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Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	231217
Document Title:	Key Topics for Lead Commissioner Workshop
Description:	N/A
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Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	12/13/2019 2:53:32 PM
Docketed Date:	12/13/2019

Key Topics for Lead Commissioner Workshop on Proposed Pre-Rulemaking Amendments to *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*

Background

The Renewables Portfolio Standard (RPS) requires retail sellers of electricity and local publicly owned electric utilities (POUs) to procure eligible renewable energy resources equal to a specified amount of their retail electric sales. The California Energy Commission (CEC) is required to adopt regulations specifying enforcement procedures for the RPS for POUs. The CEC adopted regulations for this purpose, which took effect in October 2013. These regulations are referred to as the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (RPS POU Regulations) and are codified in the California Code Regulations, title 20, sections 1240 and 3200 – 3208. The CEC subsequently adopted amendments to the RPS POU Regulations, which took effect in April 2016. Since the CEC last modified the RPS POU Regulations, Senate Bill (SB) 100 (de León, Chapter 312, Statutes of 2018), SB 1110 (Bradford, Chapter 605, Statutes of 2018), SB 1393 (de León, Chapter 677, Statutes of 2016), and SB 350 (de León, Chapter 547, Statutes of 2015) made statutory changes to the RPS program including changes that affect POUs.¹

The CEC plans to initiate a formal rulemaking to modify the RPS POU Regulations to implement the statutory changes. The CEC previously initiated pre-rulemaking activities in 2016 after the enactment of SB 350 and issued *Pre-Rulemaking Amendments to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utility* (August 2016 Amendments). The CEC resumed pre-rulemaking activities in 2019, and staff published the *Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities*² (LTR Implementation Proposal) on implementation options for the long-term procurement requirement (LTR), one of several requirements established by SB 350. On September 10, 2019, the CEC Lead Commissioner for Renewable Energy, Karen Douglas, held a pre-rulemaking workshop on this topic. CEC staff considered public comment received during and after the September 10 workshop, as well as comments previously submitted on the August 2016 Amendments, in developing new proposed amendments implementing the LTR.

CEC staff has developed new proposed pre-rulemaking amendments (Pre-Rulemaking Amendments) to implement the full range of statutory changes within the RPS POU Regulations. The Lead Commissioner for Renewable Energy will conduct a workshop to present and solicit input on the Pre-Rulemaking Amendments. To support the Lead Commissioner workshop and facilitate public input on the proposed Pre-Rulemaking Amendments, staff has developed this key-topics document. The key topics presented in this document are not comprehensive of all proposed regulatory changes reflected in the Pre-Rulemaking Amendments and any changes not specifically addressed in this document will be explained in staff's presentation at the Lead Commissioner workshop. Within this document, staff has

¹ Refer to the Appendix for a summary of each legislative bill that the CEC will address in the update to the regulations.

² Refer to <https://efiling.energy.ca.gov/getdocument.aspx?tn=229682>

identified several key topics where there may be alternative approaches and/or specific feedback is needed. Staff encourages the public to comment on and, when applicable, provide alternative considerations in this key topics document and the Pre-Rulemaking Amendments. The key topics below are organized by topic area, rather than following the sequence of the Pre-Rulemaking Amendments and each of the key topics identifies the applicable sections of the Pre-Rulemaking Amendments.

Compliance Periods and Procurement Requirements

Compliance Periods and Procurement Targets Beginning January 1, 2021

Section 3204 (a) of the RPS POU Regulations implements the compliance periods and procurement targets set by SB X1-2, including establishing annual compliance periods after 2020. SB 350 and SB 100 established and modified multiyear compliance periods and targets after 2020.

Staff Proposal

Compliance Periods [proposed section 3204 (a)(4)-(7)]: Staff proposes incorporating the compliance periods specified in Public Utilities Code (PUC) section 399.30 (b)(4)-(6). To implement PUC section 399.3 (c)(2), for subsequent years after 2030, staff proposes establishing three-year compliance periods for POUs, consistent with the three-year compliance periods established for retail sellers in PUC section 399.15 (b)(2)(B).

Soft Targets [proposed section 3204 (a)(4)-(7)]: Staff proposes establishing linearly increasing soft targets for POUs to demonstrate reasonable progress for the intervening years of Compliance Period 4 (January 1, 2021–December 31, 2024) and Compliance Period 6 (January 1, 2028 – December 31, 2030), consistent with the approach for POUs in Compliance Period 3 (January 1, 2017 – December 31, 2020).

For the three years of Compliance Period 5 (January 1, 2025 – December 31, 2027), staff proposes setting soft targets of 46 percent, 50 percent, and 52 percent, respectively. This proposal harmonizes the procurement provisions of section 399.30 (b)(5) and (c)(2) with the legislative intent of PUC section 399.11 (a), which identifies a target of “50 percent by December 31, 2026.”

For each proposed three-year compliance period beginning on or after January 1, 2031, staff plans to establish soft targets equal to 60 percent, as required by PUC section 399.30 (c)(2).

Staff’s proposed soft targets for Compliance Periods 4 and 6 and for the three-year compliance periods beginning on or after January 1, 2031, are consistent with the CPUC’s implementation for retail sellers in Decision (D.) 19-06-023.³ Staff’s proposed soft targets for Compliance Period 5 differ from the soft targets established for retail sellers, which follow the same linear progression as in Compliance Periods 4 and 6. However, staff’s proposed soft target for 2025 ensures the procurement target for POUs and retail sellers will be generally consistent for Compliance Period 5. If a POU’s retail sales remain constant over the compliance period, staff’s proposed soft targets would result in the same procurement target as if linear increasing soft targets were established. The proposed compliance periods and annual soft targets are as follows:

³ Refer to Ordering Paragraphs 1, 3 and 4, pp. 11-12, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M307/K595/307595168.PDF>.

	Year	Annual Soft Target or Procurement Target
Compliance Period 4	2021	35.75%
	2022	38.50%
	2023	41.25%
	2024	44.00%
Compliance Period 5	2025	46.00%
	2026	50.00%
	2027	52.00%
Compliance Period 6	2028	54.67%
	2029	57.33%
	2030	60.00%
Compliance Period 7 and future compliance periods	Year 1	60.00%
	Year 2	60.00%
	Year 3	60.00%

Staff seeks public comment on whether the proposed soft targets for Compliance Period 5 demonstrate reasonable progress for POUs. Though PUC section 399.11 (a) declares the Legislature’s intent of achieving 50 percent of retail sales from eligible renewable resources by 2026, PUC sections 399.30 and 399.15 do not require a specific amount of procurement in any intervening year of a compliance period, such as for 2026 (an intervening year of Compliance Period 5). In providing feedback on the proposed soft targets, staff encourages stakeholders to consider legislative intent, the multiyear compliance period structure of the RPS program, and the revised targets established in PUC section 399.30 (c), and to provide an explanation for any proposed alternatives.

Portfolio Balance Requirement (PBR) and Limitation

In addition to the procurement target, PUC section 399.30 (c)(3) requires POUs to procure resources that are consistent with PUC section 399.16, which establishes a minimum amount of Portfolio Content Category (PCC) 1 electricity products and a maximum amount of PCC 3 electricity products that may be credited to the procurement target for each compliance period.

Staff Proposal

Address Post-2020 Multiyear Compliance Periods [proposed section 3204 (c)(3), (c)(6)]:

Staff proposes to incorporate the statutory requirement establishing a PCC 1 minimum of 75 percent and a PCC 3 maximum of 10 percent for Compliance Periods 4 through 6, as well as for all multiyear compliance periods after 2030, in the RPS POU Regulations, consistent with the requirements of PUC section 399.16 (c)(1)-(2). These changes are incorporated in section 3204 (c)(3) and (c)(6) of the Pre-Rulemaking Amendments.

Clarify PCC 3 Maximum as Limit [proposed section 3204 (c)(6)]:

Staff proposes clarifying that the PCC 3 maximum is evaluated as a limit, rather than a procurement requirement, to better reflect statutory and regulatory provisions that “not more than” a specified amount of PCC 3 may be credited toward the RPS procurement target. This clarification will ensure that the PCC 3 maximum limit is the first operation conducted in evaluating the PBR, prior to the calculation of the PCC 1 minimum requirement and, when applicable, the LTR. Staff’s proposed clarification is consistent with the existing

procurement target equations in section 3204 (a), which specify: "No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit ..."

In addition to the clarification in section 3204 (c)(6), this proposed change is reflected in the definition of the "portfolio balance requirement" in section 3201 (v) of the Pre-Rulemaking Amendments.

Clarify PBR Calculations and Equations [proposed section 3204 (c)(3), (c)(6)]: Staff proposes to update the equations for calculating the PCC 1 minimum requirement and PCC 3 maximum limit to ensure they clearly meet the statutory requirements. The updated equations will address a range of scenarios, including applying more or less procurement to the RPS procurement target than required for compliance and reflect the statutory intent of "procurement credited toward each compliance period."

Applying Equal To or More Than Target: The current structure of the PBR equations do not clearly address scenarios in which a POU voluntarily applies more electricity products to the target than required for compliance, rather than banking electricity products that may qualify as excess procurement. Consistent with implementation in Compliance Period 1 and Compliance Period 2, if a POU voluntarily applies more RECs than the procurement target, the PCC 3 maximum is calculated based on the RPS procurement target, less any excess procurement that meets the criteria of section 3202 (a)(2) ("PCC 0"), historic carryover, or procurement that meets the criteria of section 3202 (a)(3) ("Pre-June 2010") that was applied. A POU cannot increase its use of PCC 3 above the maximum that would be allowed to meet the target, but nor is a POU required to increase the amount of PCC 1 in order to apply procurement in excess of the RPS procurement target.

Sample calculation: A POU retires 1,850 PCC 1 RECs and 500 PCC 3 RECs for a compliance period with a procurement target of 2,000 RECs. The PCC 3 limit is $0.10 \times (2,000 \text{ RECs}) = 200 \text{ RECs}$. The number of disallowed PCC 3 RECs is 300. The number of PCC 3 RECs available to be credited to the target is 200. Rather than seek to bank any eligible excess procurement, the POU applies all 2,050 available RECs to its RPS procurement target. The PCC 1 minimum is $0.75 \times (2,000 \text{ RECs}) = 1,500$.

Applying Less Than Target: The current structure of the PBR equations also do not clearly address scenarios in which a POU applies fewer RECs than the total amount needed to meet the procurement target. In this case, staff proposes that the PCC 3 limitation be applied to all procurement retired for the compliance period as well as any excess procurement applied to the target, less any PCC 0 or Pre-June 2010 procurement retired or applied. Staff proposes that the PCC 1 minimum would be calculated based on total RECs applied after the disallowance of PCC 3 RECs in excess of the maximum limit.

Sample calculation: A POU retires 600 PCC 3 RECs and 600 PCC 1 RECs for a compliance period with a procurement target of 2,000 RECs. The POU has no prior banked excess procurement available to apply to the target. The PCC 3 limit is $0.10 \times (1,200 \text{ RECs}) = 120 \text{ RECs}$. The number of disallowed PCC 3 RECs is 480. The number of PCC 3 RECs available to be credited to the target is 120 and the total number of RECs available to be credited is 720. The PCC 1 minimum is calculated as $0.75 \times (720) \text{ RECs} = 540 \text{ RECs}$.

Long-Term Procurement Requirement

SB 350 amended PUC section 399.13 (b) to establish a new procurement requirement for retail sellers beginning January 1, 2021, requiring at least 65 percent of procurement counted for the RPS requirement of a compliance period to come from a retail seller's contracts of 10 years or more in duration, or its ownership or ownership agreements. PUC section 399.30 (d)(1) makes the procurement requirement applicable to POUs.

Staff Proposal

Implementation of the Long Term Procurement Requirement [proposed section 3204

(d)(1)]: Staff proposes establishing the LTR as a procurement requirement for which compliance is assessed independently from the RPS procurement target and PBR for POUs, consistent with the "independent compliance" option in the LTR Implementation Proposal. If a POU fails to satisfy an RPS procurement requirement, including the LTR, it may be subject to enforcement action (proposed section 3208 (b)(5) of the Pre-Rulemaking Amendments) and it will be unable to bank excess procurement (proposed section 3206 (a)(1)(B)).

Applicability of Optional Compliance Measures [proposed section 3206 (e)]: Staff proposes that the cost limitation optional compliance measure may be adopted and applied by a POU to address a shortfall in meeting the LTR. Staff is evaluating whether the delay of timely compliance optional compliance measure may also be adopted and applied to address an LTR shortfall. Cost limitations are applicable to procurement expenditures used to satisfy RPS requirements, which include the LTR, and the allowable causes for delaying timely compliance provided in statute appear to directly address long-term contracting and development of new projects. As currently drafted, the Pre-Rulemaking Amendments allow the application of either measure to address a procurement deficit in proposed section 3206 (e), and conforming changes are reflected in section 3206 (a)(2) and (3) and section 3208 (b)(5) of the Pre-Rulemaking Amendments.

In comments on the LTR Implementation Proposal, stakeholders provided arguments for broadly interpreting the provisions of PUC section 399.15 (b)(5), including interpretations of legislative intent. However, other stakeholders argued that legislative intent established the LTR without the ability to address a deficit through optional compliance measures.

Staff generally agrees with the policy reasons for broadly interpreting the provisions of PUC section 399.15 (b)(5), and the Pre-Rulemaking Amendments were drafted to reflect this interpretation. However, staff seeks additional feedback on reconciling this interpretation with the statutory language of PUC section 399.15 (b)(5), which on its face could appear to limit applicability of the delay of timely compliance measure to the RPS procurement target.

Staff encourages public comment on the following:

1. What, if any, specific evidence from the legislative history of SB 350 supports a broad interpretation of PUC section 399.15 (b)(5)? Explain.
2. What, if any, legal interpretations of how the requirements of PUC section 399.15 (b)(5) apply to POUs vis-à-vis PUC section 399.30 (d)(2) support the application of a delay of timely compliance optional compliance measure to address an LTR shortfall? Explain.
3. What other legal support or precedent, if any, supports the application of a delay of timely compliance optional compliance measure to address an LTR shortfall? Explain.

Definition of Long-Term Contract [proposed section 3204 (d)(2)(A)]: In staff's view, the primary purpose of the LTR is to provide long-term planning stability for the development of new or repowered projects. Staff proposes that a long-term contract be defined based on a commitment to procure electricity products for a duration of 10 continuous years, as proposed in the LTR Implementation Proposal. A short-term contract provides a procurement commitment of fewer than 10 continuous years.

Amendments and Assignments [proposed section 3204 (d)(2)(A), (d)(2)(F)]: Staff further proposes that, other than amendments that modify duration, increase nameplate capacity or expected quantities or allocation of generation other than as specified in the original contract, or substitute a different resource or fuel source, amendments or assignments of contracts do not affect contract classification as long-term or short-term. Amendments that extend the duration of a long-term contract will continue to be classified as long-term, regardless of the length of the extension. Procurement from amendments that extend the duration of short-term contracts are considered short-term unless, as of the amendment execution date, the combination of the remaining duration of the original contract and the length of the extension provide a term of at least 10 continuous years.

As discussed above, staff believes the core intent of the LTR is to provide long-term planning certainty for new and repowered projects. As PUC section 399.13 (b) does not define specific requirements for long-term contracts other than a 10-year duration, staff believes that restrictions on long-term contracts should be minimized, except for those necessary to effectuate the purpose of the requirement. In staff's view, amendments that explicitly amend the contract duration, substitute a different resource, or change procurement quantity (except as provided under the terms of the original contract) should be separately evaluated to ensure they support the purpose of the LTR. Similarly, staff believes that assignments of long-term contracts that preserve the 10-year duration and contract terms for the developer support achieving the main intent of the LTR. As currently drafted, the Pre-Rulemaking Amendments would allow a POU to assign a long-term contract to another POU and transfer the benefit under the LTR, even if the assignment period is for fewer than 10 years.

Staff encourages the public to provide additional feedback on how various assignments and amendments, including arrangements not contemplated in the Pre-Rulemaking Amendments, should be classified for purposes of satisfying the LTR. Staff also encourages public comment on the following:

1. As currently drafted, the Pre-Rulemaking Amendments do not preclude long-term contract assignments, including broad assignments that replace an original purchasing party with a new purchasing party, and allowing the assignee the benefit of a long-term contract classification for purposes of satisfying the LTR, provided the benefits of a continuous 10-year contract remain in place to the developer. Does an assignment that is tantamount to a novation support the core intent of the LTR? If yes, explain. If not, what limits on assignments should staff consider? Explain.
2. What, if any, additional forms of contract amendments or assignments should staff consider specifically addressing in the Pre-Rulemaking Amendments? Explain.

PCC 0 and Historic Carryover [section 3204 (d)(2)(D)]: Staff proposes characterizing PCC 0 procurement and historic carryover as long-term and counting in full toward the LTR, consistent with the provisions of PUC section 399.16 (d) and staff's LTR Implementation Proposal. Procurement under any amendments or extensions that change the characterization of a PCC 0 contract (as provided in

section 3202 (a)(2)(B) of the RPS POU Regulations) shall not be characterized as long-term unless the contract satisfies the 10-year duration requirements. In addition to section 3204 (d)(2)(D), the Pre-Rulemaking Amendments incorporate conforming changes to section 3202 (a)(2).

Pre-June 2010 Procurement [section 3202 (a)(3)]: Staff proposes characterizing Pre-June 2010 procurement as long-term or short-term based on the duration of the contract or ownership through which it was procured. Unlike PCC 0 procurement, Pre-June 2010 procurement does not count in full toward the RPS procurement requirements, so it must be included in the calculation of the LTR and characterized based on the duration of the associated contract or ownership agreement.

Retail Sales Reductions and Exemptions

Retail Sales Reduction for Voluntary Green Pricing/Shared Renewable Generation Program

SB 350 authorizes a POU with voluntary green pricing and/or shared renewable generation programs to reduce its retail sales for purposes of calculating the RPS requirements by the amount of qualifying generation served to customers through these programs. A POU that qualifies and uses this provision effectively reduces its RPS procurement requirements but cannot count the qualifying generation for RPS compliance. PUC section 399.30 (c)(4) provides the requirements for utilizing this retail sales reduction, which was made retroactively applicable beginning in 2014. Two POU's used this provision to reduce retail sales for Compliance Period 2.

Staff Proposal

Subtracting Qualifying Generation [proposed section 3204 (b)(9)]: Though PUC section 399.30 (c)(4) provides for a POU to "exclude" qualifying generation, staff proposes implementing "subtract" to describe the process for using this provision in the RPS POU Regulations. To ensure that the requirements for qualifying generation are met, qualifying generation must be separately reported and verified prior to reducing retail sales, and "subtract" better tracks with this process.

Definition of Voluntary Green pricing or Shared Renewable Generation Program [proposed section 3204 (b)(9)(A)]: For purposes of this provision, staff proposes to require a program to be voluntary and to satisfy some or all of the participating customer's retail sales with electricity products from specified eligible renewable energy resources or specified types of eligible renewable energy resources, but does not propose imposing additional restrictions on these programs. PUC section 399.30 (c)(4) establishes specific requirements for generation procured for these programs that may be subtracted from the POU's retail sales but does not restrict the structure of the programs themselves.

PCC Requirements [proposed section 3204 (b)(9)(B)(2)]: Staff proposes requiring qualifying generation to be PCC 1 electricity products or PCC 0 electricity products that meet the criteria of PCC 1. PUC section 399.30 (c)(4) explicitly limits qualifying generation to "electricity products that do not meet the portfolio content criteria set forth in paragraph (2) or (3) of subdivision (b) of Section 399.16."

As currently drafted, the Pre-Rulemaking Amendments would require all qualifying electricity products that a POU subtracts from its retail sales to meet the criteria of PCC 1, even if the POU is not interconnected to a California balancing authority. Staff encourages stakeholders to consider and provide an explanation for any alternative interpretations, if applicable.

REC Retirement [proposed section 3204 (b)(9)(B)(3)]: As required by statute, staff proposes requiring RECs associated with qualifying electricity products be retired in a WREGIS subaccount designated for the benefit of the participating customers. Staff's proposal is consistent with the CPUC's implementation of Green Tariff/Shared Renewables programs for electrical corporations in D.15-01-051.⁴

Monetization of RECs [proposed section 3204 (b)(9)(B)(3)(i)]: The statute further requires that the RECs may not be "otherwise monetized." The plain meaning of "monetize" is to earn revenue from or convert into currency or other transferrable value; thus, staff proposes that the regulations prohibit earning revenue from the RECs that are retired on behalf of the participating customers, other than revenue earned through the tariff or subscription for the voluntary green pricing or shared renewable generation program.

Locational Requirements [proposed section 3204 (b)(9)(B)(4), 3207 (k)(6)]: As currently drafted, the Pre-Rulemaking Amendments incorporate the statutory requirements that "to the extent possible" a POU must "seek to procure" qualifying electricity products from facilities that are located in "reasonable proximity" to program participants, and require a POU to report on its efforts.

Staff seeks additional feedback on implementation of this provision and encourages public comment on the following:

1. What was the Legislature's intent and rationale for including the "reasonable proximity" provision in the statute? Explain and provide any additional insights based on the party's participation in the legislative process for SB 350.
2. What factors should be considered in determining "reasonable proximity"? Based on comments received to the August 2016 Amendments, staff does not believe that requiring the resource to be located within the POU's own service territory effectively implements "reasonable proximity," based on the relative sizes of POU service territories. However, staff encourages parties to consider and suggest other criteria, such as location within the service territory of the POU's controlling balancing authority, within a specified mile radius of a POU's service territory, within the territory of the nearest investor-owned utility, or within a county continuous to the county in which a POU has customers.⁵
3. What steps might a POU take in seeking to procure from reasonably proximate resources? For example, might a POU issue a Request for Projects with a preference for projects within a certain distance?
4. What factors might a POU consider in determining that it was not able "to the extent possible" to procure or seek to procure from reasonably proximate resources?

Exemption for Generation from Hydroelectric Facility Owned and Operated by a POU as of 1967

Current section 3204 (a)(10) of the RPS POU Regulations implements the procurement target exemption for qualifying hydroelectric generation from a facility owned by a POU as of 1967. This

⁴ Refer to Ordering Paragraph 12 and discussion at pp. 50-51 of D.15-051-51, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K250/146250314.PDF>

⁵ Several of these locational requirements were proposed in comments to the August 2016 Amendments.

procurement target exemption was established by SB 591 (Cannella, Chapter 520, Statutes of 2013). SB 1393 modified the statutory requirements for this procurement target exemption in former PUC section 399.30 (k), removing the requirement that qualifying hydroelectric generation come from a facility that is not an eligible renewable energy resources and changing the time period over which the exemption is evaluated to an annual, rather than compliance period basis. SB 100 removed the procurement target exemption for qualifying hydroelectric generation from a facility owned by a POU as of 1967.

Staff Proposal

Effective Dates [proposed section 3204 (b)(6), 3207 (h)]: Staff proposes to allow POU's to use the exemption established by SB 591 and implemented in the RPS POU Regulations effective April 12, 2016, for Compliance Period 2 and the modified exemption pursuant to SB 1393 from January 1, 2017, through December 31, 2018. Staff proposes that the procurement target exemption, as modified by SB 1393, would take effect beginning the effective date of SB 1393, which is also the beginning of Compliance Period 3, and terminate on the effective date of SB 100, which removed the statutory provisions that formed the basis for the exemption. Although the effective date of SB 100 occurs in the middle of Compliance Period 3, eligibility for the procurement target exemption, as modified by SB 1393, was determined annually and independently of other years. No POU's sought to apply the exemption in current section 3204 (a)(10) during Compliance Period 1 or Compliance Period 2. Staff anticipates that one POU will seek to apply the exemption, as modified by SB 1393, in 2017.

Because the provisions of PUC section 399.30 (k), as established by SB 591, were amended by SB 1393 and subsequently by SB 100, the Pre-Rulemaking Amendments incorporate text from the provisions of PUC section 399.30 (k) as it existed under SB 591 and SB 1393 rather than referring to statute. The Pre-Rulemaking Amendments were drafted with the intent of implementing the eligibility criteria and exemption calculations as provided in statute and described above for the applicable years covered by SB 591 and SB 1393, respectively. Staff encourages public comment on the structure proposed in the Pre-Rulemaking Amendments and whether it clearly and sufficiently captures the requirements for this exemption for the appropriate years.

Exemption for Generation from Large Hydroelectric Facility Owned by the Federal Government as part of the Central Valley Project, or a JPA

SB 350 created a procurement target exemption for qualifying large hydroelectric generation that met the criteria of former PUC section 399.30 (l). A POU that received at least 50 percent of its retail sales from qualifying large hydroelectric generation in a given year of a compliance period would be required to procure the lesser of the following for that year:

- The portion of the POU's annual retail sales not met by qualifying large hydroelectric generation.
- The POU's soft target for that year.

SB 1393 amended the procurement target exemption to remove the requirement excluding hydroelectric generation meeting the definition of former PUC section 399.30 (k). However, this did not affect eligibility for the procurement target exemption, because hydroelectric generation meeting the criteria of former PUC 399.30 (k) came from a facility owned by a POU, and the exemption requires facility ownership by the federal government as part of the federal Central Valley Project or by a joint

powers agency (JPA) meeting certain criteria. SB 100 amended the criteria for qualifying large hydroelectric generation.

Staff Proposal

Effective Dates [proposed section 3204 (b)(7), 3207 (i)]: Staff proposes to allow POUs qualifying for this procurement requirement exemption to use it for the calendar years between January 1, 2016, and December 31, 2018. Though former PUC 399.30 (l)(2) establishes the exemption for “a year within a compliance period set forth in subdivision (b)” and SB 350 took effect in the final year of Compliance Period 2, eligibility for this exemption is evaluated annually and independently from other years within the compliance period. There is also no indication that the Legislature intended for these provisions of SB 350 to apply retroactively to earlier years in the compliance period, and no POUs sought to apply this exemption for any year in Compliance Period 2. Staff proposes to reflect a termination of eligibility for this exemption on December 31, 2018, which was the last day prior to the effective date of SB 100, which amended the eligibility requirements. Eligibility for the procurement target exemption, as established by SB 350, was determined annually and independently of other years. No POUs sought to apply this exemption in 2016, and staff anticipates that one POU will seek to apply this exemption for 2017 and 2018.

Because the provisions of former PUC section 399.30 (l) were amended by SB 1393 and amended and renumbered by SB 100, the Pre-Rulemaking Amendments incorporate text from the provisions of PUC section 399.30 (l) as it existed under SB 350 and SB 1393 rather than referring to statute. The Pre-Rulemaking Amendments were drafted with the intent of implementing the eligibility criteria as provided in statute by SB 350 and amended by SB 1393 for the applicable years. Staff encourages public comment on the structure proposed in the Pre-Rulemaking Amendments and specifically address whether it clearly and sufficiently captures the requirements for this exemption.

Excluding Generation that Does Not Meet the Criteria of Large Hydroelectric Generation [proposed section 3204 (b)(7)(B), 3207 (i)(4)(A)]: Staff proposes that if a POU procures qualifying large hydroelectric generation through a contract or ownership agreement that includes non-qualifying generation, the POU must demonstrate in its reporting that any non-qualifying generation was excluded in determining whether the POU qualified for the exemption. For purposes of this exemption, non-qualifying generation includes generation from RPS-certified small hydroelectric facilities, RPS-certified incremental generation from efficiency improvements to a large hydroelectric facility, and procurement from large hydroelectric facilities owned by the federal government other than the Central Valley Project, such as the Washoe Project.

Providing Electricity to a POU [proposed section 3204 (b)(7)(A)(4)]: As written, the Pre-Rulemaking Amendments incorporate the statutory requirement that large hydroelectric generation “provides electricity” to a POU, consistent with former PUC section 399.30 (l). This requirement differs from the requirements for the hydroelectric generation exemptions under former and current PUC section 399.30 (k), which do not require that large hydroelectric generation provide electricity to a POU. In adopting regulations under former PUC section 399.30 (k), as enacted by SB 591, the CEC determined that the language of former section 399.30 (k) did not require the qualifying POU that receives hydroelectric generation to apply it to its retail sales needs.

Staff seeks additional public comment as to whether the regulations should require that a POU apply the large hydroelectric generation to its retail sales in order to use the procurement target exemption. Stakeholders are encouraged to provide specific feedback on the following:

1. Does the legislative history and legal interpretations of PUC section 399.30 (l) require large hydroelectric generation to be applied to a POU's retail sales? Why or why not? Explain.

Extensions or Renewals of Existing Agreements [proposed section 3204 (b)(7)(A)(5)]: Staff proposes that, for purposes of this exemption, an extension or renewal of an agreement between a POU and the federal government as part of the federal Central Valley Project includes an amendment that renews or extends the existing agreement as contemplated under the administration of the existing agreement or included in the Western Area Power Administration's Power Marketing Plan. The Western Area Power Administration (WAPA), a power marketing administration within the United States Department of Energy, manages the Central Valley Project. Staff proposes that extensions contemplated in WAPA's Power Marketing Plan, under the terms provided by WAPA, are extensions of agreements between a POU and the federal government as part of the federal Central Valley Project.

Annual Retail Sales Clarification [proposed sections 3204 (b)(7)(C), 3207 (i)(5)]: Staff proposes requiring a POU that calculates its retail sales in accordance with the seven-year average in section 3204 (b)(1) to use its actual annual retail sales to determine whether it meets the eligibility criteria for this procurement target exemption, rather than its average retail sales. However, staff encourages stakeholders to consider and submit alternatives that harmonize the average retail sales calculation required by section 3204 (b)(1) with the annual retail sales-based eligibility criteria of this procurement target exemption.

Exemption for Generation from Large Hydroelectric Facility Owned by a POU, the Federal Government as part of the Central Valley Project, or a JPA

SB 100 amended the eligibility criteria for the procurement target exemption in former PUC 399.30 (l) and renumbered the subdivision from (l) to (k).

Staff Proposal

Effective Dates [proposed section 3204 (b)(8), 3207 (j)]: Staff proposes to allow POUs qualifying for this exemption to use it for the calendar years between January 1, 2019, the effective date of SB 100, and December 31, 2030, the last day of the final compliance period specified in PUC section 399.30 (b). Though SB 100 took effect during the middle of Compliance Period 3 and PUC section 399.30 (k), as amended by SB 100, provides the exemption for "a year within a compliance period set forth in subdivision (b)," eligibility for the exemption is evaluated annually and independently from other years within the compliance period. Furthermore, there is no indication that the Legislature intended for these provisions of SB 100 to apply retroactively to earlier years in the compliance period.

Requirement to Receive Large Hydroelectric Generation [proposed section 3204 (b)(8)]: As written, the Pre-Rulemaking Draft Amendments incorporate the statutory requirement that a POU "receive" large hydroelectric generation in order to qualify for this procurement target exemption. As described previously, in adopting regulations under former PUC section 399.30 (k), as enacted by SB 591, the CEC determined that the language of former section 399.30 (k) did not require the qualifying POU that receives hydroelectric generation to apply it to its retail sales needs.

While the language of current PUC section 399.30 (k), as modified by SB 100, does not specifically require qualifying generation to provide electricity to a POU or be applied to the POU's retail sales, staff seeks additional public comment as to whether "receiving" large hydroelectric generation should be interpreted to confer that requirement. Stakeholders are encouraged to provide specific feedback on the following:

1. Does the legislative history and legal interpretations of PUC section 399.30 (k) require large hydroelectric generation to be applied to a POU's retail sales? Why or why not? Explain.

Excluding Generation that Does Not Meet the Criteria of Large Hydroelectric Generation [proposed sections 3204 (b)(8), 3207 (j)(4)(A)]: Staff proposes that if a POU procures qualifying large hydroelectric generation through a contract or ownership agreement that includes non-qualifying generation, the POU must demonstrate in its reporting that any non-qualifying generation was excluded in determining whether the POU qualified for the exemption. For purposes of this exemption, non-qualifying generation includes generation from RPS-certified small hydroelectric facilities, RPS-certified incremental generation from efficiency improvements to a large hydroelectric facility, procurement from large hydroelectric facilities owned by the federal government other than the Central Valley Project, such as the Washoe Project, and procurement from large hydroelectric facilities located outside of California.

Extensions or Renewals of Existing Agreements [proposed section 3204 (b)(8)(A)(3)]: Staff proposes that, for purposes of this exemption, an extension or renewal of an agreement between a POU and the federal government as part of the federal Central Valley Project includes an amendment that renews or extends the existing agreement as contemplated under the administration of the existing agreement or included in the WAPA's Power Marketing Plan. Staff proposes that extensions contemplated in WAPA's Power Marketing Plan, under the terms provided by WAPA, are extensions of agreements between a POU and the federal government as part of the federal Central Valley Project.

Annual Retail Sales Clarification [proposed section 3204 (b)(8)(C), 3207 (j)(5)]: Staff proposes requiring a POU that calculates its retail sales in accordance with the seven-year average in current section 3204 (a)(6) to use its actual annual retail sales to determine whether it meets the eligibility criteria for this procurement target exemption, rather than its average retail sales. However, staff encourages stakeholders to consider and submit alternatives that harmonize the average retail sales calculation required by section 3204 (b)(1) with the annual retail sales-based eligibility criteria of this procurement target exemption.

Exemption for Qualifying Generation from Gas-Fired Power Plants

SB 1110 created a procurement target exemption allowing a POU with generation from qualifying gas-fired power plants, subject to certain requirements. PUC section 399.33 (a) establishes requirements for qualifying gas-fired power plants and subdivision (b) establishes additional conditions for use of the procurement target exemption. PUC section 399.33 (c) requires a POU to notify the CEC by April 1, 2019, of its intent to act to use this exemption, and two POUs provided such notification by the deadline.

Staff Proposal

Effective Dates [proposed section 3204 (b)(11), (b)(11)(F), 3207 (m)]: As currently drafted, the Pre-Rulemaking Amendments allow a qualifying POU to begin using this procurement target

exemption January 1, 2025, consistent with PUC section 399.33 (b). This provision establishes conditions that must be satisfied to use the exemption, including the condition that the procurement requirements of the RPS statute require more than 50 percent of retail sales of electricity to come from eligible renewable energy resources.

Compliance Period 5 is the first compliance period with an annual soft target percent greater or equal to 50 percent of retail sales. Consistent with PUC section 399.33 (f), the procurement target exemption applies only until the end of the calendar during which the qualifying power plant's original term of bonded indebtedness expires.

A possible alternative interpretation of PUC section 399.33 (b) is that the exemption would take effect if the procurement requirements of the RPS statute were amended to require more than 50 percent of retail sales to come from eligible renewable energy resources. Under this interpretation, the procurement target exemption would become available beginning January 1, 2019, the effective date of SB 100, which modified the procurement requirements of the RPS statute to require 60 percent by 2030. In providing input on staff's proposal and any identified alternative(s), staff encourages stakeholders to provide specific information on and interpretation of legislative intent.

Operating Requirements [proposed section 3204 (b)(11)(b), 3207 (m)]: As currently drafted, the Pre-Rulemaking Amendments require that a qualifying power plant must be operating at or below a 20 percent capacity factor each year of the applicable compliance period to use the procurement target exemption. In staff's view, this proposal is consistent with PUC section 399.33 (b)(2), which requires that the additional procurement of eligible renewable energy resources or "zero-carbon generational resources" result in the power plant operating at or below a 20 percent capacity factor on an annual average during a compliance period.

Procurement of Eligible Renewable Energy Resources As Required By Section 399.30, As It Existed on January 1, 2018 [proposed section 3204 (b)(11)(D)]: As currently drafted, the Pre-Rulemaking Amendments require a POU with generation from a qualifying gas-fired power plant to procure eligible renewable energy resources equal to 45 percent of its retail sales by December 31, 2027, 50 percent by December 31, 2030, and 50 percent for each three-year compliance period thereafter. In staff's view, this is consistent with PUC section 399.33 (b)(1), which requires that a qualifying POU procure eligible renewable energy resources as required by section 399.30 as it existed on January 1, 2018.

A possible alternative interpretation of PUC section 399.33 (b)(1) would require that a POU has satisfied its RPS procurement requirements as of January 1, 2018. Staff encourages public comment on the interpretation of PUC section 399.33 (b)(1).

Exemption for Generation from Unavoidable Long-Term Contracts and Ownership Agreements

SB 350 created a procurement target exemption allowing a POU with qualifying unavoidable long-term contracts and ownership agreements for electricity from a coal-fired power plant to reduce its procurement target for Compliance Period 4, subject to certain requirements.⁶ PUC section 399.30

⁶ SB 350 created the exemption in PUC section 399.30 (m), but subdivision (m) was subsequently renumbered subdivision (l) under SB 100.

(l)(1)(A) defines unavoidable long-term contracts and ownership agreements for purposes of this provision, and paragraph (B) specifies a condition for use of this procurement target exemption.

Staff Proposal

Calculation of Procurement Target Exemption [proposed section 3204 (b)(11), 3207 (I)]:

Staff proposes allowing a POU with generation from unavoidable long-term contracts and ownership agreements that meets the condition of PUC section 399.30 (l)(1)(B) to reduce its procurement target for Compliance Period 4 to the greater of:

- The POU's retail sales for the compliance period not satisfied by procurement from unavoidable long-term contracts or ownership agreements
- An average of 33 percent of the POU's retail sales for the compliance period

This is consistent with PUC section 399.30 (l)(2), which allows a procurement target reduction to ensure that the combination of procurement of additional RPS-eligible generation and generation from unavoidable long-term contracts and ownership agreements does not exceed the POU's total retail sales for the compliance period.

Procurement Plans and Enforcement Programs

Section 3205 of the RPS POU Regulations specifies criteria for a POU's procurement plans and enforcement programs, including the date by which initial procurement plans must be adopted, information that must be included in the plans and programs, public notification requirements for adoption and revision of these plans and programs, and requirements of notifications and information that must be submitted to the CEC regarding the adoption or revision of these plans and programs.

SB 1393 removed statutory provisions that required POUs to submit information to or notify the CEC regarding the adoption or revision of procurement plans and enforcement programs.

Staff Proposal

Remove Requirements to Reflect Statutory Changes [proposed section 3205]: Staff proposes removing the regulatory requirements that were based on statutory requirements removed by SB 1393. These include the requirements in current section 3205 (a)(3)(B)-(C), (b)(3)-(4), and (c).

Optional Compliance Measures

Excess Procurement

Section 3206 (a)(1) of the RPS POU Regulations specifies how POUs may adopt rules for accumulating excess procurement pursuant to PUC section 399.13 (a)(4)(B), as enacted by SB X1-2. SB 350 modified the provisions of PUC section 399.13 (a)(4)(B), retaining the existing excess procurement requirements through Compliance Period 3 and establishing new requirements beginning in Compliance Period 4, except as provided through a voluntary early compliance process.

Staff Proposal

Meaning of "Excess" [proposed section 3206 (a)(1)(B)]: Staff proposes clarifying that excess procurement may not be banked for a compliance period unless a POU has applied sufficient electricity products to meet all RPS procurement requirements for that compliance period without the use of the cost limitation, delay of timely compliance, or PBR reduction optional compliance measures. Excess

procurement is not defined in statute or the RPS POU Regulations, but this proposal is based on a fair reading of the term “excess procurement” as used in the statute. As noted by the CPUC in D.17-06-026, if there is a deficit, there cannot be an excess. Staff’s proposal varies slightly from the CPUC’s implementation of excess procurement for retail sellers, which requires a retail seller to have met its RPS procurement target in order to bank excess procurement (but note that under the CPUC’s implementation of the LTR, a retail seller cannot satisfy the procurement target without first meeting the LTR).⁷

Excess Procurement Rules (updated with SB 350) [proposed section 3206 (a)(1)(D), (a)(1)(H)(1), (a)(1)(I), (a)(1)(I)(6)(iii)]: Staff proposes incorporating excess procurement rules for Compliance Period 4 and beyond that allow long-term and short-term PCC 1 RECs, including Pre-June 2010 PCC 1 RECs, and PCC 0 RECs to be banked as excess procurement consistent with statutory changes from SB 350.

As the SB 350 modifications to PUC section 399.13 (a)(4)(B) do not establish restrictions on banking PCC 0 procurement, staff proposes continuing to allow PCC 0 procurement to be banked as excess procurement, consistent with the treatment under the existing RPS POU Regulations and the CPUC’s implementation for retail sellers in D.17-06-026.⁸

Excess Procurement Rules for 10-year Contract Duration for Compliance Periods 1-3 [proposed section 3206 (a)(1)(C)(4), 3204 (d)(2)(E)]: For Compliance Periods 1-3, PCC 0, PCC 1, and PCC 2 RECs were eligible to be banked as excess procurement as long as they were procured under an agreement that met a minimum 10-year contract duration, defined specific to excess procurement calculations only. For Compliance Periods 4 and later, staff has proposed an updated definition of long-term contracts, and the types of procurement that can qualify as excess procurement have changed.

For purposes of determining excess procurement eligibility for Compliance Periods 1-3, staff proposes retaining the contract duration calculation as adopted in the amended RPS POU Regulations, which took April 12, 2016. While staff believes that this contract duration calculation is deficient for purposes of the new LTR established by SB 350, because, in staff’s view, it does not recognize a primary value of long-term contracts, staff does not believe it is deficient for purposes of the excess procurement requirements in place for Compliance Periods 1-3. In addition, changing the contract duration calculation for purposes of calculating excess procurement for Compliance Period 3 may adversely impact POUs that planned to bank excess procurement under the current regulatory requirements. The Pre-Rulemaking Amendments clarify the applicability of the contract duration calculation for excess procurement in section 3206 (a)(1)(C)(4).

For purposes of satisfying the LTR, staff proposes that excess procurement banked in Compliance Periods 1-3 under the rules for a 10-year contract duration that were in place at the time will be classified as long-term when applied under the LTR in a future compliance period. The Pre-Rulemaking Amendments, as drafted, characterize excess procurement banked in Compliance Periods 1-3 as long-term for purposes of the LTR in section 3204 (d)(2)(E).

⁷ Refer to D.17-06-026

⁸ See D.17-06-026, discussion at p. 31, Ordering Paragraph 7 (p. 51), and footnote 20 (p. 12).

There are potential alternatives for the treatment of excess procurement banked under the rules in place for Compliance Periods 1-3 when applied to the procurement target of a compliance period in which the LTR is effective. For example, excess procurement could be classified as long-term or short-term based on the duration of the contract through which it was procured under the LTR rules for contract duration. Additionally, excess procurement could be initially classified as long-term if it is applied to satisfy the procurement requirements of Compliance Period 4 or 5, and evaluated based on the associated contract duration under the LTR rules if applied to a subsequent compliance period. Staff encourages stakeholders to provide feedback on its proposal and alternatives.

Application of Banked Excess Procurement [proposed section 3206 (a)(1)(A)]: Staff proposes removing the reference to “compliance years” following 2020 to reflect new multiyear compliance periods and modifying the provision to account for application of banked PCC 2 RECs. Although PUC section 399.13 (a)(4)(B) allows excess procurement to be applied in any subsequent compliance period, the SB 350 modifications to excess procurement requirements prohibit PCC 2 electricity products from counting as excess procurement. To harmonize these statutory provisions, staff proposes allowing PCC 2 RECs banked in a prior compliance period to count as excess procurement when applied during Compliance Period 4, but not in any later compliance period. This is consistent with the CPUC’s implementation of the SB 350 modifications to excess procurement rules for retail sellers in D.17-06-026.⁹

Voluntary Early Compliance Process [proposed section 3206 (a)(1)(G), 3206 (a)(1)(I)(3), 3207 (d)(4)]: Staff proposes to allow a POU to adopt rules in its RPS procurement plan or enforcement program permitting the POU the option for voluntary early compliance with the LTR and excess procurement rules, consistent with staff’s proposed approach in the LTR Implementation Proposal. A POU that adopts such rules shall report on its election in its compliance period report for Compliance Period 3. If the POU’s adopted rules and reporting comport with the applicable requirements and the POU demonstrates that it has met the LTR, the SB 350 rules for excess procurement shall take effect during Compliance Period 3.

Clarification of Excess Procurement Equation for Compliance Periods 1-3 [proposed section 3206 (a)(1)(H), (a)(1)(I)(6)(i)]: Staff proposes updating the excess procurement equation used for Compliance Periods 1-3 to ensure it accounts for a range of scenarios for procurement applied to the RPS procurement target.

The structure of the existing excess procurement equation for Compliance Periods 1-3 does not address potential overlap in procurement from short-term contracts, PCC 3 RECs, and RECs applied to the procurement target. It also assumes a POU applies only as many RECs to the RPS procurement target to satisfy the procurement target calculated in section 3204 (a); however, POUs may choose to apply a greater amount of RECs in order to meet a higher RPS procurement goal established by the POU. In addition, the equation does not clearly account for scenarios in which a POU applies excess procurement or historic carryover to the target, in addition to applying RECs retired for the compliance period. Applying excess procurement to RPS procurement target effectively reduces the amount of retired RECs that a POU must apply to the RPS procurement target for compliance, which means more retired RECs may be available to be banked as excess procurement, subject to eligibility requirements. Due to the fact that excess procurement may be long term or short term in nature and of varying

⁹ Refer to Ordering Paragraphs 16 and 18

PCCs, a POU must specifically identify what excess procurement is to be applied in each compliance period.

The updated calculations seek to address all possible scenarios described here. Staff encourages stakeholders to review the proposed changes to the equation and consider whether there are additional scenarios that should be contemplated or addressed.

Delay of Timely Compliance

SB X1-2 permitted a POU's governing board to establish conditions for delaying timely compliance consistent with section 399.15 (b), which allows the CPUC to waive enforcement for a retail seller if it demonstrates that one or more specified circumstances prevented compliance. The CEC incorporated requirements for POU's to delay timely compliance in section 3206 of the RPS POU Regulations and limited the allowable causes for delay in accordance with PUC section 399.15 (b)(5), as enacted by SB X1-2.

SB 350 amended the statutory requirements in section 399.15 (b)(5) to modify and add an allowable cause for delaying timely compliance.

Staff Proposal

Incorporate Changes to Allowable Causes for Delay [proposed section 3206 (a)(2)(A)(3), (a)(2)(A)(4)]: As currently drafted, the Pre-Rulemaking Amendments modify the conditions for delay timely compliance consistent with the changes in law for retail sellers, with minor modifications, within the existing regulatory framework that allows POU's to delay timely compliance. The minor modifications are intended to reflect differences in information filing requirements between some POU's and retail sellers.

Clarification to Requirements [proposed section 3207 (d)(5)(B)]: Staff proposes clarifying requirements for the delay of timely compliance measure to better identify the information that a POU must report as part of its determination that one or more allowable causes delayed or prevented timely compliance.

Cost Limitations

SB X1-2 permitted a POU's governing board to establish cost limitations for procurement expenditures consistent with PUC section 399.15 (c), which allows the CPUC to set cost limitations for electrical corporations. The CEC incorporated requirements for POU's to adopt cost limitations in section 3206 of the RPS POU Regulations.

SB 350 amended Public Utilities Code section 399.15 (c) and (d) to remove several provisions related to the establishment of cost limitations under SB X1-2. SB 350 removed most of these provisions, leaving in place only the requirement that the cost limitation "be set at a level that prevents disproportionate rate impacts."¹⁰ To date, the CPUC has not established cost limitations for electrical corporations.

Staff Proposal

Remove Restrictions on Cost Limitation Rules [section 3206 (a)(3)]: Staff proposes to remove regulatory requirements consistent with the statutory changes from SB 350.

¹⁰ Refer to Public Utilities Code section 399.15 (c), as amended by SB 350.

Changes to reporting requirements [proposed section 3207 (d)(5)(A)]: Staff proposes adding more specificity to reporting requirements for a POU's description and use of its cost limitation rules. Given that SB 350 removed all but one requirement for a POU's adopted cost limitation rules, the additional specificity is needed to ensure that POUs applying the cost limitation measure submit information demonstrating how their cost limitation rules comport with the statutory requirement to be set at a level to avoid disproportionate rate impacts, as well as how they applied their cost limitation rules.

Compliance Reporting for POUs

Section 3207 specifies the required timing and content of annual and compliance period reports that POUs must submit to the CEC, as well as reporting instructions for POUs that qualify for special exemptions and/or apply optional compliance measures.

Staff Proposal

Reporting Applied Procurement in Compliance Report [proposed section 3207 (d)(1)-(5)]: Staff proposes updating the compliance period reporting requirements in section 3207 to ensure that POUs specific quantities of verified, eligible procurement applied to the target of each compliance period, broken down by each PCC classification and long-term or short-term classification. Staff's proposal would change the compliance period reporting deadline until after the verification of REC eligibility, portfolio content category classification, and long-term or short-term classification, and would provide POUs more complete information about the eligible RECs available to be credited to the RPS procurement target. In addition to the proposed changes in section 3207 (d)(1)-(5), the Pre-Rulemaking Amendments incorporate conforming changes to subdivisions (g), (m), and (n) to ensure that certain information is submitted at the end of the compliance period, and to the definition of "compliance report" in section 3201 (i).

Clarification to Reporting Requirements [proposed section 3207 (c)(d)]: Staff proposes additional clarifications to the annual and compliance period reporting requirements to better align with practical implementation and encourages stakeholder input on areas of alignment.

Incorrect, Incomplete, or Missing Reports [proposed section 3207 (p)]: Staff proposes clarifying that the process described in current section 3207 (i) of the RPS POU Regulations for incorrect or incomplete reports also applies to reports that are not submitted by the applicable reporting deadline. This clarification is necessary to provide better guidance on the steps that CEC staff will take if a POU does not submit an annual or compliance period report by the applicable reporting deadline.

Appendix

Statutory Changes

Since the CEC's last update to the RPS POU Regulations, four bills have been enacted into law which modify the RPS program for POUs, as summarized below. In responding to the proposed pre-rulemaking amendments, staff encourages stakeholders to review the specific statutory changes from each piece of legislation, as well as the current statutes of the California Renewables Portfolio Standards Program [PUC sections 399.11 – 399.33].¹¹

- **SB 350 (de León, Chapter 547, Statutes of 2015):** Known as the Clean Energy and Pollution Reduction Act of 2015, SB 350 increases California's RPS to 50 percent by 2030, requires the state to double statewide energy efficiency savings in electrical gas and natural gas end uses by 2030, and directs state agencies to undertake studies to identify and assess barriers to accessing clean energy and clean transportation in low-income and disadvantaged communities, among other provisions.

SB 350 provisions that impact the RPS program for POUs include: establishment of compliance periods and RPS procurement targets after 2020, culminating in a 50 percent RPS requirement by 2030; establishment of a long-term procurement requirement beginning in 2021; revisions to the requirements for banking excess procurement beginning with the 2021-2024 compliance period; introduction of a retail sales reduction for POUs with voluntary green pricing or shared renewable generation programs; revisions to requirements for cost limitations and conditions for delaying timely compliance; and introduction of exemptions for POUs with qualifying large hydroelectric generation and unavoidable coal-fired contracts. The text of SB 350 can be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350.

- **SB 1393 (de León, Chapter 677, Statutes of 2016):** This bill made technical and clean-up changes to the Clean Energy and Pollution Reduction Act of 2015, including changes to RPS program exemptions and reporting requirements for POUs; requiring CEC reporting of energy efficiency savings in the Integrated Energy Policy Report; requiring CEC review of specified academic, private, and nonprofit energy programs; and ensuring the CEC consults with specified groups in the studies required by SB 350, among other provisions.

Changes to the RPS program for POUs include revisions to an exemption for large hydroelectric generation; revisions to POU reporting requirements on RPS procurement plans; and revisions to the eligibility of a municipal solid waste facility in Stanislaus County as an eligible renewable energy resource. The text of SB 1393 may be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1393.

- **SB 1110 (Bradford, Chapter 605, Statutes of 2018):** This bill creates a partial exemption for generation from a qualifying gas-fired power plant that is owned by and serves only one POU, is associated with the POU's outstanding public indebtedness, and satisfies other specified requirements and conditions. Under the exemption, a POU with qualifying generation may adjust

¹¹ https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=2.3.&article=16.

its RPS procurement target by a specified amount. The text of SB 1110 may be found at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1110.

- **SB 100 (de León, Chapter 312, Statutes of 2018)**: SB 100, known as The 100 Percent Clean Energy Act of 2018, increases the statewide RPS requirement to 60 percent by 2030; establishes the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100 percent of retail electricity sales and electricity procured to serve state buildings by 2045; and requires the CEC, California Public Utilities Commission (CPUC), and California Air Resources Board, to incorporate this policy into all relevant planning and issue a joint report to the Legislature, among other provisions.

SB 100 provisions that affect the RPS program for POUs include the acceleration of the RPS requirements to 60 percent by 2030 and the revision and removal of RPS exemptions for POUs with certain qualifying large hydroelectric generation. The text of SB 100 may be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB100.