requiring long-term procurement of certain renewable resources.

Additional submitted attachment is included below.



October 1, 2019 | Submitted Electronically

Ms. Katharine Larson
Renewable Energy Office
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: Comments of the Joint Publicly Owned Utilities on the September 10, 2019 Lead Commissioner Pre-Rulemaking Workshop on Renewables Portfolio Standard (RPS) Regulations for Publicly Owned Utilities (POUs) [CEC Docket #16-RPS-03]

Dear Ms. Larson,

The California Municipal Utilities Association (CMUA), Northern California Power Agency (NCPA), and Southern California Public Power Authority (SCPPA) (collectively the “Joint POU”) respectfully submit these comments to the California Energy Commission on potential revisions to CEC’s *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* to incorporate options for implementing the Senate Bill 350 (2015) provision requiring long-term procurement of certain renewable resources. Specifically that, “[...] Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts towards the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” In addition, that “The governing board of a local publicly owned electric utility shall adopt procurement requirements consistent with subparagraph (B) of paragraph (4) of subdivision (a) of, and subdivision (b) of, Section 399.13.”¹

The Joint POU’s appreciate the time and discussion opportunity from prior meetings and workshops, and CEC staff’s willingness to consider and address questions most recently raised by the Joint POU’s as the rulemaking resumes. As noted during opening comments at the September 10 workshop, as the Commission develops regulations to implement the provisions of Public Utilities Code sections 399.13(b) and 399.30(d)(1) and effect the legislative intent behind those provisions, the Joint POU’s have key implementation priorities – broadly categorized as a need to maximize implementation flexibility for POU’s for the reasons below – that we encourage CEC to remain cognizant of as this rulemaking proceeds.

OVERVIEW OF JOINT POU RPS IMPLEMENTATION ISSUES

Reasonableness. The long-term procurement requirement presents unique implementation challenges for POU’s when selecting, negotiating, executing, and then developing a long-term contract or ownership agreement (which can necessarily be a lengthy process for governmental entities within the public sector contracting processes). A POU is therefore extremely limited in its ability to secure qualifying new long-term procurement in a short amount of time. We urge CEC to avoid unreasonable or inflexible

¹ Public Utilities Code sections 399.13(b) and 399.30(d)(1).

implementation requirements not statutorily mandated that could unfairly harm POU ratepayers by either treating a POU as non-compliant or forcing risk-averse POU's to procure costly or poor-fitting resources. The regulations should implement the statutory requirements in a way that is practical rather than overly technical and should not punish POU ratepayers for events outside the control of the POU to best promote the purpose of the statute as described below.

We further encourage the CEC to exercise its allowable discretion to provide reasonable and necessary flexibility when implementing the long-term procurement requirement. The CEC's authority and discretion to adopt the RPS regulation is governed by the Administrative Procedures Act (APA), which provides in part: "*Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.*"² While courts provide no deference to an agency when it is enacting regulations outside the scope of its authority, courts do provide significant discretion to agencies when enacting regulations "reasonably necessary to effectuate the purpose of the statute."³ Courts have clarified that the APA's use of the term "necessary" should not be given a literal interpretation. Instead, the court must: ascertain whether the agency reasonably interpreted its power in deciding that the regulation was necessary to accomplish the purpose of the statute. Stated another way, the court's role is limited to determining whether the regulation is 'reasonably designed to aid a statutory objective.'⁴

A narrow interpretation of the long-term procurement requirement would lead to the paradoxical situation where a POU would be potentially punished for procuring sufficient renewables to meet its RPS procurement targets. If, for example, a POU relies on a long-term contract for a significant portion of its RPS resources and that contract failed six months before the end of a compliance period, then that POU would have no realistic option for executing and receiving generation from a qualifying new long-term contract in order to maintain RPS compliance. That POU may, however, have options to quickly replace that lost generation with a new short-term contract to keep in place until it can find a replacement for the long-term contract. Any effort to discourage this action, thereby subjecting the POU to penalties that are not reduced by that short-term procurement, potentially exposes that POU's customers to both the net cost of the short-term procurement and the cost of the penalties as well. Discouraging renewable procurement is clearly at odds with the purpose and structure of SB 350, SB 100, the RPS program in general, and California's climate change goals more broadly.

The CEC should instead add a provision to the long-term procurement requirement that provides flexibility where a long-term contract inadvertently fails to deliver electricity products through no fault of the purchasing POU (such as, due to seller default) – whereby a designated replacement may count towards the long-term procurement requirement. Doing so would be consistent with the legislative intent and within the CEC's discretion. For example, in instances where the long-term commitments are still viable or only temporarily delayed (i.e., due to permitting or similar reasons), the statutory intent of encouraging long-term contracting has already been realized, and there is no value in forcing the POU to enter into additional long-term commitments for resources that are not needed to serve its customers.

² Cal. Gov. Code § 11342.2. (emphasis added)

³ See *Communities for a Better Env't v. California Res. Agency*, 103 Cal. App. 4th 98, 108 (2002).

⁴ *Samantha C. v. State Dep't of Developmental Servs.*, 185 Cal. App. 4th 1462, 1481-83 (2010) (internal citations omitted).

Legislative Intent. We understand that the SB 350 long-term procurement requirements were intended to support long-term planning and to ensure that new renewable projects could secure adequate financing (this is *both* for outside developers and for the POU's themselves). As the CEC develops these regulations, we urge staff to be mindful that the primary mechanism for ensuring adequate long-term planning is through the Integrated Resource Plans (IRPs). These comprehensive plans consider all resources; are regularly updated; must account for both a rapidly changing energy market and existing, long-term, zero-carbon resources currently serving Californians; and for the 16 IRP POU's, must publicly demonstrate that they are on track to meet California's RPS and greenhouse gas emissions reduction goals. Indeed, Senate Bill 100 (2018) also sought to recognize how POU's are uniquely situated in having existing, long-term contracts for non-RPS qualifying resources – including with the Federal Government – for large hydropower resources, and (separately) for nuclear generation as well. Further, there are already strong financial incentives for POU's to enter into long-term contracts with renewable facilities even without the 65% requirement – partially driven by the availability of federal tax incentives.

Impacts from Variability of POU Generation. Small- and medium-sized POU's face unique challenges. Smaller POU's often have a limited number of resources in their portfolios, so the failure or delay of even *one* project has the potential to place them out of compliance with the long-term RPS procurement requirement. Because of their size and potentially their socioeconomic status, they may not be able to add additional resources into their portfolio to protect against the risk of project failure without exposing their ratepayers to excessive associated costs. Additionally, if a POU has a significant amount of hydropower in its portfolio, it may face challenges in building a portfolio of long-term resources that both provides adequate generation during an extended drought but does not result in substantial over-supply during wet years. Specifically:

- If a contract fails, or if a generating facility goes offline due to operational problems, a POU may need to replace the associated lost Renewable Energy Certificates with generation from a different long-term contract or owned resource. There is typically a long lead time to successfully execute and begin receiving generation from a new long-term contract, or to purchase an ownership share in a project. Because of this, it may be impossible for a POU to make up for an unexpected shortfall if it occurs near the end of a compliance period.
- A POU's retail load and generation from renewable resources can vary from one year to the next. For example, a POU with significant RPS-eligible hydropower resources may need to make up temporary shortages during an extended drought. Similarly, an unexpected increase in load – the arrival of a large new customer(s), or significant increase in demand with the installation of fast-charging electric vehicle infrastructure banks – would be difficult to meet with predominantly long-term contracts or owned resources.
- Smaller POU's and POU's with portfolios that rely on a small number of resources will likely not be able to build a sufficient buffer to protect against unexpected shortfalls. For example, if a POU relies on one project for half of its overall RPS procurement, it may be impossible to protect against the unexpected failure of that project. Small POU's may also struggle to negotiate multiple long-term contracts because of the small transaction size. A joint project or joint ownership agreement also presents challenges when negotiating contracts with multiple counterparties (especially when multiple governmental entities are involved).

Impacts from Variability of POU Load. POU's want to encourage large new customers to locate within their communities due to the associated employment and economic benefits. However, for smaller- and medium-sized POU's, a single large customer can account for a *substantial* percentage of their overall load. Procuring long-term resources for these customers can be challenging – particularly if the customer may not be able to commit to remain within their service territory for at least 10 years, or may seek renewables contracts with project resources directly to meet corporate sustainability goals.

Actions Outside of a POU's Control. The primary reasons why a POU may be unexpectedly short on long-term procurement are generally due to events wholly outside of their control: 1) the failure or delay of a project that is under development; 2) an existing long-term resource goes offline due to a failure with the resource itself; or 3) unexpected load growth (*e.g.*, transportation electrification) or departure (*e.g.*, corporate re-location). The CEC should ensure that these regulations do not inadvertently punish a POU that has taken all reasonable actions to secure sufficient long-term resources and where actions outside of its control result in a shortfall. We also strongly encourage the CEC not to eliminate optional compliance mechanisms that would otherwise provide reasonable protections for a POU's ratepayers.

Maintaining Credit for "Early Action." As the CEC implements new provisions of SB 350, we strongly encourage staff to exercise caution against imposing unnecessary contracting restrictions that devalue any RPS procurement decisions made by POU's in reliance upon existing statutes and regulations. Doing so would result in adverse disproportionate rate impacts, and would unfairly punish POU's who sought to procure RPS resources in the earliest stages of technology deployment – helping mainstream a nascent market – when renewable resources were generally expensive and essentially necessitated long-term contracts to gain approval and to secure public and private sector financing.

TOPIC 1

IMPLEMENTATION OF THE LONG-TERM PROCUREMENT REQUIREMENT

The distinction between staff's "dependent" versus "independent" compliance options are likely less important than ensuring that *all* optional compliance mechanisms remain available, and that there are no "double penalties." A POU should be able to bank as much short-term procurement as needed as long as the procurement that actually counts towards a compliance period meets the 65% requirement. The banked RECs will carry the long-term versus short-term attributes, so even when those short-term RECs are used in a future compliance period, the POU will still need to comply with the 65% requirement.

As proposed, the dependent compliance option could subject POU's to penalties as a result of disallowing RPS-eligible procurement that would meet the POU's total procurement and PBR requirements. At the same time, as discussed below [Question 5], the constrained interpretation regarding the use of optional compliance measures – especially delay of timely compliance – could result in POU LTR shortfalls with little or no time to correct the deficit if it occurs late in the compliance period.

As discussed during the September 10 workshop, the Joint POU's have noted that Table 2 ("Example LTR Compliance Calculations") is not likely to be a potential POU problem scenario. This scenario assumes that the hypothetical POU has a procurement target of 100,000 RECs and retires and applies 100,000 RECs for RPS compliance, half of which are classified as short-term and half as long-term, all of which are classified as Portfolio Content Category (PCC) 1 so the POU satisfied the PBR. Under the independent compliance option, the POU satisfies its RPS procurement target and incurs a deficit of 15,000 RECs in the LTR. Under the dependent compliance option, the POU's excess applied short-term RECs are disallowed until all remaining applied RECs satisfy the minimum LT ratio, so that the POU complies with the LTR but incurs a procurement target deficit of 23,077 RECs. What would be more likely is that the CEC unexpectedly negates a POU's long-term contract which leads to a mistake that compromises the ability of the POU to meet the 65% ratio; a question is then raised about possibly reconciling such a mistake after-the-fact. During the workshop, the POU's also discussed concerns with the complexity of the calculation, and raised questions regarding the extent to which POU's can apply optional compliance measures adopted in their RPS Procurement Plans or Enforcement Programs in order to avoid or mitigate disproportionate/negative POU customer rate impacts.

In response to the discussion questions presented in the Staff Paper:

1. Do both implementation options effectively implement the long-term procurement requirement? We believe the “independent” compliance option as presented does not effectively implement the long-term procurement requirement because under staff’s interpretation it excludes the use of the delay of timely compliance optional compliance mechanism (interpretation of Public Utilities Code Section 399.15(b)(5)’s use of the phrase “this section”). This reading is inconsistent with the clear purpose of these statutes and is an unreasonable implementation proposal. The delay of timely compliance conditions are exactly the types of events that could result in delay or failure of a long-term resource: 1) inadequate transmission; 2) permitting or interconnection delays; 3) curtailment. Not allowing a POU to utilize these provisions would unnecessarily and unreasonably expose a POU’s ratepayers to non-compliance and potential penalties.

However, the “dependent” compliance option as presented is also not an effective implementation of the long-term procurement requirement, in that staff envisions disallowing procurement entered into in good faith in order to force compliance with the LTR. Any implementation of the “dependent” option must ensure that the application of the LTR ratio to a POU’s procurement does not exclude procurement that should otherwise qualify. For example, PCC 0 RECs should fully count as a long-term resource and not be subtracted before the ratio is applied. Further, a POU should be free to bank as much short-term PCC1 as is available, as long as the POU can meet its compliance requirement with the 65% LTR procurement necessary.

2. Which implementation option best supports the state’s 100 percent clean energy policy? To the extent that all of the resources at issue are providing RPS-eligible renewable energy, both options equally support the State’s 100% clean energy policy. Regardless of the option selected, the CEC regulations must address implementation of LTR in the context of the RPS Program mandates and must support reasonable POU procurement and planning activities. An overly rigid regulation could interfere with an otherwise currently functioning marketplace – we are therefore concerned that inserting regulatory uncertainty or restrictions could compromise long-term planning and/or the effective functioning of the current market. Fundamentally, POUs must have regulations that provide for access to reasonable optional compliance mechanisms, do not expose ratepayers to duplicative penalties, and does not hinder reasonable POU planning measures.

3. What reasons (e.g., policy, factual, financial, practical, legal) support the independent compliance LTR implementation for POUs? An independent compliance structure would be a more reasonable option under a scenario where a POU is able to minimize its penalty exposure through alternative procurement. However, there is no ability for a POU to procure additional RECs after the end of a compliance period. Further, extra RECs in a disallowed category simply do not count and provide no potential for a reduction in penalties. For example, a POU that is short on PCC1, but long on PCC3, gets no benefit for the disallowed PCC3. Instead, the POU likely faces the same potential for a penalty, but has also lost public funds on the disallowed, unusable PCC3 RECs. Because of these limitations, the scenario in Table 2 is extremely unlikely to happen: a POU would not procure extra short-term procurement at the expense of missing its long-term procurement requirement. First, the price difference between long-term and short-term PCC1 is not so substantial that a POU would be able to procure likely disallowed short-term PCC1 RECs. Second, a POU would not retire these excess short-term RECs if they would be disallowed. The most likely scenario for a POU to not meet its long-term procurement requirements would be due to the failure of a contracted resource to be completed on time, or because an existing plan ceases operation or under delivers. Rather than procuring ineligible short-term RECs, a POU would likely look to an optional compliance mechanism instead. Because of these structural limitations, there may not be a practical difference between the

“independent” and “dependent” compliance options. However, the consequences of denying a key optional compliance mechanism and potential for double penalizing a POU would be strong arguments against an “independent” compliance option.

4. **What market impacts, if any, could result if the CEC implements the LTR for POUs as the independent compliance option?** It is unclear what the direct consequences would be of the “independent” option. However, if POUs perceive that CEC’s RPS regulations do not reflect reasonable implementation alternatives, it is possible that future power purchase agreements could impose higher penalties for missing online dates, which would likely require higher contract prices incurred on behalf of POU ratepayers. This could result in net costs to ratepayers for a purely regulatory risk. It is possible that there could be increases in RPS costs due to inflexibility for no value other than because of how the regulation has been implemented. Other market impacts likely relate to planning perspectives to deal with such uncertainties (*e.g.*, banking more RECs).
5. **Are there alternative implementation options that are less burdensome and sufficiently effectuate the purpose of the statute?** A reasonably applied independent compliance option could provide a simpler approach for implementing the long-term procurement requirement. Additionally, the independent compliance measure should allow the delay of timely compliance optional compliance mechanism. Ultimately, POUs should have the option to choose the compliance option which optimizes their planned compliance strategy and protects ratepayers from costly over procurement brought on by implementing a technical, rather than practical regulatory approach.

TOPIC 2

CHARACTERIZATION OF LONG-TERM PROCUREMENT

The CEC should guide its implementation by looking to the likely legislative purposes of supporting long-term *planning* and helping new generation projects secure *financing* within the flexibility needed for POUs to secure a least-cost, best-fit plan for their ratepayers. With this in mind, the CEC should apply a reasonable interpretation of long-term contracts that recognizes both the statutory intent of the provision, as well as past POU procurement investments in renewable resources. With the adoption of the long-term requirement, parties will see a variety of approaches and new contract structures to accommodate their specific procurement needs and meet the statutory requirement. To the extent that these new structures support mutual planning efforts and project financing, and do not thwart legislative intent, the CEC should not restrict them.

In response to the discussion questions presented in the Staff Paper:

1. **For an amended contract to be considered long-term, staff proposes that the current term or at least one prior term have a continuous duration of at least 10 years. Can certain amendments to short-term contracts, in which the duration of the amendment is also short-term in nature but the entire amended term has a duration of at least 10 years, provide long-term planning stability?** A short-term amendment early on in the first term of a short-term contract that extends the life of the contract from that amendment date to the end of the contract for more than 10 years in duration provides the same long-term planning structure to a contract that is signed for 10 years at the start. It still provides long-term certainty for the purchaser and generator.

When updating RPS rules, we encourage the CEC to allow for long-term procurement credit when short-term contracts may be required to have their terms extended (resulting in a total length of 10 years or more) to meet State-mandated policy initiatives.

2. **What reasons (e.g., policy, factual, practical, financial, legal), if any, would support characterizing short-term amendments of short-term contracts as long-term, provided the entirety of the amended term is at least 10 years?** There may be unintended consequences where generators cannot get contracts they need to bridge periods to long-term contracts. The POU's therefore encourage more flexibility with short-term contracts.
3. **Should procurement from short-term assignments of contracts that were initially long-term in nature be allowed to count as long-term procurement when determining compliance with the LTR?** Renewable energy that is purchased via an assignment that originates from a long-term contract should be eligible to meet the LTR. One option that smaller- or medium-sized POU's may pursue to meet the long-term procurement requirements is through joint procurement. They may be contract structures where joint purchasers can adjust their percentage shares of the output of a facility at different points during a contract term. If allowed under the original contracts, these types of options should be allowed. Such an option both supports project financing and provides a reasonable long-term planning option for smaller- and medium-sized POU's who may have more constrained procurement options. Additionally, continuing to treat all renewable energy under the existing long-term commitment as LTR-eligible would also provide options for utilities to mitigate the financial impacts associated with the loss of load. For example, a POU may lose a large customer whose load was included in its long-term procurement forecast; until the utility is able to recover the lost load, any assignment of the unneeded portion of the contract would help mitigate the financial impacts on the POU, but the value of short-term RECs would likely be less than the value of the long-term RECs. Similarly, a POU who faced a sudden or unexpected increase in load could be assigned a portion of the contract to meet its LTR while it pursued alternatives to meet its increased load through long-term commitments without being forced into doing so.
4. **Should contract modifications that do not explicitly change the stated duration of the contract, such as changes to procurement quantities, changes in price, or assignment of certain rights or obligations under the contract, affect the contract's duration for purpose of determining the long-term nature of the procurement?** Amendments not affecting the terms' length should not affect the long-term nature of the contract. For example, if project upgrades increase capacity of the project, such an upgrade should be encouraged. A narrow reading of the long-term procurement requirement could actually discourage beneficial upgrades at a project or a "modular approach" to development without serving any clear purpose. Further, restricting the ability of parties to renegotiate the price or delivery terms, or assign rights and obligations to other parties does nothing to encourage or further the development of long-term renewable energy commitments. In fact, it would likely have the opposite effect since few parties are likely to want to enter into agreement that could never be amended.
5. **Under what circumstances should a POU's assignment of its rights and obligations under a long-term contract serve to nullify the long-term nature of the contract?** For a POU that executed a long-term contract and then assigns it prior to the end of the initial 10 years of the contract, that POU should be able to count the full time period where the POU received deliveries as long-term. The assignment limitations and requirements would have been specified in the original contract, and so the original purchasing POU would simply be exercising an existing contractual provision. Treating the assigned contract as long-term for the remainder of the contract term would be consistent with the purpose of supporting project financing.
6. **Do both treatment options for PCC 0 and historic carryover effectively implement both the LTR and the count-in-full provisions under PUC section 399.16?** PCC0 should be treated as meeting the

long-term procurement requirement without limitation. The State Legislature has acknowledged the value of PCC 0 resources since the early days of the RPS Program mandates, and nothing in PUC sections 399.13(b) changes this. Pursuant to PUC section 399.16(d), “(d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward the procurement requirements established pursuant to this article” provided that certain conditions are met. Any implementation of the LTR that does not recognize the long-term nature of these agreements would be unlawful. Furthermore, failing to recognize PCC 0 resources as eligible to meet the LTR would both unfairly penalize early compliance and discourage any POU from extending existing contracts.

PCC0 should count MWh-to-MWh and there are many reasons for why PCC0s should count in full towards the long-term procurement target:

- a. *Ratepayer Concerns.* Many of the current long-term PCC0 contracts are POU's oldest, longest, and priciest contracts. If they are not counted, POU's may be compelled to buy additional new long-term contracts which will further increase customer rates.
- b. *Over-procurement Concerns.* Not counting PCC0 resources towards the LTR will likely result in over-procurement to ensure compliance; which may further depress market prices. This outcome could drive developers out of California over time if the market conditions make financing difficult or impossible.
- c. *Flexibility Concerns.* As can be seen with the issues the Investor-Owned Utilities have had with pricey, long-term contracts and departing load, forcing *more* long-term procurement is only going to decrease flexibility to changing circumstances and cause further financial issues for all utilities.
- d. *PCC0s are almost all already long-term.* To qualify as a PCC0, a POU needed to have executed the contract prior to June 1, 2010. Even if there was a lag in the contracts delivering energy, most of these contracts are already close to the 10-year threshold. For simplicity, flexibility, and equity it would make sense to classify all PCC0s as long-term, especially given this rulemaking is after-the-fact.
- e. *Fairness Concerns.* Not counting PCC0s towards the long-term requirement would unfairly devalue the significant investments utility customers had made as “early adopters.”

PCC 0 resources are an integral part of many POU's' resource mix, and important component of their IRP. As was testified to in the September 10th workshop, not counting PCC0s towards the LTR will have an immediate impact on POU long-term compliance.

7. **What market impacts, if any, could occur if the requirements for long-term procurement under the LTR differ for POU's and retail sellers?** There would be minimal, if any, impacts to the market if there were some differences between POU and retail seller requirements. Long-term contracts are already carefully tailored to individual circumstances.
8. **What other conditions need to be addressed to fully characterize the duration of procurement for the purposes of evaluating POU compliance with the LTR?** The CEC should clarify that it will broadly interpret long-term contracts. For example, a small hydropower contract should qualify as long-term procurement even if during multiple years of that contract deliveries were not possible due to an extended drought. Further, if a contract allows multiple generators to be the source of generation, then that contract should be eligible.

Valuing Portfolio Content Category 3 RECs. Executing long term PCC3 contracts will be challenging. While it is possible to arrange a long term PCC3 contract, it is unusual. A key value of unbundled PCC3 RECs is that they can be purchased after the associated energy has already been generated and sold separately.

TOPIC 3

EARLY COMPLIANCE PROCESS

A key practical consideration is that regulations will not be finalized and adopted until well into 2020, which is the final year of the third compliance period. Therefore, the CEC should provide a simple and reasonable method for declaring early compliance, without the possibility of accruing penalties.

In response to the discussion questions presented in the Staff Paper:

- 1. Does staff's proposal effectively implement the provisions of PUC section 399.13 (a)(4)(B)(iii) and section 399.30 (d)(1) for POU's?** Staff's proposal is reasonable and consistent with other optional compliance provisions.
- 2. Under staff's proposal, if a POU that elected early compliance for Compliance Period 3 is determined not to have satisfied the LTR for that period during the CEC's verification activities, which occur after the completion of Compliance Period 3, the POU may revise its election. What are the potential compliance impacts if the early election is revised?** A POU that fails to meet the early compliance requirements will be penalized by losing access to the new excess procurement rules. That is a sufficient incentive and punishment.

Conclusion

Thank you for the time and attention to these comments. We stand ready to work with staff on the RPS regulation implementation process for the new long-term procurement requirement to ensure flexibility for California's POU's that does not inadvertently force a POU to be out of compliance with the RPS requirements through no fault of its own. We strongly encourage the CEC to address the challenges faced by POU's in meeting this new requirement and exercise its allowable discretion to provide reasonable protections consistent with the intent of SB 350.