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PART B: Sections 3206 through 3208 and Section 1240

**PRE-RULEMAKING AMENDMENTS TO Enforcement Procedures for the
Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

**California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development
Commission**

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

Section 3206 – Optional Compliance Measures

(a) In meeting its RPS procurement requirements, the governing board of a POU may adopt at a noticed public meeting any of the following measures:

(1) Excess procurement

(A) A POU may adopt rules permitting the POU to apply excess procurement accrued in one compliance period to a subsequent compliance period, as specified in paragraphs (B) – ~~(H)~~~~(D)~~ and subject to the following limitations:

(B) Excess procurement may be accrued in a compliance period only if the POU has applied sufficient electricity products to satisfy its RPS procurement requirements of the compliance period. A POU that applies an optional compliance measure described in section 3206 (a)(2)-(4) to satisfy its RPS procurement requirements of the compliance period may not accrue excess procurement for that compliance period.

(C) Excess procurement accrual will be subject to the following limitations for the compliance periods beginning January 1, 2011, through December 31, 2020, except as specified in section 3206 (a)(1)(G):

1. Electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are classified in Portfolio Content Category 3 may not be accrued ~~counted~~ as excess procurement.
2. Electricity products that meet the criteria of section 3202 (a)(1) and that exceed the maximum limit for Portfolio Content Category 3 for the compliance period, as specified in section 3204 (c), must be subtracted from the calculation of accrued excess procurement.
3. Electricity products procured under contracts of less than 10 years in duration in accordance with subparagraph 4 below shall be subtracted from the calculation of accrued excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2).
4. For purposes of calculating accrued excess procurement for the compliance periods beginning January 1, 2011, through December 31, 2020, except as

specified in section 3206 (a)(1)(G), if electricity products are procured under a contract that has been amended to extend the term, the duration of the amended contract will be calculated from the original contract execution date to the amended contract end date. If electricity products are procured under a contract of less than 10 years in duration that has been amended to extend the total term to at least 10 years in duration, then electricity products generated as of the month and year in which the contract amendment occurs will be eligible to qualify as excess procurement.

(D) Excess procurement accrual will be subject to the following limitations for the compliance periods beginning on or after January 1, 2021, except as specified in section 3206 (a)(1)(G):

1. Electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are classified in Portfolio Content Category 2 or Portfolio Content Category 3, may not be accrued as excess procurement.
2. Electricity products that meet the criteria of section 3202 (a)(1) and that exceed the maximum limit for Portfolio Content Category 3 for the compliance period, as specified in section 3204 (c), must be subtracted from the calculation of accrued excess procurement.

(E)(B) A POU that opts to allow the application of excess procurement as part of its renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.

(F)(C) Electricity products ~~qualifying~~ accrued as excess procurement may be applied toward any future compliance periods, ~~except as specified below: including compliance years following 2020.~~

1. Electricity products accrued in accordance with section 3206 (a)(1)(C) that are classified in Portfolio Content Category 2 may not be applied toward the RPS procurement requirements of a compliance period beginning on or after January 1, 2025.

(G) A POU may adopt rules pursuant to this section 3206 (a)(1) permitting the POU to make an election for voluntary early compliance with section 3204 (d) for the compliance period beginning January 1, 2017, in order for the provisions of section 3206 (a)(1)(C) to take effect beginning January 1, 2017. The provisions of section 3206 (a)(1)(C) shall take effect beginning January 1, 2017, only if the POU makes an election pursuant to its adopted rules and satisfies the requirements of section 3204 (d) for that compliance period.

(H)(D) Excess procurement accrued in a compliance period shall be calculated as follows:

1. The numerical expression of the excess procurement ~~accrual~~ permitted for compliance periods beginning January 1, 2011, through December 31, 2016, is: ~~the compliance period ending December 31, 2013, is:~~

$$\text{Excess Procurement} = (EP_{2011-2013}) - (RPS_{2011-2013} + S3_{2011-2013} + STC_{2011-2013})$$

$$\text{Excess Procurement} = EP_x - (RPS_x - B_x) - (S3_x + STC_x)$$

EP_x = Electricity products retired and applied toward the RPS procurement target for the compliance period X

RPS_x = The RPS procurement target calculated in section 3204 (a) for compliance period X or, if greater than the target, the amount of electricity products applied toward the target. This may include electricity products retired for compliance period X, excess procurement accrued in a prior compliance period, or historic carryover pursuant to section 3206 (a)(5), that the POU has applied toward the target.

B_x = Any excess procurement accrued in a prior compliance period or historic carryover pursuant to section 3206 (a)(5) that the POU applied toward the RPS procurement target calculated in section 3204 (a) for compliance period X

$S3_x$ = Any remaining retired electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and the definition of Portfolio Content Category 3

$S3_x$ = Retired PGC-3 RECs that meet the criteria of section 3202 (a)(1) in excess of the maximum calculated in section 3204 (c) for compliance period X

STC_x = Any remaining retired electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are associated with contracts less than 10 years in duration in accordance with section 3206 (a)(1)(C)(4) and are retired and applied toward the RPS procurement target for compliance period X

2. The numerical expression of the excess procurement accrual permitted for the compliance period beginning January 1, 2017 through December 31, 2020, is either:

A. The same equation as specified above in section 3206 (a)(1)(H)(1) for compliance periods ending before January 1, 2017, or

B. For POUs that qualify for and elect to use section 3206 (a)(1)(G), the same equation as specified below in section 3206 (a)(1)(H)(3) for compliance periods beginning on or after January 1, 2021.

3. The numerical expression of the excess procurement accrual permitted for the compliance periods beginning January 1, 2021, is either:

$$\text{Excess Procurement} = EP_x - (RPS_x - B_x) - (S3_x + S2_x)$$

S2_x = Any remaining retired electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3) and the definition of Portfolio Content Category 2

2. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2016, is:

$$\text{Excess Procurement} = (EP_{2014-2016}) - (RPS_{2014-2016} + S3_{2014-2016} + STG_{2014-2016})$$

3. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, is:

$$\text{Excess Procurement} = (EP_{2017-2020}) - (RPS_{2017-2020} + S3_{2017-2020} + STG_{2017-2020})$$

4. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2021, and each annual compliance period thereafter is:

$$\text{Excess Procurement} = (EP_y) - (RPS_y + S3_y + STG_y)$$

EP_y = Electricity products retired and applied toward the RPS procurement target for the compliance year Y

RPS_y = The RPS procurement target calculated in section 3204 (a) for compliance year Y

S3_y = Retired PGC 3 RECs that meet the criteria of section 3202 (a)(1) in excess of the maximum calculated in section 3204 (c) for compliance year Y

STG_y = All electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance year Y

(E)(I) Notwithstanding section 3206 (a)(1)(A)-(H)(D), a POU that meets the criteria of section 3204 (a)(8)(b)(4) or section 3204 (a)(9)(b)(5) may adopt rules permitting the POU to apply excess procurement accrued in one compliance period to a subsequent compliance period, subject to the following limitations.

1. Unbundled RECs that do not meet the criteria of section 3202 (a)(2) may not be accrued counted as excess procurement. Electricity products that exceed the maximum limit for unbundled RECs specified in paragraph 5 must be subtracted from the calculation of excess procurement.
2. For the compliance periods between January 1, 2011, through December 31, 2020, except as specified in section 3206 (a)(1)(I)(3), electricity Electricity

products procured under contracts of less than 10 years in duration in accordance with section 3206 (a)(1)(C)(4) shall be subtracted from the calculation of accrued excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2).

3. A POU may adopt rules permitting the POU to make an election for voluntary early compliance with section 3204 (d) for the compliance period beginning January 1, 2017, in order to use the calculation for accrued excess procurement in section 3206 (a)(1)(I)(6)(iii) for the compliance period beginning January 1, 2017. A POU may use the calculation in section 3206 (a)(1)(I)(6)(iii) for the compliance period beginning January 1, 2017, only if the POU makes an election pursuant to its adopted rules and satisfies the requirements of section 3204 (d) for that compliance period.

~~3-4.~~ A POU that opts to allow the application of excess procurement as part of its renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.

~~4-5.~~ Electricity products accrued ~~qualifying~~ as excess procurement may be applied toward any future compliance periods, ~~including compliance years following 2020.~~

~~5-6.~~ Excess procurement accrued in a compliance period shall be calculated as follows:

- i. The numerical expression of the excess procurement permitted to be accrued for compliance periods beginning January 1, 2011, through December 31, 2016, is as follows: ~~the compliance period ending December 31, 2013, is:~~

$$\text{Excess Procurement} = (EP_{2011-2013}) - (RPS_{2011-2013} + UR_{2011-2013} + STC_{2011-2013})$$

$$\text{Excess Procurement} = (EP_x) - (RPS_x - B_x) - (UR_x + STC_x)$$

$EP_x =$ Electricity products retired for compliance period X

$RPS_x =$ The RPS procurement target calculated in section 3204 (a) for compliance period X or, if greater than the target, the amount of electricity products applied toward the target. This may include electricity products retired for compliance period X, excess procurement accrued in a prior compliance period, or historic carryover pursuant to section 3206 (a)(5), that the POU has applied toward the target.

$B_x =$ Any excess procurement accrued in a prior compliance period or historic carryover pursuant to section 3206 (a)(5) that the POU applied toward the RPS procurement target calculated in section 3204 (a) for compliance period X

UR_X = Any remaining electricity products retired for compliance period X that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and the definition of unbundled

~~$UR_{2014-2013}$ = Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2013, that exceed an amount equal to 25 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.~~

ii. The numerical expression of the excess procurement permitted for the compliance period beginning January 1, 2017, through December 31, 2020, is either:

a. The same equation as specified above in section 3206(a)(1)(I)(6)(i) for compliance periods ending before January 1, 2017, or

b. For POUs that adopt rules and elect to use section 3206 (a)(1)(I)(3), the same equation as specified below in section 3206 (a)(1)(I)(6)(iii)

iii. The numerical expression of the excess procurement permitted for the compliance periods beginning January 1, 2021, except as specified in section 3206 (a)(1)(I)(3), is:

$$\text{Excess Procurement} = (EP_X) - (RPS_X - B_X) - UR_X$$

ii. ~~The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2016, is:~~

~~$$\text{Excess Procurement} = (EP_{2014-2016}) - (RPS_{2014-2016} + UR_{2014-2016} + STG_{2014-2016})$$~~

~~$UR_{2014-2016}$ = Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2016, that exceed an amount equal to 15 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.~~

iii. ~~The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, is:~~

~~$$\text{Excess Procurement} = (EP_{2017-2020}) - (RPS_{2017-2020} + UR_{2017-2020} + STG_{2017-2020})$$~~

~~$UR_{2017-2020}$ = Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for~~

~~compliance period ending December 31, 2020, that exceed an amount equal to 10 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.~~

- iv. ~~The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2021, and each annual compliance period thereafter is:~~

$$\text{Excess Procurement} = (EP_y) - (RPS_y + UR_y + STC_y)$$

~~UR_y = Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance year Y that exceed an amount equal to 10 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.~~

(2) Delay of timely compliance

- (A) A POU may adopt rules permitting the POU to ~~determine~~ make a finding that conditions beyond the control of the POU exist to delay the timely compliance with RPS procurement requirements, as defined in section 3204. ~~Such a finding shall be limited. The POU's adopted rules shall limit the determination to one or more of the following causes for delay specified in paragraphs (1)-(4) below. and The POU's determination shall include information showing~~ demonstrate that the POU would have met its RPS procurement requirements but for the cause of delay.±

1. There is inadequate transmission capacity to allow sufficient electricity to be delivered from eligible renewable energy resources, or proposed eligible renewable energy resource projects, to the extent applicable, using the current operational protocols of the balancing authority in which the POU operates. A POU that owns transmission or has transmission rights ~~may~~ shall include in its determination information showing how the inadequate transmission capacity delayed timely compliance and find that:
 - i. The POU has undertaken all reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of its expectation for cost recovery.
 - ii. The POU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.
2. Permitting, interconnection, or other circumstances have delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. The POU must include in its determination information showing how the permitting, interconnection, or other circumstances caused delayed projects or insufficient supply and also find that:

- i. The POU prudently managed portfolio risks, including, but not limited to, holding solicitations for RPS-eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.
 - ii. The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.
 - iii. If the cause for delay or insufficient supply was foreseeable, the POU procured an appropriate minimum margin of procurement above the level necessary to comply with the RPS to compensate for foreseeable delays or insufficient supply. The POU's determination shall identify the minimum margin of procurement that the POU deemed appropriate to compensate for foreseeable delays or insufficient supply.
 - iv. The POU had taken reasonable measures to procure cost-effective distributed generation and allowable unbundled RECs.
3. Unanticipated curtailment of eligible renewable energy resources, if the delay of timely compliance would not result in an increase in greenhouse gas emissions was necessary to address the needs of a balancing authority.
4. Unanticipated increase in retail sales due to transportation electrification. For purposes of this paragraph, "transportation electrification" is defined in Public Utilities Code section 237.5. The POU's determination shall include information showing that it considered the following:
- i. Whether transportation electrification significantly exceeded forecasts in the POU's service territory based on the best and most recently available information filed with the State Air Resources Board, the Commission, or another state agency, or in the POU's integrated resource plan developed pursuant to Public Utilities Code section 9621, or in another transportation electrification forecast approved by the POU.
 - ii. Whether the POU has taken reasonable measures to procure sufficient resources to account for unanticipated increases in retail sales due to transportation electrification.

(3) Cost limitations

- (A) A POU may adopt rules for cost limitations on the procurement expenditures used to comply with its RPS procurement requirements.
- (B) Adopted cost limitation rules shall be set at a level that the POU has determined will prevent disproportionate rate impacts. Such cost limitation rules shall ensure that:
 - ~~1. The limitation is set at a level that prevents disproportionate rate impacts.~~
 - ~~2. The costs of all procurement credited toward achieving the RPS are counted toward the limitation.~~
 - ~~3. Procurement expenditures do not include any indirect expenses including, without limitation, imbalance energy charges, sale of excess energy, decreased~~

~~generation from existing resources, transmission upgrades, or the costs associated with relicensing any POU-owned hydroelectric facilities.~~

~~(C) In adopting cost limitation rules, the POU shall rely on all of the following:~~

- ~~1. The most recent renewables energy resources procurement plan.~~
- ~~2. Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.~~
- ~~3. The potential that some planned resource additions may be delayed or canceled.~~

~~(D)(C) When applying procurement expenditures under an adopted cost limitation rule, the POU shall apply only those types of procurement expenditures that are permitted under the adopted cost limitation rule.~~

~~(E)(D) Adopted cost limitation rules shall include planned actions to be taken in the event the projected cost of meeting the RPS procurement requirements exceeds the cost limitation. Such actions may include, but are not limited to, refraining from entering into new contracts or constructing facilities for eligible renewable energy resources beyond the quantity that can be procured within the cost limitation.~~

(4) Portfolio balance requirement reduction

(A) A POU may adopt rules that allow for the reduction of the portfolio balance requirement for Portfolio Content Category 1 for a specific compliance period consistent with Public Utilities Code section 399.16 (e).

(B) The need to reduce the portfolio balance requirements for Portfolio Content Category 1 must have resulted because of conditions beyond the control of the POU as provided in section 3206 (a)(2).

(C) A reduction of the portfolio balance requirement for Portfolio Content Category 1 below 65 percent for any compliance period after December 31, 2016, will not be considered consistent with Public Utilities Code section 399.16 (e).

(D) A POU that reduces its portfolio balance requirements for Portfolio Content Category 1 must adopt these changes at a publicly noticed meeting, ~~providing at least 10 calendar days advance notice to the Commission~~, and must include this information in an updated renewable energy resources procurement plan submitted to the Commission. The notice to consider the portfolio balance requirement reduction and the procurement plan must include the following information:

1. The compliance period for which the reduction may be adopted.
2. The level to which the POU has reduced the requirement.
- ~~3. The reason or reasons the POU has proposed for adopting the reduction.~~
- ~~4.3.~~ An explanation of how the needed reduction resulted from conditions beyond the control of the POU as provided in section 3206 (a)(2).

(5) Historic Carryover

(A) A POU may adopt rules that allow for procurement generated before January 1, 2011, that meets the criteria of section 3202 (a)(2), that is in excess of the sum of the 2004 – 2010 annual procurement targets defined in section 3206 (a)(5)(D) and that was not applied to the RPS of another state or to a voluntary

claim, to be applied to the POU's RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period.

- (B) The historic carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010. Both the historic carryover and the procurement applied to the POU's annual procurement targets must be from eligible renewable energy resources that were RPS-eligible under the rules in place for retail sellers at the time of execution of the contract or ownership agreement, except that the generation from such resources need not be tracked in the Western Renewable Energy Generation Information System. If the contract or ownership agreement is executed prior to April 21, 2004, the procurement must be from resources that were RPS-eligible under the rules in the RPS Guidelines in place as of April 21, 2004.
- (C) Historic carryover shall be calculated by subtracting procurement generated between January 1, 2004, and December 31, 2010, in an amount that is equal to the sum of the 2004 – 2010 annual procurement targets defined in section 3206 (a)(5)(D) and the amount of procurement that was sold, claimed for a voluntary program, or claimed for compliance with the RPS of another state, from the total procurement generated during that same period. If a POU was not in existence as of January 1, 2004, historic carryover shall be calculated based on procurement generated between the first full calendar year during which the POU became operational and December 31, 2010.
- (D) The RPS compliance obligation used to calculate a POU's historic carryover shall be based on the following:
 - 1. A baseline of an amount equal to 2001 procurement divided by 2001 total retail sales, multiplied by 2003 total retail sales, plus 1 percent of 2001 total retail sales (or, if the POU was not in existence in 2001, "2001" in this calculation shall be replaced by the first full calendar year in which the POU was operational, and "2003" in this calculation shall be replaced by the second full calendar year after which the POU was operational). The numerical expression of the baseline is:

$$\text{Baseline} = (EP_{2001} \div RS_{2001}) \times RS_{2003} + (0.01 \times RS_{2001})$$

EP_x = Electricity products procured and retired and applied toward the RPS procurement target for the specified year X

RS_x = Total retail sales made by the POU for the specified year X

- 2. Annual procurement targets for 2004 – 2010 that are equal to the lesser of 20 percent of the previous year's retail sales or 1 percent of the previous year's retail sales greater than the annual procurement target for the previous year. The POU's annual procurement target for 2004 shall be equal to the lesser of 20 percent of 2003 retail sales or the baseline plus 1 percent of 2003 total retail sales, and the annual procurement target for 2010 shall be an amount equal to 20 percent of 2010 total retail sales. For POU's that were not in existence in 2001, "2003" in this calculation shall be replaced by the second full calendar year after which the POU became operational, and "2004" in this calculation shall be replaced by the third full calendar year after which the POU became operational.

- (E) A POU that adopts rules allowing for the use of historic carryover shall submit all applicable procurement claims for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations, annual procurement target calculations, and any other pertinent documentation to the Commission within 90 calendar days after the effective date of these regulations. All applicable procurement claims must be retired and reported to the Commission within 90 calendar days after the effective date of these regulations to qualify as historic carryover.
- (b) Rules adopted under this section 3206 shall be in place and described in a POU's renewable energy resources procurement plan or enforcement program for a given compliance period if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements. The Commission may, when hearing a complaint against a POU under section 1240, consider the date of adoption of any rules adopted pursuant to this section that the POU relied upon to satisfy or delay its RPS procurement requirements.
- (c) Any rule or rule revision adopted under this section 3206 shall be submitted to the Commission within 30 calendar days after adoption. The rule or rule revision shall be submitted along with all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision.
- (d) A POU may request the Executive Director of the Commission to review any rule or rule revision adopted under this section 3206 to determine its consistency with the requirements of Public Utilities Code section 399.30. The Executive Director shall make a determination, to the extent reasonably possible, within 120 days of receipt of a complete request for review. A complete request for review shall include the rule or rule revision and all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision. The Executive Director may request additional information from the POU or solicit information from the public to make a determination. Failure of the Executive Director to make such determination within 120 days of receipt of the complete request for review shall not be deemed a determination that such rule or rule revision is consistent with the requirements of Public Utilities Code section 399.30.
- (e) A POU may apply an optional compliance measure in section 3206 (a)(2) or 3206 (a)(3) to satisfy or delay a portion or the entirety of a shortfall in meeting its RPS requirements under section 3204. A POU may also attribute different amounts comprising said shortfall to the cost limitation adopted in accordance with section 3206 (a)(3) or to one or more conditions of the delay of timely compliance adopted in accordance with section 3206 (a)(2).
- (f) A POU may apply a portfolio balance requirement reduction as described in section 3206 (a)(4) to meet a portion or the entirety of a shortfall in meeting its portfolio balance requirement under section 3204 (c). A POU may also attribute different amounts comprising said shortfall to one or more conditions of the portfolio balance requirement reduction adopted in accordance with section 3206 (a)(4).
- (g) In determining a POU's compliance with the RPS procurement requirements, the Commission will not consider the application of any rule or rule revision adopted by a POU under this section 3206 that the Commission determines does not comply with Public Utilities Code section 399.30, these regulations, or any applicable order or decision adopted by the Commission pertaining to the RPS.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.15, 399.16 and 399.30, Public Utilities Code.

Section 3207 – Compliance Reporting for POU's

- (a) Each POU shall submit the following reports to the Commission as required by this section.
- (b) Within 90 calendar days after the effective date of these regulations, any POU that has adopted rules allowing for historic carryover, in accordance with section 3206 (a)(5), shall submit documentation to the Commission including all applicable procurement claims by RPS-certified facility and generation month for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations used to determine the amount of historic carryover claimed, annual procurement target calculations for 2004-2010, and any other pertinent documentation necessary.
- (c) ~~By September 1, 2013, or 30 calendar days after the effective date of these regulations, whichever is later, and by~~ By July 1 of each year thereafter, each POU shall submit an annual report to the Commission that includes the information in paragraphs (1) - (4) below for the prior calendar year. ~~The report submitted in 2013 shall include information required by paragraphs (1)-(4) below for both the 2011 and 2012 calendar years.~~ The format for the annual report shall be specified by the Commission, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Commission. If the annual report refers to information provided to the Commission through existing reports, the annual report shall reference the information by identifying the name, submittal date, and page number of the existing report. The annual report shall include an attestation, signed by an authorized agent of the POU, affirming that the information provided in the report is true and correct.
 - (1) POU identifying information, including: POU name, contact name, mailing address, phone number, and email address.
 - ~~(A) POU name, contact name, mailing address, phone number, and e-mail address.~~
 - ~~(B) Year the POU was established.~~
 - ~~(C) Number of end-use retail customer accounts in California.~~
 - (2) RPS annual progress procurement information for the prior calendar year, including:
 - (A) Amount of total retail sales to end-use customers, in MWh, and projected retail sales for the current compliance period.
 - (B) Amount of procured electricity products retired, in MWh, and total projected electricity products retired for the current compliance period.
 - (C) WREGIS compliance report for procurement claims in the prior calendar year. For any procurement claims not tracked through WREGIS as permitted by the RPS Guidelines, the POU shall report procurement claims using the process specified in the RPS Guidelines. ~~interim tracking system established by the Commission prior to the implementation of WREGIS.~~
 - (D) An initial, nonbinding classification of retired electricity products qualifying for each

portfolio content category or qualifying to count in full in accordance with section 3202 (a)(2).

(E) An initial, nonbinding classification of retired electricity products qualifying as long-term or short-term in accordance with section 3204 (d).

~~(E)(F) A description of Information for each of the eligible renewable energy resources with which the POU has executed contracts or ownership agreements during the prior year, including but not limited to the contracted amount of MWh or the contracted percentage of the resource's total output, if applicable; the contracted amount of MWh as a percentage of retail sales; resource fuel type; the execution date of the procurement contract or ownership agreement; the contract or ownership agreement start date; the duration of the procurement contract or ownership agreement in accordance with section 3204 (d); the anticipated portfolio content category classification(s) for the electricity products procured through the contract or ownership agreement; the anticipated long-term or short-term classification for the electricity products procured through the contract or ownership agreement; the seller's name, if the resource is not owned by the POU; a summary of the procurement contract or ownership agreement, the operational status of the resource, the date the resource came on-line, the date the resource came on-line using a renewable fuel or technology, if different, the date on which procurement of electricity products begins, if different, RPS certification status, the county, state, and country in which the resource is located, and a summary of the resource names and identification numbers.~~

~~(F)(G) Documentation demonstrating the portfolio content category classification and long-term or short-term classification claimed for all of the POU's procured electricity products during the prior year. This documentation may include interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and electricity product contract information.~~

~~(G) An explanation of any public goods funds collected for eligible renewable energy resource development, including a description of programs, expenditures, and expected or actual results.~~

(H) A description of any identified issues that occurred that have the potential to delay the POU's timely compliance with the RPS procurement requirements defined in section 3204, and planned actions to minimize the delay of timely compliance. Such issues may include, but are not limited to, inadequate transmission to allow for procurement to be delivered from eligible renewable energy resources, permitting, interconnection, or other circumstances that have delayed the procurement from eligible renewable energy resources, unanticipated curtailment of a contracted or owned eligible renewable energy resource, an unanticipated increase in retail sales due to transportation electrification, and higher-than-expected costs for the procurement or development of eligible renewable energy resources.

(I) A description of the energy consumption by the POU, including any electricity used by the POU for water pumping, the purpose of this consumption, the annual amount in MWh, and the annual amount in MWh being satisfied with electricity products. The POU shall separately identify the annual amount of MWh being satisfied with electricity products for each type of energy consumption by the POU.

- (3) Actions taken by the POU demonstrating reasonable progress toward meeting its RPS procurement requirements. The information reported shall include, but not be limited to, a discussion of the following actions taken by the POU during the prior calendar year:
- (A) Solicitations released to solicit bid for contracts to procure electricity products from eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
 - (B) Solicitations released to solicit bid for ownership agreements for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
 - (C) Actions taken to develop eligible renewable energy resources to satisfy the POU's RPS procurement requirements, including initiating environmental studies, completing environmental studies, acquiring interests in land for facility siting or transmission, filing applications for facility or transmission siting permits, and receiving approval for facility or transmission siting permits.
 - (D) Interconnection requests filed for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
 - (E) Interconnection agreements negotiated and executed for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
 - (F) Transmission-related agreements negotiated and executed to transmit electricity products procured from eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
 - (G) Other planning activities to procure electricity products from eligible renewable energy resources.
- (4) In addition to the information specified in subparagraphs (c)(3)(A) – (G), the POU shall include a description of all actions planned by the POU in the current calendar year to demonstrate progress toward achieving the POU's RPS procurement requirements. The description of actions planned shall include, but not be limited to, a discussion of activities specified in subparagraphs (c)(3)(A) – (G).
- (d) The Commission shall verify a POU's procurement claims for each compliance period following the process in the RPS Guidelines. Within 60 days of the POU's receipt of the Commission's draft verification results, the POU shall submit a compliance report that provides the following information for the applicable compliance period: By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, each POU shall submit to the Commission a compliance report that addresses the reporting requirements of section 3207 (c) and the following information for the preceding compliance period:
- ~~(1) Classification per RPS-certified facility of the amount of procurement qualifying for each portfolio content category and procurement that shall count in full in accordance with section 3202 (a)(2).~~
 - ~~(2)(1) The POU's RPS procurement target for the compliance period, in MWh.~~
 - ~~(3) The amount of excess procurement, in MWh, from previous compliance periods, if any, and historic carryover, if any, that the POU is applying to the RPS procurement target for the compliance period.~~

- ~~(4)~~(2) The amount of draft verified procurement retired, in MWh, for the compliance period that the POU wishes to claim applies toward the RPS procurement requirements target for the compliance period. for calculating the portfolio balance requirements.
- (3) The amount of excess procurement, in MWh, accrued in previous compliance periods, if any, and historic carryover, if any, that the POU is applying to the RPS procurement target for the compliance period. The POU shall separately identify the amount of excess procurement applied from each portfolio content category and attributable to long-term or short-term contracts.
- ~~(5)~~(4) The amount of excess procurement, in MWh, accrued for the compliance period, if any, that may be applied toward future compliance periods, as determined by applying the calculation in section 3206 (a)(1)(H)~~(D)~~ or section 3206 (a)(1)(I)~~(6)~~(E), as applicable. The POU shall separately identify the amount of accrued procurement from each portfolio content category and attributable to long-term or short-term contracts.
- i. For the compliance report submitted July 1, 2021, a POU that adopted rules permitting it to make a voluntary early compliance election pursuant to section 3206 (a)(1)(G) or section 3206 (a)(1)(I)(3) shall report on any election made in accordance with its adopted rules.
- ~~(6)~~(5) If a POU's compliance report indicates that the POU's RPS procurement requirements were not met, the POU shall submit copies of its renewable energy resource procurement plan(s) and enforcement program(s) in effect during the compliance period, if not previously submitted to the Commission, and provide documentation to justify the application of any optional compliance measures adopted by the POU in accordance with section 3206. The documentation shall include all reports, analyses, proposed findings, and any other information upon which the POU relied in applying the measure, as well as the amount of the shortfall each optional compliance measure is intended to satisfy. The POU shall also submit an updated enforcement program and/or procurement plan that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU's shortfall.
- (A) If a POU applies adopted cost limitation measures, the POU shall also report: that cost limitation to the Commission in dollars spent during the compliance period. The POU shall also provide the Commission with an estimate of the total cost for the POU to procure sufficient electricity products to meet its RPS procurement requirements for the preceding compliance period. The POU shall additionally report on actions taken in response to RPS procurement expenditures meeting or exceeding the cost limitation.
- (1) The dollar amount corresponding to the POU's adopted cost limitation rules for the compliance period.
- (2) The procurement expenditures made by the POU for the compliance period in accordance with its cost limitation rules.
- (3) An explanation of how the POU evaluated its cost limitation rules.
- (4) An explanation of how the POU's adopted cost limitation rules prevent a disproportionate rate impact.

- (5) An estimate of the total cost for the POU to procure sufficient electricity products to meet its RPS procurement requirements and an explanation of the factors considered in this estimate.
- (6) Actions taken in response to the POU's projected or actual RPS expenditures meeting or exceeding the cost limitation and/or in response to the POU's evaluation of its cost limitation rules.
- (B) If a POU applies adopted rules for delaying of timely compliance, the POU shall also report:
- (1) A description of the cause for delay and information showing that the cause for delay is allowed under section 3206 (a)(2).
- (2) The estimated amount of RPS-eligible generation, in MWh, that would have been procured by the POU but for the cause of delay, and an explanation of the factors considered in this estimate.
- (3) If the cause for delay was allowed under section 3206 (a)(2)(A)(1), the POU shall provide information showing:
- (i) The POU owns transmission or has transmission rights.
- (ii) The reasonable measures that the POU undertook under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of the POU's expectation for cost recovery.
- (iii) The reasonable operational measures that the POU undertook to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.
- (4) If the cause for delay was allowed under section 3206 (a)(2)(A)(2), the POU shall also provide information showing:
- (i) The POU prudently managed its portfolio risks, including a description of solicitations held and the anticipated MWh from viable projects that the POU relied upon to achieve RPS procurement requirements.
- (ii) The POU's attempts to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.
- (iii) Whether the cause of delay or insufficient supply could have been foreseen by the POU.
- (iv) If the delay or insufficient supply was foreseeable, the POU's efforts to compensate for the delay or insufficient supply.
- (v) The reasonable measures the POU took to procure cost-effective distributed generation and allowable unbundled RECs.

(5) If the cause for delay was allowed under section 3206 (a)(2)(A)(3), the POU shall also provide information showing that the curtailment event was unanticipated, the expected amount of eligible renewable energy generation attributed to the unanticipated curtailment event, whether the unanticipated curtailment events resulted in an increase in greenhouse gas emissions, and factors the POU relied upon in making this determination.

(6) If the cause for delay was allowed under section 3206 (a)(2)(A)(4), the POU shall also provide information showing its forecasted amount of retail sales due to transportation electrification for the compliance period, the amount of actual retail sales attributed to transportation electrification for the compliance period, and how the POU considered the requirements of section 3206 (a)(2)(A)(4)(i)-(ii) when determining that the unanticipated increase in retail sales prevented timely compliance.

(C) If a POU applies a portfolio balance requirement reduction measure, the POU shall also report:

1. The level to which the portfolio balance requirement for Portfolio Content Category 1 was reduced.

2. How the need to reduce the portfolio balance requirements for Portfolio Content Category 1 resulted because of conditions beyond the POU's control, as provided in section 3206 (a)(2).

(e) Notwithstanding section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (g) shall submit to the Commission documentation as specified in section 3204 ~~(a)(6)(b)(2)~~.

(f) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall annually submit to the Commission, by the deadline for annual reports specified in section 3207 (c), documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state; and that the POU receives greater than 67 percent of its electricity sources to meet its electricity demands on an annual basis from qualified hydroelectric facilities as defined in section 3204 ~~(a)(7)(b)(3)~~. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (j). A POU that meets the criteria listed in Public Utilities Code section 399.30 (j) must additionally submit its total electricity demand and documentation of its annual qualifying hydroelectric generation, and provide evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with procurement from eligible renewable energy resources, including renewable energy credits.

(g) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (h) shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c) for the final year of each compliance period ~~the compliance reports specified in section 3207 (d)~~, documentation demonstrating that the POU provides retail electric service to 15,000 or fewer customer accounts in California, and that it is interconnected to a balancing authority primarily located outside California but within WECC. The Commission may request

additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (h).

(h) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria of section 3204 (b)(6)(B) or (C) shall report as follows: ~~meets the criteria listed in Public Utilities Code section 399.30 (k) shall submit to the Commission,~~

(1) A POU that meets the criteria specified in section 3204 (b)(6)(B) for the compliance period beginning January 1, 2014, shall submit by July 1, 2017, ~~by the deadline for the compliance reports specified in section 3207 (d), the following information:~~ documentation demonstrating that the average annual qualifying hydroelectric generation as defined in section 3204 (b)(6)(A)(~~a~~)(10) in the twenty years preceding ~~the~~ each compliance period, or the entire generating history of the qualifying hydroelectric generation facility, whichever is less, is greater than 50 percent of the POU's retail sales for the year preceding that compliance period. The POU must additionally submit documentation to identify the amounts of qualifying hydroelectric generation produced during the compliance period, qualifying hydroelectric generation procured by the POU during the compliance period, and any generation during the compliance period that would have qualified as qualifying hydroelectric generation as defined in section 3204 (b)(6)(A)(~~a~~)(10), except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in section 3204 (b)(6)(B) ~~Public Utilities Code section 399.30 (k)~~ and to determine the amounts of any generation that qualifies as qualifying hydroelectric generation, or that would have qualified as qualifying hydroelectric generation, except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. Additionally, the Commission may request additional documentation if necessary to determine whether any amount reported as qualifying hydroelectric generation includes incremental generation as a result of efficiency improvements to a large hydroelectric generation facility eligible for the RPS in accordance with Public Utilities Code section 399.12.5 (b).

(2) A POU that meets the criteria specified in section 3204 (b)(6)(C) for a given reporting year between January 1, 2017, through December 31, 2018, shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c), the following:

(A) The amount of generation that meets the definition of qualifying hydroelectric generation in section 3204 (b)(6)(A) for the reporting year.

(B) Any additional documentation requested by the Commission if necessary to determine whether the POU meets the criteria of section 3204 (b)(6)(C) and to determine the amounts of any generation that is or would have been qualifying hydroelectric generation, except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012.

(i) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria specified in section 3204 (b)(7) for a given reporting year between January 1, 2016, through December 31, 2018, shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c), the following:

- (1) The amount of generation, in MWh, that the POU procured for the reporting year from large hydroelectric generation as defined in section 3204 (b)(7)(A).
- (2) Information showing that the amount of large hydroelectric generation, as defined in section 3204 (b)(7)(A), procured for the reporting year is greater than 50 percent of the POU's retail sales for the reporting year.
- (3) Any and all agreements for large hydroelectric generation meeting the criteria of section 3204 (b)(7)(A), including any amendments, extensions, or renewals of the agreements.
- (4) A narrative explaining how the generation reported in paragraph (1) satisfies the requirements of large hydroelectric generation provided in section 3204 (b)(7)(A), and whether there have been any changes to the agreements through or for the facilities from which a POU procures large hydroelectric generation, including, but not limited to, changes in ownership, changes in contract quantity or allocation percentage, or planned incremental efficiency upgrades to the hydroelectric facilities.
 - (A) If the agreements effective January 1, 2015, or renewals or extensions of those agreements, include generation that does not meet the definition of large hydroelectric generation provided in section 3204 (b)(7)(A), the POU's narrative shall demonstrate that only generation meeting the definition of large hydroelectric generation in section 3204 (b)(7)(A) is reported in paragraph (1).
- (5) Annual retail sales for the reporting year, for a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code).
- (6) Any additional documentation requested by the Commission necessary to determine whether the POU meets the criteria specified in section 3204 (b)(7) and to determine the amount of generation that qualifies as large hydroelectric generation as defined in section 3204 (b)(7)(A).
- (j) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria specified in section 3204 (b)(8) for any given reporting year between January 1, 2019, and December 31, 2030, shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c), the following:
 - (1) The amount of generation, in MWh, that the POU procured for the reporting year from large hydroelectric generation as defined in section 3204 (b)(8)(A).
 - (2) Information showing that the amount of large hydroelectric generation, as defined in section 3204 (b)(8), procured for the reporting year is greater than 40 percent of the POU's retail sales for the reporting year.
 - (3) Any and all agreements for large hydroelectric generation meeting the criteria of section 3204 (b)(8)(A), including any amendments, extensions, or renewals of the agreements.

(4) A narrative explaining how the generation reported in paragraph (1) satisfies the requirements of large hydroelectric generation provided in section 3204 (b)(8)(A) and whether there have been any changes to the agreements, renewals, and extensions, including, but not limited to, changes in ownership, changes in contract quantity or allocation percentage, or planned incremental efficiency upgrades to the hydroelectric facilities.

(A) If the agreements, renewals, or extensions include generation that does not meet the definition of large hydroelectric generation in section 3204 (b)(8)(A), the narrative shall include documentation demonstrating that only generation meeting the definition of large hydroelectric generation in section 3204 (b)(8)(A) is reported in paragraph (1).

(5) Annual retail sales for the reporting year, for a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code).

(6) Any additional documentation requested by the Commission necessary to determine whether the POU meets the criteria specified in section 3204 (b)(8) and to determine the amount of generation that qualifies as large hydroelectric generation as defined in section 3204 (b)(8)(A).

(k) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that elects to subtract from its total retail sales the eligible renewable energy resources credited to participating customers in the POU's voluntary green pricing or shared renewable generation program in accordance with section 3204 (b)(9), shall report the following information annually by the deadline for annual reports specified in section 3207 (c):

(1) A description of the POU's voluntary green pricing or shared renewable generation program.

(2) The total number of kilowatthours, reported to the nearest MWh, of electricity products from eligible renewable energy resources procured for the reporting year that were credited to participating customers in accordance with the requirements of section 3204 (b)(9).

(3) Documentation, including WREGIS reports, demonstrating that the RECs associated with the qualifying electricity products provided under the POU's voluntary green pricing or shared renewable generation program were retired in a WREGIS subaccount designated for the benefit of the participating customers and were not further transferred, sold, or monetized.

(4) The total quantity of qualifying electricity products, in MWhs, procured by the POU and subtracted from its annual retail sales.

- (5) Documentation demonstrating that the RECs associated with the qualifying electricity products subtracted from the POU's retail sales were procured from eligible renewable energy resources and meet the criteria in section 3203 (a).
- (6) A description of how the POU sought to procure, to the extent possible, the qualifying electricity products subtracted from the POU's retail sales from eligible renewable energy resources located within reasonable proximity to program participants. This description shall include an explanation of the factors the POU considered and measures it took in seeking to procure within reasonable proximity to program participants, and the POU's procurement decision outcomes.
- (l) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that meets the criteria of section 3204 (b)(10) shall submit to the Commission, by July 1, 2025, the following information:
- (1) The total quantity, in MWh, of qualifying procurement of coal-fired generation procured by the POU during the compliance period beginning January 1, 2021.
 - (2) A copy of the POU's procurement contract or ownership agreement for the qualifying procurement of coal-fired generation.
 - (3) A copy of the POU's renewable energy resources procurement plan, if not previously provided to the Commission, demonstrating that the POU met the requirements of section 3204 (b)(10)(B).
- (m) In addition to the applicable reporting requirements in section 3207 (a) – (d), starting with the compliance period beginning January 1, 2025, a POU that reduces its procurement target pursuant to section 3204 (b)(11) shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c) for the final year of each compliance period, the following information:
- (1) The quantity, in MWh, of generation from a qualifying gas-fired power plant for each year of the compliance period.
 - (2) Documentation demonstrating that the qualifying gas-fired power plant meets the criteria of Public Utilities Code section 399.33 (a). This documentation may include, but is not limited to: findings adopted by the POU's governing board, adopted city council resolutions, proof of facility ownership, financial records, compliance filings, and/or wage schedules or other such documents for facility employees.
 - (3) The nameplate capacity of the facility and the POU's calculation of the facility's capacity factor for each year of the compliance period based on the facility's annual generation for that year.
 - (4) Documentation demonstrating the POU's efforts to sell the qualifying gas-fired power plant or gas-fired power plant generation to mitigate against the reduction of generation below a 20 percent capacity factor.
 - (5) Documentation demonstrating that additional procurement of eligible renewable energy resources or zero carbon generation resources resulted in the power plant operating at, or below, a 20 percent capacity factor on an average annual basis during the compliance period.

(6) Any additional documentation requested by the Commission necessary to determine whether the POU meets the criteria specified in Public Utilities Code section 399.33 (a) and satisfied the requirements of section 3204 (b)(11).

(7) The reporting requirements of this section 3207 (m) apply only to a POU that has availed itself of the provisions of section 3206 (b)(11) by notifying the Commission by April 1, 2019, of its intent to act pursuant to section 3206 (b)(11).

(n) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that meets the criteria of Public Utilities Code section 399.18 shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c) for the final year of each compliance period, documentation demonstrating that the POU satisfied the criteria for that compliance period.

(o) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU may be required to submit any additional information needed to demonstrate compliance with an RPS procurement requirement or any other RPS-related requirement upon request from Commission.

~~(p)~~ (p) Incorrect and incomplete reports.

(1) If the Executive Director determines a report submitted by a POU pursuant to this section is incorrect or incomplete, or if the POU did not submit a report by the deadline, he or she shall issue a written notice to the POU specifying what information is missing or needs to be corrected in the report or, in the case of an unsubmitted report, that the report is past due. If a POU submits the missing or correct information or a complete report to the Commission within ten (10) business days of receipt of such notice, the POU's initial failure to submit a complete and correct report by the reporting deadline shall not be processed as a separate violation under these regulations. Written notices issued pursuant to this subdivision may include e-mail or other written communications.

(2) A POU may request an extension of time to submit the missing or correct report information or the missing report specified in the written notice issued by the Executive Director. Such a request for an extension of time must be received by the Commission no later than the date the missing or correct information is due to the Commission. The Executive Director shall act on a request for an extension of time within five business days after it is received by the Commission and may grant an extension of time of up to 30 calendar days from the date the missing or correct report information is due under the written notice if he or she finds that there is good cause for an extension. The POU's initial failure to submit a complete and correct report shall not be deemed a separate violation under these regulations if the Commission receives the complete or correct report information by the date specified in the extension. In determining whether good cause exists for purposes of this subdivision, the Executive Director may consider, without limitation, the following factors:

(A) Whether the POU was diligent in gathering the information necessary to submit a complete and correct report to the Commission and preparing the report for submission by the due date.

(B) Whether there were circumstances beyond the control of the POU that prevented the POU from gathering and producing a complete and correct report to the Commission by the due date.

(C) Whether the extension of time is likely to enable the POU to submit a complete and correct report by the extended due date.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30 and 9508, Public Utilities Code. Reference: Section 25747, Public Resources Code; and sections 399.13, 399.15, 399.16, 399.30, 399.33, 9507 and 9508, Public Utilities Code.

Section 3208 – Enforcement

- (a) Any complaint against a POU pertaining to the enforcement of a RPS requirement, or any regulation, order, or decision adopted by the Commission pertaining to the RPS, shall be filed in accordance with Title 20, section 1240 of the California Code of Regulations.
- (b) A complaint may be issued for a POU's failure to comply with any of the requirements in these regulations, including, but not limited to any of the following:
 - (1) Failure to meet an RPS procurement target as specified in subdivision (a) of section 3204 for reasons other than the POU's adopted cost limitations and/or delay of timely compliance rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2) and (3) of section 3206
 - (2) Failure to meet a Portfolio Content Category 1 portfolio balance requirement as specified in subdivision (c) of section 3204 for reasons other than the POU's adopted cost limitation, ~~and/or~~ delay of timely compliance, and/or portfolio balance requirement reduction rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2)-~~(4)~~ and (3) of section 3206
 - (3) Failure to adopt an RPS procurement plan, enforcement program or plan, or provide notice, disclosure, or other information to the Commission and public as specified in section 3205
 - (4) Failure to submit a complete annual, compliance, or other report, or other documentation or information as specified by section 3207-
 - (5) Beginning January 1, 2021, failure to meet the long-term procurement requirement as specified in section 3204 (d) for reasons other than the POU's adopted cost limitation rules which the Commission determines comport with the RPS requirements as specified in subdivision (a)(3) of section 3206.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development
Commission

Chapter 2. Rules of Practice and Procedures
Article 5. Request for Investigations and Complaints

Section 1240 – Renewables Portfolio Standard Enforcement

- (a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.
- (b) Complaints shall follow the process set forth in section 1233.1.
- (1) The executive director may file a complaint against a local publicly owned electric utility for failure to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities.
- (2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the informational requirements set forth in section 1233.1(b).
- (c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.
- (d) Answer
- (1) The local publicly owned electric utility shall file an answer within 45 days after service of the complaint. The answer shall be filed with the commission as specified in section 1208. In addition to those matters set out in section 1233.2, the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer. The answer may also include information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating or otherwise pertinent factors related to any alleged violation or to a possible monetary penalty that may be imposed if noncompliance is determined pursuant to this section. The information included regarding any mitigating or otherwise pertinent factors may describe all relevant circumstances, including, but not limited to, the following:
- (A) The extent to which the alleged violation has or will cause harm.
- (B) The nature and expected persistence of the alleged violation.
- (C) The history of past violations.

(D) Any action taken by the local publicly owned electric utility to mitigate the alleged violation.

(E) The financial burden to the local publicly owned electric utility.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, the local publicly owned electric utility shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the executive director along with a complete request for confidential designation in accordance with section 2505.

(e) Response

(1) Commission staff may file a response to the answer no later than 15 days after receipt of the answer.

(2) In the event that commission staff files a response under (e)(1), the local publicly owned electric utility may file a reply to such response no later than 10 days from receipt of such response.

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than 45 days after the filing of the answer pursuant to subdivision (d) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section 1209.

(3) The hearing may be scheduled before the commission, a committee designated by the commission, or a hearing officer assigned by the chair at the request of the committee as provided in section 1205.

(4) If the hearing is not held before the commission, the proposed decision set out in section 1233.4(a) shall be forwarded to the commission, to the extent reasonably possible, no later than 45 days after the hearing has been concluded. If the hearing is held before the commission, to the extent reasonably possible, the commission shall publish its decision within 45 days after the hearing has been concluded.

(g) The decision of the commission shall be a final decision. There is no right of reconsideration of a final decision issued under this section 1240. The decision will include all findings, including findings regarding mitigating and aggravating factors related to noncompliance. The decision may also include findings regarding mitigating and aggravating factors upon which the California Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions (n) and (o) ~~and (p)~~. The decision may also include suggested penalties for the California Air Resources Board to consider, as appropriate. Any suggested penalties shall be comparable to penalties adopted by the California Public Utilities Commission for noncompliance with a Renewables Portfolio Standard requirement for retail sellers.

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, commission staff shall forward a notice of violation, based on the final decision of the commission,

together with the record of proceedings, to the California Air Resources Board for determination of a penalty and to the local publicly owned electric utility. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the commission pertaining to the proceedings.

- (2) If a petition for writ of mandate is filed by respondent, commission staff shall not forward the notice of violation to the California Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.