

BEFORE THE
CALIFORNIA ENERGY COMMISSION

DOCKET	
11-RPS-01	
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In the matter of) Docket No.11-RPS-01
)
 Staff Workshop: 33 Percent)
 Renewables Portfolio Standard)
 Pre-Rulemaking Draft Regulations)
for Publicly Owned Utilities) Staff Workshop

CALIFORNIA ENERGY COMMISSION
 HEARING ROOM A
 1516 NINTH STREET
 SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 1, 2012
 9:00 A.M.

Reported by:
 Kent Odell

APPEARANCESCommissioners Present:

Carla Peterman

Staff Present: (* via phone)

Gabe Herrera
Lorraine Gonzalez
Angela Gould
Gina Barkolow
Kate Zocchetti
Emily Chisholm

Others Present:

Tony Andreoni, California Municipal Utility Association
Tim Tutt, Sacramento Municipal Utility District
Bill Westerfield, Sacramento Municipal Utility District
James Hendry, San Francisco Public Utilities Commission
Fred Lyn, City of Rancho Cucamonga, also representing
POUs: Cities of Marino Valley, Victorville,
Cerritos, and Corona
Jeannette Olko, City of Marino Valley, Cities of Rancho
Cucamonga, Victorville, Cerritos, and Corona
Gurduran S. Bawa, City of Pasadena Water and Power
Danielle Mills, Center for Energy Efficiency and
Renewable Technologies (CEERT); also on behalf of
the Union of Concerned Scientists
George Morrow, Azusa Light and Power
Randy Howard, Los Angeles Department of Water and Power
Susie Berlin, Northern California Power Agency
*Norman Pedersen, Southern California Public Power
Authority (SCPPA)

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1 P R O C E E D I N G S

2 MARCH 1, 2012

9:07 A.M.

3 MS. ZOCCHETTI: Good morning, everyone. We're
4 going to go ahead and get started. I'm Kate Zocchetti,
5 I'm the Technical Lead for the RPS Program here at the
6 Energy Commission. I want to welcome you all to our
7 workshop on the publicly-owned electric utilities draft
8 regulations. Thank you very much for those of you who
9 have traveled to Sacramento to the Energy Commission,
10 those of you who are online on our WebEx, and those who
11 are calling in and listening on the phone.

12 Before we get started, I would like to do a few
13 housekeeping things for you to know about. If you go out
14 these main doors here and go to your left, the restrooms
15 are there. We have a snack bar on the second floor, you
16 just go up the main staircase there, there's coffee and
17 snacks, obviously. If we have an emergency, which we
18 hope we don't, please follow staff's direction and we'll
19 lead you out of the Energy Commission and kitty corner
20 across the street to the park, please follow traffic
21 lights, they will give us a ticket if we run out in our
22 frenzy, so please follow staff's directions, and we hope
23 that doesn't happen.

24 Before I get started, I would like to introduce
25 Commissioner Carla Peterman and she has agreed to make

1 some opening remarks. Commissioner Peterman?

2 COMMISSIONER PETERMAN: Good morning, everyone.
3 Thank you for being here today, both with us in the room
4 and on the line; it's great to have you. This is an
5 exciting workshop, happy to see these Draft Regs out, and
6 to get your input.

7 Staff has worked very hard over the last several
8 months to incorporate the views and inputs of various
9 stakeholders in drafting these Regulations. The
10 Commission has also worked closely with the California
11 Air Resources Board and the Public Utilities Commission
12 as we move forward. With the Air Resources Board, we're
13 working on developing an efficient Compliance and
14 Enforcement Program, and with the Public Utilities
15 Commission we're working to make sure that we don't have
16 an unnecessarily fragmented market. Where we may deviate
17 from the PUC or have a difference of opinion, I think
18 that reflects staff's attempt to respect the independence
19 of the POUs and their respective authority.

20 I think that some of you will think we've gone
21 perhaps not too far past our legislative authority, and
22 some will think we haven't gone far enough. I like to
23 think, though, I think we've struck an appropriate
24 balance to start off with and we welcome your input.

25 I would like now to thank staff for all the work

1 they've done on this and I think this will be a very
2 productive workshop. Feel free any time to contact my
3 office going forward if you want to discuss any issues
4 that are raised.

5 On a personal note, I'll also say today is my
6 one-year anniversary at the Energy Commission and, so,
7 yeah, you can applaud [applause], and so it would be
8 great if after this workshop, during this workshop, you
9 could work out every issue you have on the RPS, that
10 would be a great anniversary present to me. So, with
11 that, thank you in advance for your involvement and I
12 look forward to working with you on this issue going
13 forward.

14 MS. ZOCCHETTI: Thank you, Commissioner Peterman.
15 Before we launch into an overview of our staff Draft
16 Regulations, I'd like to introduce the staff that has
17 been working diligently on this and other RPS issues.

18 To my right is Lorraine Gonzalez and, at the
19 table there on the far end, is Angie Gould, who has come
20 back today after a maternity leave. She launched the
21 initial effort to draft these regulations and we welcome
22 her back. And to her right is Gina Barkolow, she leads
23 the RPS Verification process. And Gabe Herrera to her
24 right, he is our Staff Counsel. And Emily Chisholm, who
25 has recently joined our office and is working very hard

1 with Lorraine on moving these Regulations forward.
2 Traveling around also is Brian McCollough, who will be
3 collecting -- there he is -- the blue cards from you, so
4 I'll be going over a little bit about how you're going to
5 provide comments to us in a moment. You'll be giving
6 some blue cards to Brian if you want to come up and speak
7 to the group.

8 So with that, I'd like to go ahead and start with
9 our agenda. We plan to provide a short presentation
10 which is an overview, as I said, of our Draft
11 Regulations. As Commissioner Peterman said, we've been
12 working very hard on these Regulations, but this is our
13 first draft, we don't imagine that we got everything
14 perfect for everyone, and we really appreciate all of you
15 calling us and coming in to meet with us to help us get
16 it right, and we welcome you to continue that.

17 We're going to cover an overview of the
18 Regulations and then we also have some outstanding issues
19 and questions that we've posed to you in our Workshop
20 Notice. We welcome your comments on that. And then
21 we'll be telling you our next steps moving forward. When
22 we do the public comment part, we'd like you to hold your
23 questions to the end, if you would because, perhaps the
24 next slide will answer them. But when we do get to your
25 comments, we are recording today's presentation and

1 today's workshop and we'd like you to give your business
2 card or write out your name for our Court Reporter here,
3 come on up to the podium to make your comments, and we
4 won't call you unless you submit a blue card, so try to
5 summarize what you were going to say very briefly on the
6 card, write your name so that I can read it, and say your
7 name.

8 We're going to go ahead and mute the phones right
9 now and, when we do take public comments we'd like to
10 take them first from the audience here at the Energy
11 Commission, and then we'll go to the WebEx and to ask a
12 question or to provide a comment on WebEx, you need to
13 click the little raised hand button, and then lastly
14 we'll take comments from our phone-in callers.

15 So this is a summary of what we're going to cover
16 today. I don't need to read those all to you, but I
17 wanted to give you a sense of what we are planning to
18 cover. The Outstanding Issues is a summary of the points
19 that we raised in our questions and asked you to comment
20 on. Of course, we're going to accept your oral comments
21 today, but we also encourage you to submit written
22 comments.

23 So, getting into kind of what the Energy
24 Commission's roles are and have been under the RPS, we've
25 always had the first two roles, which is to certify

1 renewable energy resources or facilities as eligible for
2 the RPS, we've done that for the retail sellers for a
3 number of years, and now we'll be doing that for the
4 facilities serving the POUs. We are also tasked by
5 statute to design and implement an accounting system to
6 verify and track RPS procurement. And now we're tasked
7 with implementing Regulations specifying procedures for
8 the publicly-owned electric utilities or POUs. We are,
9 under that task, monitoring compliance with the RPS and,
10 then, we are to refer any violations to the California
11 Air Resources Board.

12 These slides have a lot of text on them and I'm
13 not going to read them, but you can certainly read them
14 for yourself. By the way, and I should have mentioned,
15 there are handouts on the front table in case any of you
16 missed those, we have copies of the Draft Regulations and
17 copies of our presentation. The presentation will be
18 posted on our website.

19 So kind of moving into the Qualifying Electricity
20 Products, the statute says that generation under contract
21 before June 2010 shall count in full and if it was
22 eligible under the rules in place when the date of the
23 contract was executed. And the Energy Commission is
24 interpreting the "rules in place" to mean the rules in
25 statute that the Energy Commission has implement in its

1 RPS Eligibility Guidebooks. And we interpret counting in
2 full to mean that the portfolio content categories don't
3 apply, so that the generation under those contracts does
4 not need to be classified as Category 1, 2, or 3, and so
5 those minimum and maximums would not apply.

6 For those that are eligible then, but not
7 eligible now, the count in full provision also means that
8 it counts in full, but once that contract expires, it
9 would no longer be eligible. And we'll get into that in
10 more detail.

11 So there are three ways to qualify for the RPS,
12 this is kind of touching on some of the eligibility
13 issues; again, products procured on or about 2010 and
14 certified of course will be counted as eligible and if
15 they meet our current eligibility requirements.

16 For facilities with electricity procured before
17 June 2010, there are a couple of way, that if the
18 Governing Board approved that procurement and if it meets
19 our definition of renewable electric generating facility,
20 meaning it meets the current RPS eligibility rules, then
21 it could be RPS certified.

22 Again, this is talking about the limitations on
23 those contracts, those pre-June 2010 contracts. As it
24 says in statute, you can't amend the contract. The
25 facility does have to be RPS certified. And, again,

1 count in full's meaning is that procurement contract
2 categories don't apply. From here on out, I'm going to
3 call those "buckets," I think, that's what we all call
4 them and it's a lot less of a mouthful, if you'll allow
5 me.

6 So -- oh, I need to catch up with myself here --
7 so going into Bucket 1, in order to be classified as a
8 procurement for Bucket 1, it need to have -- the
9 generating facility needs to have a first point of
10 interconnection to the WECC within the meter boundaries
11 of the California Balancing Authority, which is defined
12 in statute, or it needs to have a first point of
13 interconnection to an electricity distribution system
14 used to serve California customers in the California
15 Balancing Authority, or it needs to be scheduled into a
16 California Balancing Authority without substituting
17 another source, even if it's a renewable source. Lastly,
18 it can have a dynamic transfer agreement.

19 For Bucket 2, the renewable facility must be
20 located within the WECC and scheduled into a California
21 Balancing Authority, firmed and shaped with substitute
22 energy to produce incremental electricity and be
23 initially procured as bundled electricity, which means
24 the REC and the energy both have to be procured. It has
25 to have a first point of interconnection into the WECC --

1 the substitute electricity must be located outside of
2 California, that only makes sense. It must be
3 incremental or what we mean by that is not in the POU's
4 portfolio before the firmed and shaped transaction is
5 executed.

6 The procurement of the substitute resource must
7 be adopted by the POU at the same time, or after the
8 renewable is procured. And for administrative purposes,
9 the Energy Commission has long required that "firmed and
10 shaped," which is not new to us, for the retail sellers,
11 it's always been within the same calendar year and we're
12 applying that going forward so that, within the same
13 calendar year, the renewable resource and the substitute
14 resource both have to have generation dates in the same
15 calendar year.

16 Bucket 3 is pretty much everything that doesn't
17 meet the criteria of Buckets 1 or 2, including unbundled
18 renewable energy credits and if procurement as initially
19 in 1 or 2, but is hence unbundled, then it becomes in
20 Bucket 3.

21 So I'd like to ask Lorraine, who is going to come
22 up and go over the remainder of the presentation, then
23 we'll both be available, of course, for questions.
24 Lorraine Gonzales.

25 MS. GONZALES: Good morning, everyone. So

1 Section 3204 of the Draft Regulations, that's Procurement
2 Targets, consistent with the statute that says an average
3 of 20 percent of total retail sales from January 1st,
4 2011 through December 31st, 2013, that's the first
5 compliance period. And 25 percent of total retail sales
6 must come from eligible renewable energy resources in the
7 last year of the second compliance period ending 2016.
8 Then 33 percent in the last calendar year of the third
9 compliance period ending 2020 and 33 percent for each
10 calendar year thereafter. This section also provides
11 that deficits associated with any compliance period shall
12 not be carried forward into another compliance period.

13 This next slide is a representation of the
14 statutory requirements for a minimum and maximum
15 procurement for each portfolio content category. The
16 statute requires that procurement from Category 1 must be
17 at least 50 percent in 2013, 65 percent in 2016, and 75
18 percent in 2020. Maximum procurement for Category 3 must
19 be at least -- must be at 25 percent in 2013, 15 percent
20 in 2016, and 10 percent in 2020. The remainder of the
21 procurement can fall into Category 2.

22 Section 3204 also addresses reasonable progress.
23 The Draft Regulations provide two ways to demonstrate
24 reasonable progress was made at the end of each
25 compliance period, the first method is a qualitative

1 demonstration where the POU can provide plans to the
2 Energy Commission laying out steps that will be taken in
3 the upcoming year to meet targets. The second option to
4 demonstrate reasonable progress would be to adopt a
5 linear trend for meeting procurement targets and a
6 demonstration that the POU had increased procurement by
7 at least 1.5 percent in each year of the second
8 compliance period, and two percent in each year of the
9 third compliance period. This demonstration would be
10 deemed reasonable progress.

11 Section 3205 of the Regulations addresses
12 procurement and enforcement plans adopted by the POU's in
13 order to ensure compliance with all RPS requirements.
14 The Draft Regulations require all POU's to submit their
15 most recent RPS procurement plan at the beginning of each
16 year, starting in 2013. And additionally, the statute
17 requires enforcement plans to be adopted by January 1st,
18 2012. If these enforcement plans need to be revised in
19 light of the requirements of these regulations, a revised
20 enforcement plan can be submitted 90 days after
21 finalization of these requirements. The statute allows
22 for POU's to adopt certain measures to address RPS plans,
23 and so the draft regulations provide some guidance in
24 these areas.

25 So here we have excess procurement, and for

1 excess procurement the accumulation of excess may begin
2 January 1st, 2011, however, procurement from Category 3
3 and from contracts of less than 10 years cannot be
4 counted as excess.

5 The Regulations also address delay of timely
6 compliance and cost limitations, which the statute
7 requires must be consistent with rules that the CPUC will
8 develop for retail sellers, and this section also
9 addresses portfolio content category requirement
10 reductions in accordance with PUC Section 39916.

11 Section 3207 of the Regulations requires that the
12 POUs report to the Energy Commission on an annual basis
13 by June 1st of every year. Additionally, a compliance
14 report detailing total procurement and portfolio content
15 category classification will be due at the end of each
16 compliance period. It will be due June 1st in 2014,
17 2017, and 2021, and then each year thereafter, with the
18 expectation that, after 2020, the annual report and the
19 compliance report will be combined into one annual
20 report. Future editions of the RPS Guidebook will detail
21 the process for verification of this information, but
22 these reports will be used to determine compliance.

23 So I just wanted to take a couple minutes to
24 outline the verification process that we currently use, a
25 few things that the Energy Commission staff will explore

1 in verifying reports: RPS certification, sufficient
2 generation reported from each facility, conflicting data
3 from other states and from the voluntary market, multi-
4 fuel requirements; and a few new things that will be
5 taken into consideration after the passage of these
6 regulations, the facilities -- the facility's eligibility
7 date, portfolio content categories, and procurement
8 requirements.

9 Staff is currently verifying 2008 through 2010
10 RPS data and is working toward a workshop in the spring
11 for that verification report, with the draft report in
12 the summer or the fall, and a final report by the end of
13 the year. So if it was determined that a POU did not
14 meet its RPS requirements, the Energy Commission will use
15 the process in Section 1240 to file a complaint and
16 Section 1240 states, in summary, that no complaint for
17 the failure of a POU to meet an RPS requirement may be
18 filed by any person or entity, except Energy Commission
19 staff. A POU shall file an answer to any complaint made
20 against it with the Energy Commission's Chief Counsel
21 within 45 calendar days, then the Energy Commission staff
22 may file a response to the POUs' answer, a hearing shall
23 be scheduled to commence no sooner than 30 days after the
24 filing of staff's response, and any decision issued by
25 the full Energy Commission shall be a final decision.

1 After that, the Energy Commission will forward a Notice
2 of Violation to the ARB for their determination of
3 penalties.

4 There are a few corrections that we would like to
5 point out in the Draft Regulations. Section 3204(a)(8),
6 there is a reference to Section 3204(d) which should
7 actually be 3204(e), and Section 3206(a)(1)(D), we would
8 like to revise to be read "POUs may access procurement in
9 a given period only if the POU satisfies the following
10 criteria." Also, the years in the first equation should
11 have been 2011, 2012, and 2013, rather than 2014, 2015,
12 and 2016.

13 So we wanted to release these Draft Regulations
14 to the public to get stakeholder input and feedback from
15 all of you, but there are still a few outstanding
16 questions we would like your input on, so I'm going to
17 quickly read through these questions and the topic of
18 consistency should be Energy Commission determine
19 reasonableness for cost limitations and delay of timely
20 compliance based on the structure to be determined for
21 retail sellers, and rules for excess procurement for POUs
22 should also be consistent with excess procurement rules
23 for retail sellers.

24 Some timing and seams issues -- most electricity
25 products be retired in the same compliance period as when

1 they are procured to be used for compliance, and is there
2 any reason why RECs generated before January 1st, 2011
3 could be used for the first compliance period.

4 Under Exemptions, are there any additional
5 alternatives that are available and that the Energy
6 Commission should consider to limit the burden on very
7 small POU's? And under Non-Compliance, how should late
8 reporting, failure to report, or late submittal of an
9 approved enforcement plan, or a procurement plan, be
10 included in findings of RPS compliance for a POU? And
11 for enforcement plans, is 90 days after the effective
12 date of the 33 percent regulations -- RPS Regulations --
13 a reasonable amount of time for a POU to adjust an
14 enforcement plan to comply with the provisions of these
15 regulations?

16 A couple last questions for Enforcement: Should
17 other individuals or entities be allowed to file a
18 complaint against a POU for failing to comply with the
19 Regulations? And if the Energy Commission initiates a
20 public proceeding to consider a staff complaint against a
21 POU, should other individuals or entities be allowed to
22 intervene or otherwise be granted party status in the
23 proceeding?

24 A quick overview of Next Steps. Comments are due
25 on these Draft Regulations March 15th, 2012, not 2011 as

1 it is stated in the Notice, and then the Energy
2 Commission will incorporate comments into a final draft
3 and hope to submit a rulemaking package to Office of
4 Administrative Law in April 2012. A formal 45-day public
5 comment period will follow that and that would be between
6 April and June of 2012, and then a public hearing will
7 follow the public comment period in June 2012 with the
8 hope to adopt these Final Regulations by the Energy
9 Commission in August.

10 Of course, if you have any questions or would
11 like to meet with us on any topic, staff is always
12 available and this is contact information for Kate and
13 myself.

14 MS. ZOCCHETTI: Thanks, Lorraine. So that
15 concludes our overview of the Regulations. I'm sure many
16 of you want to share your thoughts with us. Brian, if
17 you wouldn't mind bringing up the blue cards and, as
18 folks provide their comments, and if that inspires you to
19 comment, as well, feel free to do so. And if you'd like
20 to comment more than once, that's fine as well. We'll
21 kind of exhaust the comments in the room and then we'll
22 turn to the folks outside the Energy Commission.

23 While Brian is doing that, I'd like to thank
24 another staff member that I neglected to introduce
25 before, Teresa Daniels is manning the WebEx and I

1 appreciate that help.

2 So again, as a reminder, please give your
3 business card or write out your name on a little piece of
4 paper for our Court Reporter. First, I'd like to invite
5 up to the podium Tony Andreoni from CMUA.

6 MR. ANDREONI: Thank you for the opportunity and
7 I also want to thank the CEC staff for working so
8 diligently on putting out the Draft Rule back on February
9 17th. And just for the record, my name is Tony Andreoni,
10 I'm with California Municipal Utility Association. I'm
11 the Director of Regulatory Affairs. And also just for
12 the record, we're a statewide organization of local
13 public agencies that provide water, gas, electric
14 service, to California Consumers. Our membership
15 includes over 40 Publicly-Owned Electric Utilities, or
16 POU's, and provide electricity to about a quarter of all
17 Californians. We are definitely excited to move forward
18 and continue the dialogue.

19 I thought I would start off before getting into
20 some of the specific questions that we have on the actual
21 draft rule, is focus a little bit on the process, and you
22 kind of talked a little bit about this in your
23 presentation, but so far the process actually began
24 almost last summer, I believe, was the time where you
25 actually had a workshop; I recall that we had a number of

1 work group meetings shortly after that with POUs, which I
2 thought was very helpful, there was a nice open dialogue
3 to provide some input on the process. I think we also,
4 and other folks, provided comments on some of the
5 documents that you provided. And you also had a white
6 paper out that provided a webinar to give us and others
7 opportunity to kind of get an idea of where CEC was
8 heading. I think that process kind of stopped around
9 November, late October time frame, and the Rule itself
10 was being developed, and then now we kind of fast forward
11 to February and we were actually able to see the Draft
12 Rule and provide comments. It's kind of a little
13 challenging when you start talking about a group our size
14 getting comments together in a short time frame such as a
15 week and a half. I believe the deadline was repeated for
16 written comments to be on March 15th. So we are a little
17 concerned as an organization that, as you start moving
18 forward and creating such a rule of this magnitude that
19 affects to many members statewide, that the staff
20 consider looking at little bit closer, perhaps providing
21 a little bit more dialogue with working group meetings
22 like you've done in the past, and start allowing a little
23 more dialogue for Q&A, and I think that would certainly
24 help us and help you at the same time try to move forward
25 in the iterations of the Rule itself.

1 We also would suggest, if it's possible, to go a
2 little bit beyond the March 15th deadline on the written
3 comments, which we understand would allow us an
4 opportunity to provide written comments on the Draft
5 Rule, but at the same time, for what we don't respond to
6 or provide today on Attachment A questions, it would also
7 give us time to try to integrate where we can. But I do
8 think there needs to be a little bit more dialogue,
9 perhaps here today, perhaps some of the additional
10 members that we have that are going to speak will go over
11 a few of those questions, but I do believe there are a
12 few more questions to ask to try to get at what those
13 responses may mean. And that goes without saying --
14 actually, before I go to my next statement, I'm just
15 going to throw out a date, you guys can think about it,
16 March 30th, but if there's another date that you have in
17 mind, or if it just can't be done, let us know, we would
18 like to have that dialogue. But we think it is important
19 to spend a little bit more time putting an effort into
20 this Rule so it can move forward a lot more smoothly.

21 Getting to the next portion which is Attachment
22 B, Attachment B was also part of the Notice, and
23 Attachment B is really getting at focusing on the
24 economic impact that is required by you all as you move
25 forward in putting this Rule together. A lot of those

1 questions, I think, have a lot more questions to be
2 asked, a number of our members would need significant
3 more time. Should you decide to keep a March 15th
4 deadline for all responses in writing, I think it would
5 be great to have additional dialogue, maybe even meeting
6 with our members individually, if needed, to try to get
7 at responding to those.

8 And I recall going back to a rule that no longer
9 exists on the books, that renewable electricity standard
10 that ARB worked on, CEC worked very closely in that
11 process, as well as CAISO, CPUC with ARB. There were
12 surveys done that kind of aligned some of the questions
13 that you were asking, I know time was taken to try to get
14 that information to assess what the overall economic
15 impact would be on our POUs, especially the medium and
16 smaller POUs, and I think that's important to continue
17 down that dialogue, to just throw out some questions and,
18 as a good start, I just think it would be great to have
19 additional dialogue in that area as you go through that
20 very important analysis that could have an effect on the
21 overall cost to our members, as well as the potential of
22 cost limitation that is going to be integrated into this
23 overall rule. And unfortunately there's really no one-
24 size-fits-all in this case, we have members that are
25 large and members that are very small in this arena.

1 So with that, there were a list of questions that
2 I've kind of set aside to maybe throw out at you all, and
3 I'm not sure if this is the time if you want to go
4 through some of these questions and provide some
5 responses, or if not, is it okay to ask a few? Okay.

6 So what I'll do is start with -- and actually,
7 some of your presentation did answer some of our
8 questions and we've had some good dialogue over the
9 phone. But one of the first questions is how reasonable
10 progress will be dealt with, within what you're
11 describing in the rule. We understand that there are
12 flexible compliance that may be also thrown into this, so
13 we just want to get a view from you on how you see and
14 view reasonable progress as we're going through the
15 current draft. So I'm not sure if you want to answer
16 that now? Should I go through questions? Or lay them
17 out and then answer? How would you like to do that?

18 MR. HERRERA: Thank you, Tony. This is Gabe
19 Herrera with the Commission's Legal Office. You know, I
20 think that's fine if you ask question, it might spur
21 other questions from folks in the audience. It is on --
22 I'll speak louder. I apologize for that. Gabe Herrera
23 with the Energy Commission's Legal Office. So as Kate or
24 Lorraine pointed out, there's two options for
25 demonstrating reasonable progress, one is kind of a

1 quantitative approach where the POU needs to demonstrate
2 that, to procure a certain amount of renewable energy,
3 each of the intervening years of the compliance period
4 and the other approach, which was an approach I think was
5 adopted, recognizing, at least from what we've heard from
6 some of the POU representatives, that because procurement
7 tends to be a little bit more lumpier, some POUs relative
8 to, say, how the IOUs do things, that process would be
9 more of kind of a qualitative analysis to demonstrate
10 what efforts the POU took to make reasonable progress in
11 the intervening years. But the Energy Commission's
12 regulations, at least the way they're set up now, would
13 evaluate compliance with the procurement requirements in
14 the last year of the compliance period. So I'm not sure
15 if that's helpful, Tony?

16 MR. ANDREONI: So you're looking basically at an
17 option focusing on the last year of compliance, basically
18 a true-up at that point?

19 MR. HERRERA: That's right. And the way at least
20 we envision enforcement action or compliance is that the
21 POUs would have an obligation to comply with the
22 procurement requirements in that last year, it would be
23 demonstrated in that last year, but they also have an
24 obligation in each of the intervening years of the
25 compliance period to demonstrate that they've made

1 reasonable progress. So that might be easier to show for
2 a POU that had taken the kind of qualitative approach and
3 showed that they procured, you know, the minimum, 21.5
4 percent, for example, at the end of the year 2014. And
5 then, for those facilities that -- or those POUs that
6 could not demonstrate that, but had tried, then we would
7 expect some sort of written submission, some sort of
8 demonstration that they had taken reasonable efforts, but
9 nevertheless could not procure additional resources in
10 the intervening years. I mean, we would be interested in
11 learning whether that option is something that is really
12 viable, whether the more qualitative approach is better.

13 MR. ANDREONI: I think you may hear from a few
14 others today, but I do believe flexibility, since there
15 isn't a one-size-fits-all in many of the members to be
16 able to do this and, you know, provide a number of
17 options to be able to calculate and look at what
18 reasonable progress is, as well as meeting the
19 requirements over the various periods that we have.
20 Obviously, we're in one right now.

21 MR. HERRERA: Right. I think what would be
22 helpful, too, would be to get feedback from the POUs on
23 what type of documentation they could provide to meet
24 this demonstration. I mean, we don't know the universe
25 out there, I don't know how each of the POUs conduct

1 their business, but it would be helpful particularly if
2 somebody like CMUA was able to get together with us and
3 provide that kind of documentation, or a list of those
4 kinds of issues, it would be important for us to kind of
5 assess and determine whether reasonable progress had been
6 demonstrated.

7 MR. ANDREONI: Okay, well, I think that's
8 certainly something that we would like to have additional
9 dialogue on and try to figure out what will work best for
10 our members and perhaps have some of that either through
11 a working group meeting; obviously, we won't be able to
12 have that dialogue necessarily today, but I think it's
13 something that definitely needs to be looked at as we
14 move forward. We actually had a laundry list of
15 questions, I know we'd been able to talk over some of
16 them on the phone and I'm not sure if we're going to be
17 able to get to all the answers today, but you know, being
18 able to answer those questions and allowing us to be able
19 to go back and work with our group to get additional
20 responses, that would be great, so we do encourage that.

21 Some of the other questions, I'll go ahead and
22 save for a later dialogue, to be able to listen to what
23 some of the other folks that come up and describe, but I
24 do believe, as we get into these discussions, the more we
25 can have a Q&A session that allows us to better

1 understand and get to the responses, and provide that
2 information to you in writing, I think the better
3 everybody will be.

4 Setting everything aside, I think the timeline
5 that you're on, the fact that you're still looking for
6 finalization in June, is there a possibility that, as you
7 start having additional dialogue that there will be more
8 time given, given the fact of where we are today and the
9 fact this is the first draft rule that anybody has seen,
10 do you have an idea how tight your timeline is at this
11 point and having this in place?

12 MR. HERRERA: So let me just speak for Lorraine.
13 I think the schedule that they discussion in the
14 presentation is where we are right now, I mean, that's
15 what the decision makers here at the Energy Commission
16 have kind of put out there for us to follow. If you
17 think, or any of the other POU representatives think,
18 that you need additional time to respond, then, you know,
19 indicate that in your comments to the Energy Commission
20 because we want to hear it and obviously the statute, you
21 know, required the adoption of these Regs --

22 MR. ANDREONI: Last year.

23 MR. HERRERA: -- last year, so there's no way we
24 could comply with that, but again, if you have comments
25 and you think we need additional time, then we encourage

1 you to indicate so in your comments to us.

2 MR. ANDREONI: Okay, and we are today and the
3 first shot hopefully we'll get through the 30th if that's
4 a possible scenario for written comments, but beyond
5 that, I would encourage again if we can do some
6 additional working group meetings and try to hammer out
7 exact language changes that we could suggest, and also
8 allow you to kind of get a better feel for answering
9 those Attachment B questions, that would be very useful
10 to our members. Thank you.

11 MS. GONZALEZ: Great suggestion. Thank you,
12 Tony.

13 MS. ZOCCHETTI: Thank you, Tony. I think
14 everyone should assume that we will definitely continue
15 to be meeting with the POU's and the POU organizations. I
16 think the best way to manage the time today, although we
17 don't have an end time, so this is really your workshop,
18 but I appreciate, Tony, providing an opportunity for
19 others to speak and perhaps some questions will be
20 answered. I think what we'll see is that there will
21 probably be some issues that are of concern to many, and
22 so I think that would be a good way for us to kind of
23 highlight those issues for ourselves, and then invite
24 another meeting like you suggest, or a conference call,
25 or a Webinar or something like we've done in the past, to

1 kind of flesh out those issues and help us get it right.

2 I want to also remind everyone that, once we do
3 move to OAL, there is that public comment period and
4 that's a formal process wherein we must provide comments
5 in writing -- I'm sorry -- replies to your comments. So
6 that will be another opportunity for you to comment, but
7 we'd like to work with you before that happens to get
8 closer. Did you want to add something? Okay, next up,
9 Tim Tutt from SMUD.

10 MR. TUTT: Good morning, Kate and everybody.
11 Welcome back, Angie. As Kate said, I'm Tim Tutt from
12 SMUD and I want to reiterate what Tony said, that we
13 appreciate all the hard work of the staff, and Angie
14 probably had the hardest job, actually. I want to make
15 several points, I guess. And the first is, we appreciate
16 you asking the question about the timing and seams issues
17 in the release, we think that's a very important thing to
18 consider. The Public Utilities did have RPS programs in
19 place before this law and, in many cases, in most cases,
20 we're complying with their own programs, and now we have
21 a situation where some of us, for example, SMUD actually
22 complied well enough that we met 20 percent by 2010, we
23 had surplus energy, extra energy that we would have, in
24 going forward in our own program, we would have counted
25 that surplus energy and carried it forward, and we think

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1 that you can do that in the current law as you consider
2 the timing and the seams, and allow that early action to
3 move into the new RPS; if you don't, you are effectively
4 discouraging early action and I don't think -- I think
5 that disincentive to early action is not something that
6 you want to have in place.

7 What I would suggest is that you reinterpret what
8 it means in the statute, that historical energy,
9 count in full. Right now, you're giving a fairly, I
10 think, limited definition to that term, but to me,
11 "count in full" would mean that, if it hasn't been
12 counted for the RPS in the past, it should be counted for
13 the RPS in the future. So I think that's a way to hook
14 into bringing that surplus energy into the new RPS.

15 Secondly, I would encourage that you revisit your
16 treatment of compliance periods here. The structure
17 where you have only compliance for the last year of the
18 compliance period, I think, leads to lots of issues and
19 complexity, it's must simpler to follow what the CPUC
20 did, at least in this case, and have a compliance period
21 wide compliance structure. That way, it conforms with
22 your excess procurement calculations very clearly and
23 easily, and I think that you can actually get rid of the
24 reasonable progress requirements. The statute doesn't
25 require reasonable progress, it requires sufficient

1 energy in the intervening years to demonstrate reasonable
2 progress. You set of the compliance periods so that you
3 have that energy incorporated in what's meant for
4 compliance, then by definition you're making reasonable
5 progress in those intervening years. It makes everything
6 just simpler and there's fewer kind of things that you
7 have to worry about and that we have to worry about it if
8 you do it that way.

9 Another issue I think with those structures, the
10 structures that you have, is we could be in a situation
11 as POUs where we do have procurement in those intervening
12 years sufficient to demonstrate your quantitative
13 reasonable progress potentially, but end up then
14 calculating excess procurement by your calculation, and
15 not actually being in compliance in the final year. So
16 we could be in a situation effectively where we say we
17 have excess procurement for the compliance period, but
18 we're not in compliance because we don't have 25 percent
19 in that single year. That is confusing to the market and
20 to us. We could also be in a situation where we're well
21 over complying in that final year, but don't meet the
22 definition of excess procurement that you have, the
23 quantitative definition, maybe we haven't taken the
24 qualitative side, we don't meet the quantitative
25 definition and so we don't have potentially excess

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1 procurement because we haven't done the -- you know, the
2 procurement happened in the final year, not in the
3 intervening years. You need to have a structure which
4 reflects that I think the Legislature intended to set up
5 here, which is compliance period wide compliance, not
6 annual compliance, which is what your structure is moving
7 towards.

8 I think another issue is your treatment of
9 unbundled RECs, and the Category 1 vs. Category 3
10 resources. The way the law reads, to us, it does not say
11 that all unbundled RECs are in Category 3, it defines
12 Category 1 with specific requirements, Category 2 with
13 specific requirements, and there's a lot of generation
14 that will meet those requirements, even if the energy
15 from that is unbundled subsequently, or even as it
16 happens. For example, behind the meter distributed
17 generation meets all the requirements of Category 1, and
18 yet the way the structure is set up, that will be treated
19 as a Category 3 resource. I think that's problematic for
20 a variety of reasons, the first of which is that we are
21 also in this state embarking on a path to try to achieve
22 up to 12,000 megawatts of distributed generation. The
23 last thing we need to do as we try to figure out if
24 that's feasible and how to do that is to put barriers in
25 the way and to put distributed generation. So that's

1 something that I think you would tend to want to change.

2 Also, the statute does not treat Category 3
3 resources in terms of counting for carryover the way you
4 have it in the Regulation, the words are different than
5 for less than 10-year contracts, so I understand that
6 it's possible to interpret it the way you have, but the
7 implication of -- well, actually, both of those concepts
8 in the law for carryover is that it provides -- in
9 effect, I think it has backfired in a sense because,
10 effectively, if those resources are subtracted from your
11 calculations before you can count excess procurement for
12 carryover, what entities will have an incentive to do is
13 to reduce -- if they have those resources in their
14 portfolio, they'll have an incentive to reduce their
15 procurement so that they don't lose the excess that they
16 otherwise would have going forward; in other words, if
17 I've got Category 3 resources in less than 10-year
18 contracts in my portfolio, I'm only going to procure
19 enough of other resources so that I don't have any excess
20 procurement because, if I go beyond, then I lose it. I
21 lose the value of it. That's, I think, not what -- I
22 think the intent of the drafters there ended up not --
23 it's not going to work in practice.

24 Another issue, I think, is the annual reporting
25 that you have incorporated in the Regulations. We're

1 talking about a compliance period wide information here
2 and you guys have done -- you get information from POU's
3 on resource plans every two years. I understand the need
4 for perhaps an initial procurement plan, but I think,
5 because of the disparity of sizes in POU's, you don't need
6 to have them coming back to you ever year and saying,
7 "This is how we're doing." Look at it as a compliance
8 period report, if I may.

9 If there are things that need to be handled
10 annually, or even biannually, it can happen through the
11 IEPR process, but you don't need it in regulations to say
12 there are annual requirements for reporting for POU's.
13 One of your questions was what about the administrative
14 cost of this to the POU's, this is one way of reflecting,
15 particularly for the really small POU's, and do they want
16 to be providing you with an annual report every year?
17 Perhaps not.

18 I think I'll stop there. I would suggest that in
19 the Regulations, the way you've drafted the Category
20 implementation limitations, it appears that it doesn't
21 reflect grandfathered resources there, it kind of says
22 all procurement in the compliance period has to meet
23 these limitations, it's not all procurement in the
24 compliance period, it's only the procurement from
25 contracts after June 1st, 2010 that has to meet those

1 limitations.

2 And then, finally, I wanted to just second Tony's
3 comment on sort of the process here. We did appreciate
4 the beginning of the process where we had the focus
5 groups and the concept outline and the discussion, things
6 did seem to go kind of dark there for a while; now we
7 have the Draft Regulations, we're certainly happy to have
8 them and happy to comment on them, but it would be very
9 nice if there was a bit more back and forth as those are
10 developed further before the OAL process. It's the kind
11 of process that I think your staff has taken off and on
12 building standards and appliance standards, you know,
13 working with the stakeholders saying, "What do you think
14 of this language or this concept," before it officially
15 comes out. It's the kind of process that we've often
16 used at the ARB, and I would encourage you to think a
17 little bit more about adopting it here. Thank you.

18 MS. ZOCCHETTI: This is Kate, Zocchetti. Thank
19 you, Tim. I appreciate you pointing out -- I think that
20 is an error where we said "all procurement," I don't
21 think that's our intention. So thank you for pointing
22 that out, as well as your other comments.

23 So I would like to invite your colleague, Bill
24 Westerfield. He is next.

25 MR. WESTERFIELD: Thank you, Kate. Good morning,

1 everyone, and appreciate all your hard work. I would
2 like to echo the same comments that Tim made, you all
3 have done an awful lot to give us a lot constructive to
4 work with, and so we appreciate all your hard work. And,
5 Angie, welcome back to the frying pan.

6 I would like to make a few additional points that
7 Tim made on a variety of issues. Frankly, I would hope
8 we could get to a point today where we could actually
9 have a dialogue on particular issues so that various
10 people can weigh in on the same subject, instead of
11 having a whole bunch of people talk about subjects in
12 sequence; maybe we can get to that later in the morning.
13 But I will make some remarks for the record.

14 On the seams issue that Tim had mentioned about
15 RECs accruing prior to 2011, I'd like to also make the
16 point that this was renewable energy that many POUs and
17 certainly SMUD procured under law that was valid and in
18 effect at the time. And SBX2 1 does not repudiate or
19 invalidate that procurement, in fact, it builds on that
20 procurement and, I think, assumes those levels of
21 procurement. So I think to take an interpretation of the
22 statute that, in effect, discredits that procurement is
23 not putting forward the State policy, which is achieving
24 long term goals of a sustainable level of renewable
25 energy. The law is actually silent on the issue of pre-

1 2011 procurement, and I think it would be bad policy to
2 assume that the law does not count that kind of
3 procurement.

4 We recognize there are legitimate issues around
5 what is excess procurement from the Section 387 Programs,
6 but I think those issues could be worked out and in a way
7 that would further the State policies of sustainable
8 renewable developments for California, so I'd like to
9 make that point.

10 Also on the issue of reasonable progress, I'd
11 like to just bring an additional idea about the
12 enforcement of that standard. I think it would -- I
13 understand that the Energy Commission is setting forth
14 that as an additional compliance requirement, in addition
15 to the target years at the end of the three-year periods;
16 I think setting it up as an additional compliance
17 requirement would be messy to enforce. We've got a
18 fairly qualitative standard that may take a while for
19 staff to determine that a POU is not, in fact, in
20 compliance with that standard, and so by the time that
21 gets evaluated and by the time an NOV could be issued,
22 after a determination that, in fact, that standard has
23 not been met, then it might be a year or two later and
24 you're in the second or third year of the compliance
25 period and then it seems like it's sort of irrelevant to

1 the situation to pursue some enforcement action several
2 years later that could be really irrelevant to the goal
3 of achieving that compliance within that compliance
4 period. And moreover, if you were to go down that route
5 and decide, heck, in year one that the POU hadn't been
6 doing what it needed to do and, then, in year 3 the POU
7 has actually met its targets for that compliance period,
8 it's going to look a bit odd to ding them for something
9 that, in fact, was supposed to be a stepping stone to
10 achieve compliance. So I would just suggest that I'm not
11 so sure that that setting it up as an independent
12 compliance standard would be constructive and easy to
13 enforce.

14 Then, on the issue of TRECs -- or, excuse me,
15 RECs -- that seem to fall into Bucket 3, if in fact they
16 might be traded after they are procured in a bundled
17 fashion; we think at SMUD that that would chill the
18 market for TRECs and tradable RECs, which I don't think
19 is what the State would like in terms of policy. If that
20 bundled procurement all of a sudden is viewed as Bucket
21 3, who is going to be interested in buying those RECs
22 since they are such -- they count in such a limited
23 quantity going forward? I don't think very many entities
24 want to buy that and particularly they won't want to buy
25 that under your rules in Year 1 and Year 2 because that's

1 not when we would need them for compliance purposes. In
2 Year 1 and Year 2, we're not quite sure what our level of
3 generation might be in the third year of the compliance
4 period, so it's not going to make a lot of sense for us
5 to buy a lot of RECs until we know where we're going to
6 stand in that Year 3. I think it also sets up a
7 situation where the market price for those RECs in Year 1
8 and Year 2 are going to be very very low because no one
9 will know whether they need them or not, and then in Year
10 3, maybe half way through the year, a POU might see, "Oh,
11 we look like we're going to be somewhat short," and then
12 all of a sudden demand is high and then the price spikes.
13 And so I don't think you want a rollercoaster market for
14 RECs, and I think the way the rules are set up, that
15 could happen that way. So I would hope that you would
16 reconsider actually following the CPUC's approach in that
17 regard.

18 And then I'd like to speak briefly about the idea
19 of substitute energy under Bucket 1. This actually may
20 be somewhat ambiguous in certain cases because
21 electricity from an eligible facility could be scheduled
22 on a path through another balancing authority, and so
23 here comes the question of what is the substitute energy,
24 if it's scheduled through a balancing authority, or from
25 the balancing authority, itself. So how do we -- how do

1 we keep track of those electrons from a particular
2 facility when scheduling can happen in a number of
3 different ways? So I know there's no definition of
4 substitute electricity in the Regulations now, it seems
5 to be something that we should talk about and make sure
6 that there is an interpretation of that that is broad
7 enough to accommodate how energy is actually scheduled
8 from balancing authorities from outside the state.

9 MS. ZOCCHETTI: Bill, this is Kate, if I could --
10 I'm sorry to interrupt you, but if I could ask a question
11 there? Are you referring to Bucket 2?

12 MR. WESTERFIELD: Well, I think Bucket 1 says
13 that they are scheduled within substitute electricity.

14 MS. ZOCCHETTI: Okay. I wasn't sure which
15 substitute energy you were referring to there.

16 MR. WESTERFIELD: Bucket 1.

17 MS. ZOCCHETTI: Okay, thank you.

18 MR. WESTERFIELD: And then, well, on Bucket 2, I
19 notice there was no definition of "firmed and shaped" in
20 the Regulations and that's something that we all think we
21 know what it is, but I can imagine situations where that
22 can be subject to dispute, so I think maybe my one
23 question I could ask now is, was it the CEC's intention
24 to depart from the scenarios on firmed and shaped from
25 the existing Guidebook, those scenarios that were put

1 onto the section of delivered energy? So there's been
2 precedents in the Guidebook for interpreting that phrase
3 and now I don't know where we stand on that.

4 MR. HERRERA: Bill, this is Gabe Herrera from the
5 Legal Office at the Energy Commission. You know, the
6 Energy Commission, in the Regs, what the Energy
7 Commission tried to do, staff tried to do, was to follow
8 the definitions that the CPUC had established for retail
9 sellers. I mean, I think that had always been the intent
10 from the start, and that holds true with Buckets 1, 2 and
11 3 to the extent some of the criteria that the CPUC
12 established for retail sellers in Bucket 2; to the extent
13 we didn't think it made sense to apply that to POUs, I
14 mean, there's where you saw a little bit of deviation
15 from those rules from retail sellers. In terms of what
16 the Commission did under its Guidebook for delivery of
17 firmed and shaped power, under the rules in place prior
18 to SB1X 2, I think we're looking at that to see to what
19 extent they can apply, if it makes sense to apply those
20 rules in a similar manner. But with respect to your
21 question, in terms of firmed and shaped power being
22 rerouted through, or perhaps being scheduled through
23 another balancing authority, I mean, obviously we can't
24 confirm that the electrons from the out-of-state
25 generator, or from the generator that is outside the

1 balancing authority, you know, make its way to
2 California. But the idea would be that they had secured
3 through scheduling the transmission path to get those
4 electrons into California, assuming they were flown in
5 that direction, right? I think that's -- I think
6 obviously we need some more work on that, but we welcome
7 your comments on why what we suggested isn't going to
8 work.

9 MR. WESTERFIELD: I appreciate that, Gabe. It's
10 just that there is a practice in place where scheduling
11 happens from, say, a facility, or from a system.

12 MR. HERRERA: Right.

13 MR. WESTERFIELD: And I'd like to make sure --
14 hopefully we can get some certainty to further the policy
15 of actually, if you will, scheduling the energy from the
16 facility, make sure that any energy generated from an
17 eligible facility, sort of in the hour in which it
18 generates, will be credited, I think, under Bucket 1 even
19 though it may seem hard to track exactly how the
20 scheduling goes because sometimes it goes from a
21 balancing authority and not from a particular facility.

22 MR. HERRERA: Right. I think, also, we met with
23 some other POU representatives who have indicated that
24 the way the Regulations read right now in terms of a POU
25 or the Governing Board of a POU approving an agreement,

1 and when that actually takes place for scheduling of the
2 substitute power relative to the renewable energy, it's
3 not clear whether our language in the Draft Regulations
4 works because it's my understanding that some POU's might
5 be doing things slightly different, and so I think we
6 still need to work on that language. SMUD may be in that
7 situation, I mean, in terms of timing, would it approve a
8 contract for renewable energy and followed up by another
9 contract for the substitute power, assuming it wanted to
10 do firmed and shaped under Bucket 2? Or is that one big
11 process? I don't know. So we need to get input from you
12 guys on how that happens.

13 MR. WESTERFIELD: Okay, good. And sort of on
14 that same general subject, I mean, I see the requirement
15 in the Regulations that substitute energy come from
16 outside California, and I still don't understand the
17 rationale for that. It doesn't seem to be required in
18 the statute. So I think I could certainly imagine
19 situations where we would want to firm an outside
20 resource with energy from inside California.

21 MS. ZOCCHETTI: Bill, this is Kate. I think,
22 going to your suggestion before about kind of following
23 the previous kind of paradigm, 20 percent by 2010
24 requirements, we did require that the substitute energy
25 come from outside of California. I don't think we'd

1 really contemplated energy coming from inside California,
2 I would have to think about that a little bit more, but
3 that's basically why we are kind of continuing where the
4 rules make sense, to continue how we apply firmed and
5 shaped before, and then working very closely with the
6 CPUC, as Gabe said, to try to align our requirements as
7 closely as possible and that makes sense for the POUs.
8 It seems like the statute suggests that it's a benefit to
9 California to have incremental -- and it didn't define
10 "incremental" and maybe you're even going to get to that,
11 and so, you know, you could think, well, does it mean
12 incremental to California as a whole, or is it
13 incremental to the load serving entity? We decided the
14 latter, as did the CPUC. But I think the idea is that
15 California would receive some benefit from the substitute
16 energy that's coming in, I mean, but we would welcome
17 your comments on that. That's kind of the background.

18 MR. WESTERFIELD: I appreciate that, Kate, but if
19 the definition of "incremental" is incremental to the
20 electric utility, then it doesn't necessarily mean it has
21 to come from outside of California.

22 MS. ZOCCHETTI: No, right, right. I see that.

23 MR. WESTERFIELD: And so -- and just one final
24 point. Again, you said that it was a desire of the CEC
25 to follow the CPUC rules where it makes sense, and of

1 course, we are not huge electric utilities that have the
2 same kind of time horizons in our planning and the same
3 kind of volume, so I know this is an issue that you're
4 all sensitive to and, so, are eager to find out in what
5 ways we are different from the IOUs, and so I hope we can
6 have a robust dialogue on that and I hope you can keep an
7 open mind in rewriting these Regulations to take our
8 particular size and our particular challenges in moving
9 from our own systems to a uniform system into account.
10 So, thanks very much.

11 MS. ZOCCHETTI: Thank you, Bill. I think the
12 buckets, just for everyone -- sorry, I didn't mean to
13 call you back to the podium -- in your comments, I think,
14 recognizing that I think we want to have these
15 definitions of the three buckets as closely aligned with
16 the CPUC's and ours as possible, and so keeping that in
17 mind, if you think they should not be as they're written
18 in the Regulations, please provide a rationale for why it
19 should be different because it needs to be a pretty
20 strong reason to deviate because we don't want to create
21 a fourth and a fifth bucket, for example, we want
22 everything to be really transparent. When folks are
23 trading RECs, we want them to know what they're getting.
24 We want to be clear on what's being retired for what is
25 not so complex as to be unwieldy; so, just keep those

1 kind of guidelines in mind if you would when you're
2 commenting on the buckets. So thank you, Bill. I'd like
3 to invite James Hendry from San Francisco PUC.

4 MR. HENDRY: Good afternoon. My name is James
5 Hendry. I'm with the San Francisco Public Utilities
6 Commission. And I also would just like to thank the
7 staff for trying to put together into the Regulations,
8 and trying to boil down and summarize what is a very
9 complex rule into somewhat simpler Regulations. I guess
10 that sort of leads to a general overview of comments of,
11 you know, I think these are somewhat similar to what have
12 been raised in the RPS Eligibility Handbook, is that
13 sometimes in trying to simplify and consolidate what is
14 in the legislation into Regulations, sometimes there's
15 some nuances and definitions that gets slightly changed
16 and, in most cases, that doesn't matter, but in some
17 cases there are significant impacts to that and we've
18 identified several in that which I think we'll work with
19 you to kind of work through and resolve.

20 A second kind of broader one, and I realize you
21 kind of want to get this out for comment, and it's very
22 helpful the way you got it out for comment for us to look
23 at, but as we move from this being a document, just the
24 lawyers and the Regulatory legislative staff are looking
25 at, and it goes down to the operations and scheduling

1 people, it would be nice for the document to be sort of
2 self-contained, and as written there's a lot of sort of
3 references back to other pieces of legislation, or other
4 Code Sections, and that's helpful for us to figure out
5 where your thinking is and where you're going, but I
6 think as this evolves through the process, I hope your
7 goal is that you then kind of move those sort of
8 references actual into the text of the document so that
9 we can go give it to our operations people and say, "Here
10 are the rules, follow then," without them having to then
11 cross reference back to other Code Sections, or other
12 sections of State law. In terms of sort of specific
13 comments -- I realize those are the things you'll
14 probably work through as you go forward.

15 In terms of specific comments, I guess we have
16 sort of three broad categories, the first, as you know,
17 San Francisco has an alternative compliance obligation
18 under Section 399.30(k). We were curious whether you
19 would treat as separately sort of we're off here in this
20 little bucket and this is how you deal with us, or
21 whether you try and incorporate us under the overall
22 Regulations; you chose the latter approach, we think it
23 generally works, as I said there are some areas where I
24 think some of the nuances of the rules that apply to us
25 are not quite the same as what applies to the other POUs,

1 and there are some differences in the adjustments. And
2 rather than sort of take time with this workshop, since
3 this is very specific to us, I think this is probably
4 better just to arrange a meeting offline and we can take
5 care of this, just because we're really the main parties
6 being affected by it.

7 The second issue, and I think this is a very
8 broad issue, and I think it follows on something you had
9 raised, about the bucket rules and how you define what's
10 in Bucket 1, Bucket 2, and Bucket 3. And a general
11 framework, without sort of going into the elaborate
12 details, is we think the Energy Commission needs to
13 separately develop the sort of evidentiary and legal
14 record to support how it chooses to define what the
15 Buckets are. And you should not just rely on what the
16 California Public Utilities Commission did. And there
17 are three sort of broad reasons why we believe that's
18 true. The first is you're interpreting a different
19 statutory language. The language that the California PUC
20 had to deal with dealt with determining what electricity
21 products qualified for the various Bucket categories.
22 The language that the Energy Commission has to decide for
23 the POU's deals with electricity products, including
24 renewable energy credits that count toward the various
25 bucket requirements. So it's a different statutory

1 language. The issue of renewable energy credits, which
2 seems to be the big issue that's in dispute, is
3 separately identified in the rules that the Energy
4 Commission must adopt for the POUs. And so you can't
5 just rely on what the California Public Utilities
6 Commission did, and we think the separation of renewable
7 energy credits probably leads to some of the conclusion
8 about Bucket 1 bundled energy, once it's unbundled,
9 remains in Bucket 1.

10 The second issue that was also very big in the
11 CPUC proceeding was the issue that two types of -- what
12 is an unbundled renewable energy credit. And I think
13 what the Energy Commission needs to look at is basically
14 there are two types of unbundled renewable energy credit,
15 there are those where you buy energy and then you
16 separate out the RECs and unbundled energy. But the
17 second definition, which comes from the Energy
18 Commission's own rules, it refers to power that is
19 bundled, but can't be delivered to California, and this
20 is a definition that the Energy Commission has developed
21 and used over time. And so I think for those reasons, we
22 feel that the whole issue of what the RECs are and how
23 you define what buckets they fall under, specifically
24 unbundled RECs, there needs to be a sort of separate
25 record developed to deal with these differences in the

1 legislation, the different rules that the Energy
2 Commission itself has adopted, and the different
3 statutory mandates it's operating under, and that's one
4 of the things I think that there needs to be much more
5 further discussion, I think, as a lot of other parties
6 have said.

7 The third issue is one that I know we kind of
8 raised briefly, but it goes to this issue of the Energy
9 Commission's authority to have a cure period, or a true-
10 up period under the Regulations. And you have the
11 authority to issue a Notice of Violation and/or
12 correction, and so we were hoping to explore the
13 possibility that we could develop some sort of Notice of
14 Correction that sometime between the end of the calendar
15 year when you're reporting -- when you figure out what
16 your obligation is, and June when you file your reports,
17 if you realize that you're short a few RECs here and
18 there, you could just kind of make it up during that
19 period and then submit a completed application that shows
20 you're in compliance. And we think that's sort of in
21 your authority of sort of dealing with Notices of
22 Violations and Corrections, and we'd like to pursue that
23 issue with you, and we think that would be a lot easier
24 than currently where, then, you know, you'd have to
25 submit the report and say, "Gee, it's looks like we're

1 short," and then it triggers this whole enforcement
2 process that is laid out here, which seems to take -- if
3 everything goes according to schedule, it takes about six
4 months, nine months or something to get to. So it seems
5 like if you could just kind of short stop that, of
6 saying, "No harm, no foul, we realized we're a little bit
7 short, we're going to true-up this small portion and get
8 it to you in the compliance period and avoid the whole
9 procedural steps that follow after that." We think
10 that's something you could do in your jurisdiction and
11 we'd like to explore that issue with you.

12 And so other than those three issues, we look
13 forward to working with you and we'll probably address
14 these in our comments. Thank you.

15 MR. HERRERA: Can I ask a quick question for you,
16 James, concerning the penalties. I mean, one of the
17 things that the Energy Commission staff has been doing is
18 working with the Air Resources Board; we wanted to make
19 sure that our authority, you know, stops at some point
20 and that the Air Board's authority then picks up. And
21 when we take a look at the statute, I mean, it's pretty
22 clear that we make an assessment as to whether the POU
23 has complied with the requirements in the RPS, and if
24 not, then we issue a complaint. But the law seems pretty
25 clear that, on the penalty phase, that it gets

1 transferred over to the ARB. Is what you're suggesting,
2 it would kind of nullify the ARB's role to this regard?
3 I mean, if the Energy Commission was to somehow conclude,
4 "Well, you guys were in violation, but we're going to let
5 you make it up somehow," would that -- I mean, do you
6 think that's kind of getting into the Air Board's
7 jurisdiction there -- at all?

8 MR. HENDRY: Uh, it's an area we'd like to
9 explore. I mean, the Regulations look at Notice of
10 Violation and Correction and if you look at like what
11 Notice of Correction is under a lot of Air Quality rules,
12 a lot of it is sort of these minor sort of compliance
13 issues, you know, you're a little bit short, the records
14 weren't quite right, and there's a processes set up in a
15 lot of Air Resources Board rules, or Air Quality District
16 rules, which is the Notice of Correction process was
17 basically, "Oh, minor problem, fix it," rather than, you
18 know, we file a complaint, go through the whole formal
19 process. And so we think -- maybe it ends up that the
20 utility would file it with the Air Resources Board in
21 advance and kind of sit there and say, "We're pleading
22 guilty in advance to being short and if you accept, we're
23 making it up," then we skip the whole process. I don't
24 know, I mean, we think it's within the concept of Notice
25 of Violation and Correction, that Notice of Correction

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1 aspect of it, if you look at how it works for Air Quality
2 Districts, there may be opportunities there for the
3 Energy Commission to work with the ARB and the POU's to
4 kind of sit there and say, you know, between the end of
5 the year and June, if you realize you're short, rather
6 than just coming in and saying in June, "Okay, we're
7 filing a violation," "We're filing, we're in violation,"
8 and the whole process starts, just kind of say, "Yeah, we
9 realize we're in violation, but we fixed it," and the Air
10 Resources Board rules tend to have sort of similar
11 criteria about sort of the magnitude of how much you're
12 short, or whether it was -- so if it's a chronic
13 violation, or willful violation, or if it's a major -- if
14 you're really out of compliance, it doesn't count, but if
15 there's some sort of small threshold, the Air Resources
16 Board can say, or the Air Management Districts which
17 enforce a lot of Air Resources Board rules, say, "Well,
18 just kind of fix it and move on." So we think it's an
19 opportunity out there, that there may be issues, and we
20 kind of just want to flag it as something for you to
21 consider as you go forward.

22 MS. ZOCCHETTI: Thank you, James. I'd like to
23 invite Fred Lyn from the City of Rancho Cucamonga.

24 MR. LYN: Hi, good morning. Fred Lyn, I'm the
25 Utilities Division Manager with City of Rancho Cucamonga.

1 I'm also here representing some of the other smaller POU's
2 within Southern California, including Cities of Marino
3 Valley, Victorville, Cerritos, and Corona. I appreciate
4 the opportunity to address the CEC on the Proposed RPS
5 Regulations and how they directly affect the smaller
6 POU's.

7 One of the key distinguishing features of the
8 smaller POU's is that we had to settle into Settlement
9 Agreements with Southern California Edison in the form of
10 exit fees. A portion of those exit fees was attributable
11 to Edison's renewable resources and we feel that the CEC
12 should consider this alternative when dealing with costs
13 that we had to pay for the smaller POU's. Another
14 attribute that the smaller POU's has is we were formed and
15 began providing power really in like 2003-2004. And by
16 then, the first RPS law was already almost two-years-old,
17 and we aren't really starting from the same starting line
18 as the other POU's, as well. So that's something that
19 we'd like consideration of, as well. We want to thank
20 you for the opportunity to provide alternatives for us
21 and how we can make this RPS Regulation work for us
22 because we are a little bit different. As previously
23 mentioned, the starting point for our cities are not
24 equal to the other POU's and the exit fees that we had to
25 pay, a part of it was attributable to Edison's renewable

1 resource, as well.

2 The second alternative that we plan to submit for
3 further consideration is consistent with how the smaller
4 IOUs are being treated in SBX1 2, the smaller POUs here
5 may have relied exclusively on RECs for compliance and
6 that's something that we'd like the CEC's
7 acknowledgement, to see if our Governing Boards may also
8 adopt this alternative approach, specifically in the
9 first compliance period. And, really, that's dealing
10 with the lack of financial resources that we are dealing
11 with, as well as the likelihood that this
12 disproportionate rate impact to our customers is one of
13 the justifications of why we're asking for the similar
14 extension to the smaller POUs, as well. Thank you again
15 and we, the smaller POUs within Southern California, look
16 forward to working with the CEC staff on this.

17 MS. ZOCCHETTI: Thank you, Fred. Next is
18 Jeannette Olko with the City of Marino Valley.

19 MS. OLKO: Good morning. My name is Jeannette
20 Olko. I am the Electric Utility Division Manager
21 representing the City of Marino Valley, as well as the
22 Cities of Rancho Cucamonga, Victorville, Cerritos, and
23 Corona. I appreciate the opportunity to address the
24 California Energy Commission on the proposed RPS
25 legislation.

1 Very small POUs less than 30 megawatts of load,
2 Marino Valley is among the largest of the small POUs at
3 30 megawatts peak load, reformed to protect against the
4 economic instability that resulted from the 2000-2001
5 energy crisis. Marino Valley began serving their
6 customers in 2004, and we provide service to developing
7 portions of the City, trying to serve as an economic
8 development catalyst within the community. It should be
9 noted that our city is in the first year of a three-year
10 deficit elimination plan. There is currently a hiring
11 freeze, our economy is still lagging in the Inland
12 Empire, and our unemployment rate is hovering right
13 around 15 percent at the present time.

14 Marino Valley and the other cities have adopted
15 enforcement plans pursuant to SBX1 2 and the resolutions
16 are posted on the CEC website. Marino Valley and some of
17 the other cities have purchased tradable RECs to meet a
18 portion of the compliance requirements for the first
19 compliance period.

20 We support the provisions in the proposed
21 regulations, which allow the POUs to meet REC
22 requirements for all three years of each compliance
23 period in the final year. But since Marino Valley is
24 starting from zero and there are only 18 months of the
25 compliance period after the CEC Regulations are scheduled

1 to become final, more flexibility is needed to avoid
2 disproportionate rate impacts on our customers,
3 particularly in the first compliance period. We continue
4 to request the CEC to expressly acknowledge that the
5 City's Governing Boards, our City Councils, may
6 consistent with various provisions of SBX1 2, relating to
7 small utilities, determine that it is reasonable to rely
8 100 percent on RECs to meet our RPS requirements in the
9 early compliance periods.

10 Marino Valley and the other very small POUs have
11 had very high initial cost formation, including building
12 substations, meeting reliability requirements, and
13 meeting utility regulatory requirements. We have hired a
14 consultant to help us conduct a cost of service study,
15 initial indications are that, even without including the
16 cost of meeting the SBX1 2 renewable resource
17 commitments, Marino Valley may need to raise rates. That
18 result could require Marino Valley to establish cost
19 limitations as described under SBX1 2, to prevent our
20 customers from having to pay even higher costs, unless we
21 can work with the CEC to find low cost alternatives for
22 meeting our requirements.

23 The process of going through a rate adjustment,
24 which may also be required to establish the cost
25 limitations under SBX1 2, includes hiring consultants to

1 help conduct cost of service studies, designing rates,
2 briefing our City Councils and customers, and conducting
3 public hearings. The whole process is time consuming and
4 costly, and we question how much the CEC wants to involve
5 itself in reviewing such processes for multiple Publicly
6 Owned Utilities. We agree in general with the comments
7 of the CMUA that the Draft Regulations are overly
8 proscriptive and may interfere unnecessarily with the
9 authority of the POU Government Boards preserved under
10 SBX1 2.

11 The Reporting and Verification requirements are
12 onerous for the cities. Marino Valley, like other small
13 POU's, have very few employees available to respond to any
14 new reporting requirements. For example, we have a total
15 staff of five.

16 We will include our proposals in simplifying the
17 requirements in our written comments. We appreciate the
18 opportunity to participate in the workshop today and we
19 look forward very much to working with you to complete
20 Regulations which all of the participants in this process
21 can support. Thank you.

22 MS. ZOCCHETTI: Thank you, Jeannette. Next is
23 Bawa from Pasadena Water and Power.

24 MR. BAWA: Good morning. My name is Gurduran
25 Bawa, I'm with the City of Pasadena Water and Power. And

1 it has been said about the hard work that staff has put
2 in and we do recognize the complexity of this subject
3 matter. My questions generally relate to more of a
4 clarification with regard to the language that has been
5 proposed. It implies, reading it, that the pre-June 1
6 2010 energy contracts would be -- would not fall into the
7 procurement content categories. So, in other words, if
8 for the compliance period 1, let's say they accounted for
9 10 percent, then the procurement content category
10 criteria in terms of, you know, you can have only 50
11 percent, no less than 50 percent, for Category 1, and so
12 on, so would apply to the rest of the 10 percent. Is
13 that correct understanding?

14 MS. ZOCCHETTI: Anybody want to --

15 MR. HERRERA: Yeah, this is Gabe Herrera. I
16 think that's correct. So if you have procurement that
17 was approved by the POU before June 1, 2010, and it meets
18 the Energy Commission's eligibility requirements at that
19 time, or would have perhaps, then that counts in full and
20 then, so, what the POU would then carry forward in terms
21 of its obligation would be the difference between that
22 and the procurement requirements. So, if you had 10
23 percent, the count is in full, and you need to be at 20
24 percent, then the 10 percent difference would be subject
25 to the bucket requirements. That's how we've initially

1 drafted the Regs.

2 MR. BAWA: That's how I perceived, I just wanted
3 to clarify. Thank you. Could you clarify, what does the
4 metered boundary of California Balancing Authority Area
5 mean, really?

6 MR. HERRERA: So, that is language we pulled
7 right out of the statute; if we need to provide, you
8 know, a better definition to make sure that's clear,
9 that's something that we intend to work with the POUs to
10 clear that up in the definition.

11 MR. BAWA: Yeah, that would be helpful. To me,
12 it seems like any time energy is put into any balancing
13 area authority, it is metered, so I'm wondering if there
14 are situations where it is unmetered.

15 I have a few questions related to the Section
16 3203 Portfolio Content Category. Under Section 1A-1B,
17 where it talks about the RPS Certified Resource being
18 interconnecting to the electrical distribution system,
19 the language is somewhat, I think, at least from my
20 perspective, not very clear; but the question that comes
21 to my mind is that, if there is a CEC certified facility
22 within California and it's connecting to the distribution
23 system of a California Balancing Authority Area, can that
24 energy be moved -- and this is all real time -- to
25 another California Balancing Authority to serve the load?

1 In other words, what I'm not seeing very clearly here is,
2 is it saying the energy must stay within the same
3 California Balancing Authority Area where it was
4 generated? Or could it move out?

5 MS. ZOCCHETTI: I don't think it's precluded from
6 moving.

7 MR. BAWA: Okay.

8 MS. ZOCCHETTI: As long as it serves a California
9 Balancing Authority that primarily serves California, so
10 that currently is five balancing authorities that meet
11 that definition of at least 50 percent serves California.

12 MR. BAWA: Right, okay.

13 MS. ZOCCHETTI: Gabe, I'm not wearing my legal
14 hat right now, so I should defer to you.

15 MR. HERRERA: No, I think that's right. I mean,
16 if this is an area that needs further clarification, then
17 we encourage your suggestions to do that.

18 MR. BAWA: Okay. So that's good. Then, going to
19 the Subsection (C), and I think there was a little bit of
20 discussion about this particular section by a previous
21 speaker, but the question that comes to my mind is that,
22 if there is, let's say, a windmill which is
23 interconnected to a non-California Balancing Authority,
24 and it dynamically schedules energy into that authority,
25 then that authority makes it firm, makes that schedule

1 firm, and in turn delivers it within the same hour to a
2 California Balancing Authority, would that type of a
3 energy contract structure fall within the Portfolio
4 Content Category 1?

5 MS. ZOCCHETTI: I believe so, if it meets all the
6 other requirements and it's not an unbundled REC.

7 MR. BAWA: Yeah. The energy is purchased by,
8 let's say, a POU here, along with the RECs, and then --
9 but the source is outside the California Balancing
10 Authority.

11 MS. ZOCCHETTI: As long as it is dynamically
12 transferred to a California balancing authority.

13 MR. BAWA: Okay.

14 MS. ZOCCHETTI: I believe that's our
15 interpretation. Anyone else?

16 MR. HERRERA: So that would be a -- (A)-(D) is
17 the section in the Regulations that deals with power
18 generated outside a California Balancing Authority that
19 is dynamically transferred into the California Balancing
20 Authority.

21 MR. BAWA: I could actually read (C) as being
22 that, too.

23 MR. HERRERA: But (C) also contemplates a
24 situation where you have the power being scheduled and
25 delivered within the same -- excuse me, being generated

1 and then being scheduled for delivery within the same
2 hour of generation, and then requiring, you know,
3 demonstration that that schedule was in place, so that
4 that power could in fact be transmitted into the
5 California Balancing Authority.

6 MR. BAWA: That's right. And that's how we
7 anticipate the deal to be, so it's happening within the
8 same hour, but it's just moving from a non-California
9 Balancing Authority where it actually got dynamically
10 scheduled, and that authority firmed it up, as is the
11 common practice in BPA Balancing Authority, and then, for
12 instance, Pasadena being a California ISO participant,
13 could take the delivery from BPA and bring it into ISO.
14 I mean, to me, it's a -- operationally, it might seem a
15 disconnect, but from a regulatory point of view, it may
16 seem a disconnect, but operationally it's all happening
17 within one hour.

18 MR. HERRERA: So in that, I mean, this probably
19 gets into a lot of details, but I mean, in that
20 transaction, then would Pasadena have an agreement for
21 that power, that added Balancing Authority power for that
22 given hour? And then also have some separate agreement
23 that ensured that that power got scheduled into
24 California? How would that be shown? Would that be
25 shown on NERT tags, for example, indicating that, from

1 the point of generation, transmission paths to get that
2 power into the California Balancing Authority?

3 MR. BAWA: Right. The contract would be between,
4 in this case, let's say Pasadena and whoever is going to
5 be delivering that energy. So, for example, that could
6 be a plant there, or it could be a marketer. And the
7 point of delivery under that contract would be where BPA
8 interconnects with ISO. So that -- the Seller would
9 schedule energy into the BPA system, within the same
10 hour, and deliver that energy to Pasadena where BPA and
11 ISO interconnection is. And then, at that time, Pasadena
12 takes it into the ISO. In some detail, we can talk about
13 it offline, but to us that should be considered Category
14 1.

15 MS. ZOCCHETTI: So we're working behind the
16 scenes to better understand how the different buckets can
17 be verified and we've been working a lot, especially Gina
18 is kind of heading that effort up, we're working closely
19 with the CPUC on how both agencies might verify the
20 classification of procurement into the various buckets,
21 so we're not quite there yet to probably correctly answer
22 your questions on the record, and we don't want to give
23 our misinformation. But we're getting a lot smarter
24 about how these things work and we anticipate that the
25 details about what you're need to demonstrate to us, and

1 what we'll need to verify the different buckets, will be
2 put forth in the RPS eligibility Guidebook, most likely,
3 rather than in the Regulations. So we anticipate coming
4 out with another Guidebook revision after these
5 regulations are adopted, whenever that is, so that we can
6 kind of catch all these issues that we're still working
7 on finalizing and refining. So we don't have that answer
8 for you today, but, again, we encourage everyone to tell
9 us how they think these product content categories -- or,
10 I'm sorry -- portfolio content categories -- could be
11 verified and what documentation exists in your world that
12 we can use to kind of corroborate your claim, you're
13 going to claim if they're in a certain bucket, that we
14 need to be able to verify that. So we welcome your
15 thoughts on that perhaps in your written comments.

16 MR. BAWA: Sure, we'll do that.

17 MS. ZOCCHETTI: Thank you.

18 MR. BAWA: And under the same clause, it talks
19 about the POU's Governing Board must have approved an
20 agreement, and it's quite common in POU's that the
21 Governing Board would delegate some authority in terms of
22 either the duration of a contract, or the quantity, or
23 dollar limit, to staff. And especially for short term
24 contracts, it could be one year, six months, two years,
25 something like that, and is the intent here that, if the

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1 Governing Board has delegated that authority to the
2 staff, that staff enters into a written agreement that's
3 acceptable? Or are you stuck on the literal meaning of
4 having it approved by the Board?

5 MS. ZOCCHETTI: I think we've heard similar
6 concerns since the Draft Regulations have come out, I
7 think that's a learning curve for us as to -- I don't
8 think I can answer that question, but we've heard that
9 concern and we hope to address it, you know, so that it's
10 workable.

11 MR. BAWA: Okay, great. The only reason I'm
12 saying it is administratively -- it creates a lot of time
13 for us, a lot of extra work, and many times the seller is
14 not going to wait two months for our Board to approve --

15 MS. ZOCCHETTI: Sure. So --

16 MR. BAWA: -- whether it's going to be approved or
17 not.

18 MS. ZOCCHETTI: So I think we suggest that, give
19 us a phrase that you think should replace the POU Board
20 there, and we can kind of see if everyone is on the same
21 page as to how they do that process at the various POUs.

22 MR. BAWA: Okay. We appreciate that. And then
23 moving into the portfolio content category 2, subsection
24 2(A) where it talks about that the -- in that firmed and
25 shaped arrangement, the source of energy and the

1 substitute energy both should be coming from out of the
2 California Balancing Authority, you know, and there was
3 some discussion about that, is there really a good reason
4 why the substitute energy must come from outside?

5 MS. ZOCCHETTI: As you pointed out, it has been
6 raised earlier. I think we'll have to think about that
7 and --

8 MR. BAWA: Okay.

9 MS. ZOCCHETTI: -- and talk with the CPUC staff.

10 MR. BAWA: Okay. My last question relates to
11 that it seems like, irrespective of the portfolio content
12 Category 1 or 2, but I'm more focused on Category 1, the
13 lexity products coming from a RPS sort of CEC certified
14 facility, which has the first interconnection with the
15 California Balancing Authority, qualifies into a
16 portfolio content Category 1 or 2. And the question is,
17 lexity products are strictly, the way I read it, is
18 lexity and the RECs, there's no -- it doesn't have a fuel
19 component consideration in this. And if a facility is
20 certified to burn biomethane, then does -- and I'm
21 bringing up that issue because biomethane has been an
22 issue of discussion quite extensively, and PUC in its own
23 docket did specifically talk about biomethane -- is the
24 intent here that the content categories would be
25 determined strictly based on the lexity products,

1 irrespective of the fuel, as long as the facility is
2 certified by CEC?

3 MS. ZOCCHETTI: I believe that's how it is in the
4 statute and that's how we're implementing it.

5 MR. HERRERA: That's correct. The way the draft
6 regulations are set up right now, we're looking only at
7 electricity. The issue you raised is an RPS eligibility
8 issue that is one that would need to be addressed in the
9 Commission's RPS Eligibility Guidebook. So if the
10 facility has been certified by the Commission based upon
11 its use of a renewable resource, then it would be
12 certifiable by the Energy Commission. And then, if the
13 power that was generated by that facility falls within,
14 you know, depending upon which bucket it falls in, is how
15 it would be classified.

16 MR. BAWA: Okay, that's very good. So I'm
17 assuming the facilities that are already certified, they
18 would continue to be certified unless the law changes, or
19 something like that happens?

20 MR. HERRERA: So RPS certified facilities, yeah.
21 Under our current Guidebook, if a facility is already
22 certified, then typically it retains that certification
23 unless the law changes and no longer permits that.

24 MR. BAWA: All right, thank you very much.

25 MS. ZOCCHETTI: Thank you, Bawa. I would like to

1 give everybody a break. It's a little past -- well, I
2 was going to convene back at 11:00, but I don't think
3 that's quite enough time, so let's reconvene at 11:10 and
4 have a little stretch break. Thank you.

5 [Break at 10:51 a.m.]

6 [Reconvene at 11:17 a.m.]

7 MS. ZOCCHETTI: So welcome back, everyone. We
8 have just a few more blue cards here, so just as a
9 reminder if you do want to speak, please fill out a blue
10 card, they're on the front table by the front door.
11 Next, I'd like to invite Danielle Mills from the Center
12 for Energy Resource Technologies -- I got that wrong --
13 CEERT.

14 MS. MILLS: Hi, I'm Danielle Mills with the
15 Center for Energy Efficiency and Renewable Technologies.
16 I want to thank you all for having this workshop today,
17 I've already had a lot of my questions sort of clarified
18 and fleshed out. I have a few more clarifying questions
19 and then just a couple quick comments that we'll
20 reiterate in written comments. Some of these are also on
21 behalf of the Union of Concerned Scientists, as well.

22 So I just had a conversation during the break
23 about the Draft Regulations on tracking and verification,
24 and it seems like there's a little bit of uncertainty
25 still in how the tracking and verification will take

1 place, especially with regard to Product Content Category
2 1. So I just want to kind of encourage consistency with
3 the CPUC's decision on this, and I think it mentions
4 eTags as a tracking and verification mechanism, and so
5 some further clarification in the Regulation would be
6 helpful.

7 Second, there are just a couple of small
8 differences in the language that SMUD raised that could
9 have significant implications on the compliance with
10 Product Content Category 2. We'd like just further
11 clarification on what those differences mean, whether
12 they are significant, and what the background is on
13 those, and wherever possible just encourage consistency
14 between the definitions of the Content Categories with
15 the PUC, just from a stakeholder perspective that makes
16 things a lot easier for us to kind of know what falls
17 into what bucket and what's right and what's not.

18 Thirdly, the procurement targets, this is an
19 issue that is shared with Union of Concerned Scientists,
20 but the procurement targets are based on retail sales in
21 the last year of the compliance period. I was under the
22 impression from a briefing that we had with CEC staff
23 earlier this month -- or last month -- that there was
24 going to be sort of a more linear trend, or a more annual
25 compliance requirement, and that's something that we

1 would like to see also to be consistent with the PUC
2 Regulations.

3 And just finally, a couple things about
4 compliance in general. It would be helpful to have more
5 information from CARB in terms of how they're going to
6 assess the penalties and what the relationship will be
7 between the CEC and CARB throughout that process, and
8 also what CARB's role will be in looking at the reporting
9 requirements and enforcement plans.

10 And we also have just a final concern with the no
11 complaints policy. It seems a little odd that members of
12 the public aren't able to raise concerns when they see
13 non-compliance from their utilities. Thank you.

14 MS. ZOCCHETTI: Thank you, Danielle. George
15 Morrow, Azusa Light and Power. I'm sorry, I just
16 realized my mic was muted, so for those listening in,
17 George Morrow, Azusa Light and Power.

18 MR. MORROW: Good morning. I'm George. I didn't
19 intend to speak today, but just like spiritually I was
20 drawn to the podium, so -- and if I'd know it was going
21 this long, I wouldn't have done it to you, but we are
22 another one of those smaller entities that believe this
23 is an extremely important part of our business. We've
24 been around a little longer than some of the other
25 smaller POUs you've heard from today, we've been around

1 about 100 years. We're starting at a good place, we're
2 at 20 percent renewables today, but a couple of comments
3 that I'm left after hearing from everybody else, and it's
4 kind of nice to be one of the later speakers, is this
5 concept of deference to the local regulatory authorities.
6 When I meet with my Utility Boards, I'm the one that's
7 got to do the agenda and get up there in front of my City
8 Council and my Utility Board, you know, their neck is in
9 the wringer, so to speak, and I don't know if that's a --
10 for what they do and how the utility performs, and what
11 our rates are like. So, you know, if we're doing things
12 that are going to require a rate impact, you know, they
13 could lose their job, you know, they are elected by folks
14 that like to see the utility perform well, rates get
15 under control, and it's a little different than IOUs.
16 You know, the IOUs, the CPUC, has both the regulations,
17 the details, and they sit there and take the heat for the
18 rate side of it, but it's a little different here. You
19 know, we've got the California Energy Commission studying
20 the regulations and, from what I can tell, you guys are
21 doing a great job, you're very knowledgeable, you appear
22 to be open minded and flexible, and I appreciate that
23 very much. But, you know, in the end our adherence to
24 the Regs are going to provide some heat, probably, to our
25 local regulators and City Council. So we like to defer

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1 and delegate as much as possible to the local regulatory
2 authorities, we think that's the intent of the
3 Regulations, and so where there's a vacuum or it's really
4 not spoken to, you know, if you were to ask us what
5 should you do, we're like, "Okay, well, let us handle
6 it." If at somewhere down the road we don't handle it
7 well, maybe that's a different story, maybe we had
8 another discussion and say, "Well, hey, we gave them the
9 chance, you know, they wanted to be in the driver's seat,
10 but they crashed the car, so maybe we've got to do
11 something different." But I don't think that will
12 happen. Again, this is as important to us as it is to
13 those who develop the statutes and those of you that are
14 working on the Regulations.

15 I want to echo what I heard from Tim at SMUD, the
16 administrative burden of compliance is tough for the
17 small utilities and so we hope you consider those
18 thoughts and do what you can to kind of minimize that; if
19 it's really not required, you know, give us a little more
20 time and perhaps not be so proscriptive on some of this
21 stuff. So my compliments to everybody again and thanks
22 for letting me talk.

23 MS. ZOCCHETTI: Thank you, George. Randy Howard
24 from LADWP.

25 MR. HOWARD: Good morning and thank you for the

1 opportunity. I thank also the staff, as others have
2 done, for all the hard work, we really appreciate now
3 having something that we can actively be working on, and
4 so I'd like to go over a few points, but I won't repeat
5 what others have stated, as well, I want to make sure
6 that I just stay to the high level, we will be putting
7 forth written comments.

8 One of the things that I feel today that will
9 kind of disadvantaged is we don't have what will be the
10 RPS Guidelines, we don't have those at the same time. So
11 we don't know how those will complement the rulemaking.
12 And that's a real challenge for us as we're here today
13 trying to comment on this rulemaking, when we don't know
14 what's going to count. My staff, they have a couple
15 pages of tables of projects that have been provided with
16 applications to the CEC for certification and they're
17 still not certified. So we're in the middle of a
18 compliance period today, still not knowing if our project
19 is going to be certified. So I'm not sure if within the
20 proposed rules how you're handling projects that have yet
21 to be certified, yet are producing, and what we think
22 meeting our RPS obligations in a current compliance
23 period. And I didn't really see that addressed, it's not
24 addressed, okay. So that is a big deal to us, we do need
25 to have that addressed.

1 The other thing that we've had a side discussion
2 on with a number of parties, but it's not in your
3 proposed rules at all, the definition of pre-
4 certification. There's an interpretation from CEC staff
5 as to what pre-certification means; those of us that are
6 new to this regulatory oversight had a very different
7 view of what pre-certification meant. I think we've
8 tried to do a good job at educating staff as to what it
9 takes for us to implement RPS programs, what it takes for
10 us to integrate these programs, but I don't think we've
11 done enough based on what I see in the proposed rules.
12 We need to probably do a little bit more. I would
13 second, or third, or whatever, Tony's comments as to the
14 need for additional time. We probably do need to spend a
15 little bit of additional time, some separate meetings, to
16 really talk about some of the specifics that are
17 different with POUs vs. IOUs. It would be ideal if we
18 could have standardized process and rules for both the
19 IOUs and the POUs, but we really can't -- we are very
20 different entities, we operate differently, we enter into
21 agreements differently, as you've heard from a number of
22 parties today, they are small -- they are very small.
23 One 25 megawatt solar farm for Azusa would be a massive
24 project that they could not integrate, they could not
25 handle, they could not manage, but for others it is. So

1 one broad comment, as well, I'm very concerned the way
2 the rules are proposed because it doesn't consider some
3 of those differences in, say, a SCPPA structure. So
4 SCPPA is a joint power authority that was formed for the
5 purposes of allowing a number of utilities, municipal
6 utilities, to come together and efficiently build
7 transmission, and efficiently we've been able to use that
8 model to build a number of renewable projects and enter
9 into those renewable projects, as well as natural gas and
10 other things.

11 SCPPA enters into the contracts with the counter
12 parties, the developers and the operators of these
13 renewable projects if it's a SCPPA project. LADWP does
14 not. SCPPA is entering into that agreement. So the way
15 the proposed rules seem to be written, it's as if L.A. is
16 that direct counter party and, in many cases, if it's a
17 SCPPA project, it's not. So I think we need to ensure
18 that it's a clear understanding the way the structures of
19 many of these projects are because this is how we're
20 going to be successful in California and get a number of
21 the smaller municipal utilities into more of these cost-
22 effective projects, is through a structure like a SCPPA
23 structure, yet the proposed rules seem to follow a little
24 bit more of the PUC, which is very different for Southern
25 California Edison, or a PG&E, or San Diego. So we'll

1 have some very specific comments to that. But when we
2 talk in here, when you look at some of the buckets and
3 you call it a resale, you know, our concern when we look
4 at that is, is that SCPPA now reselling it to L.A.? Or
5 is that SCPPA reselling it to Azusa, Glendale, Burbank,
6 Pasadena, or IID? That should not be the intent. If
7 it's a Bucket 1, or if it's a grandfathered project that
8 was entered into on behalf of SCPPA for the SCPPA
9 members, then it should be a grandfathered project.

10 The other provision in all of the agreements that
11 we've entered into on behalf of SCPPA for renewables,
12 there's a provision that says these are the principal
13 entities taking the power as the contract is entered
14 into, but it allows for any of the other SCPPA members to
15 potentially take some of that power at some point if the
16 need is there. But they might not be taking it today.
17 So does that mean they don't get some of the rights when
18 you read the proposed rules as drafted? So we probably
19 need to help you a little bit more on how these
20 structures are currently in place to make sure that the
21 rules still apply appropriately. And that's a very
22 different thing than what the PUC has been addressing
23 with the IOUs, but we just didn't see it there.

24 We had some other concerns, so there are
25 provisions that would say if you don't meet compliance,

1 you have some reasons that you might not meet compliance,
2 we know of a very large issue, Bonneville Power
3 Administration has notified us, they need to do an
4 upgrade in the northern end on a Pacific D.C. intertie, a
5 major major transmission line into Southern California,
6 it transports about 3,100 megawatts, both Edison and L.A.
7 and some other Publicly Owned Utilities run that line.
8 They have indicated to us that, for an entire 12-month
9 period, there's going to be very limited capacity on that
10 line, it's going to impact all of our projects that are
11 in the Pacific Northwest. So we don't believe if we
12 still have wind farms up there generating, and we are
13 unable to deliver that, but those RECs should not then
14 just default to a Bucket 3. Our opinion is they're
15 grandfathered, they should remain grandfathered, and the
16 way the grandfathering language seems to read, there's a
17 conflict on an issue like that. So, again, it's an
18 operational issue that we probably haven't done as good a
19 job educating those impacts and what can really happen
20 out there. There might be some alternative paths to
21 deliver energy, but it's really going to be more of a
22 swap-type basis. We don't think that should take away
23 from the Bucket 1 provisions on something such as that.
24 Some of -- again, I'm going to try not to repeat what
25 others have stated -- we also had some concerns on the

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1 POU's have chosen to own and operate a number of projects,
2 or we have options to own those projects, so we want to
3 make sure that, when we go to exercise the option to own
4 a grandfathered project, that that doesn't kick us out of
5 the Bucket 1 because, now, is that a resale? Is that a
6 different transaction that would be considered outside of
7 the Bucket 1?

8 Also, a number of the members that are in
9 ownership projects that could be grandfathered, if we
10 have a wind farm and that wind farm has a turbine, and I
11 hate to use the name of the turbine, but -- Clipper
12 Turbine -- Clipper is a turbine manufacturer, if Clipper
13 goes out of business and that turbine needs to be
14 replaced because it has a mechanical failure, and I can
15 no longer just replace it as a one-for-one because
16 Clipper is no longer in business, and I put a different
17 turbine on that site, but that turbine that I have put on
18 site is a different turbine and of a different size, the
19 way the proposed rules seem to read is I couldn't count
20 any of the incremental power that might come out of this
21 larger turbine, and I don't think that should be the
22 intent. I think we should have that ability and, in all
23 of our contracts, we have the obligation because we're
24 part of an interconnect, we have the obligation to take
25 the entire output of those facilities. So the way that's

1 proposed, where there couldn't be a modification, we
2 probably need to get to a clarification or a definition
3 of what a modification would be.

4 We still don't see the provisions that we believe
5 are in statute related to the large hydro, sufficiently
6 covered to ensure that those of us that have that larger
7 hydro that should be covered, that those are included
8 going forward.

9 Let me take one last look to see if I -- so I
10 think in closing, that we will have a number of very
11 specific comments. We need to go back to some of how we
12 operate and why it's different for a POU. In the case,
13 even for an L.A. that's very very large, we currently
14 have about a thousand megawatts of wind power that we
15 have procured, that delivers to our system. Our average
16 peak right now on a day is around 3,200 to 3,400
17 megawatts right now. Now, in the summer, it's going to
18 be about 6,100 maybe, the peak. Fortunately, I wish I
19 could tell the wind farms to operate and the wind to blow
20 on those days, but that's typically not the case. So
21 when we get to the off-peak hours, so if my peak today is
22 3,200 megawatts, my off-peak is probably closer to 2,000,
23 and I have nuclear, and I have existing coal, and I have
24 other resources that I have to operate for the
25 reliability of the Grid, and if I get all of a sudden one

1 thousand additional megawatts of wind in the off-peak
2 hours tonight, I can't operate the system where my
3 operators are unable to do that. So the provisions of
4 firming and shaping and the use of those tools for POU's
5 become much more important, but the way the proposed
6 rules are written, it seems to be in a way that somehow
7 you're trying to catch us, or keep us from cheating the
8 system, and that shouldn't be the intent because the
9 purpose of what we're trying to do is be able to
10 efficiently operate the system. We are generating a
11 renewable energy, the problem is the way our systems are
12 configured and the way the size for many of the POU's, we
13 just don't have some of the same capabilities for the
14 integration. And firming and shaping is a very cost-
15 effective way for us to be able to operate these systems.
16 So as the Bucket provisions are drafted in the proposal,
17 we have some concerns there, as well, that we'll raise
18 some comments. With that, I'll close or take any
19 questions you might have. Thank you.

20 MS. ZOCCHETTI: Thank you, Randy. I do have a
21 couple just responses to a couple of your points, I don't
22 know if you need to stay at the podium, but I just wanted
23 to let you know that, on the 40 megawatt existing small
24 hydro, that will be addressed in the RPS Eligibility
25 Guidebook that we hope to release in March -- we are in

1 March -- we hope to release this month. So I just wanted
2 to let you know that because that's an eligibility issue.

3 On the pre-certification, we do recognize that
4 the POU's, many of you are not as familiar with our
5 terminology, we sort of have our own language, but we do
6 describe it to some length in the RPS Eligibility
7 Guidebook, so for those of you that haven't familiarized
8 yourself with that document, please do so, it is on our
9 website, and also on our website is a revised version
10 that we had a workshop on last fall, so if you look at
11 the most current one, it's in underline strikeout, kind
12 of messy to read, but anyway, that's available for you to
13 help understand pre-certification. And we agree it takes
14 too long to certify facilities, we're working really hard
15 on these Regulations, and we did just get a whole bunch
16 of new staff who are here today, so we hope to be able to
17 expedite that process. So you know, we regret that it
18 does take too long. I would add, though, that once a
19 facility is certified, in case you don't know this, I
20 hope this alleviates a little bit of the concern, we date
21 stamp the application when we receive it and, presuming
22 that it eventually is certified after our review, we
23 allow those RECs that have been generated since that date
24 of receipt to count towards your obligation, so we
25 certainly don't want to put you between a rock and a hard

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1 spot there. But we understand that you want more
2 certainty about whether or not they're certified, so we
3 are working on that.

4 MR. HOWARD: If I might ask, and if you're unable
5 to answer, that's fine too, but will the Guidelines also
6 address some of the concerns that have been raised
7 previously as to, say, we're building a solar farm and
8 we're incrementally building it out, that the way the
9 proposed guidelines were written, we couldn't certify it
10 until it was completed. But yet we would be delivering
11 in incremental phases. Are we proposing to address that
12 in the Guidelines?

13 MS. ZOCCHETTI: Well, I think -- I'm glad you
14 raised that, we can make sure that we do after hearing
15 this question, it kind of revolves around test energy and
16 how that gets into WREGIS, and whether it looks at the
17 whole facility having to be completed even though it's in
18 phases, it also affects PV, which builds in phases,
19 typically. So we're hoping to address that. We will
20 come out with a final draft before it goes up for
21 adoption. If you feel that the language that we've
22 proposed doesn't address it, or doesn't do a good job,
23 please let us know.

24 MR. HOWARD: Yeah, again, I think that's some of
25 the disadvantage, a challenge we have, on some of our

1 comments is because we don't quite know yet what's going
2 to be in the Guidelines and how it will be stated, then
3 it's going to impact how it's going to be implemented in
4 the rulemaking for us.

5 MS. ZOCCHETTI: Sure.

6 MR. HOWARD: Thank you.

7 MS. ZOCCHETTI: You're welcome. Thank you.

8 Susie Berlin from NCPA is next.

9 MS. BERLIN: Good afternoon. Thank you for the
10 opportunity to comment. My name is Susie Berlin and I'm
11 representing the Northern California Power Agency. We
12 want to express our appreciation for this initial draft
13 and all the work that went into it, we appreciate all the
14 work group meetings that you had with the stakeholders
15 and to try to get our input and comments. But with that
16 said, we still have a few concerns and we believe that
17 there are areas that we need additional information and
18 we look forward to this continued dialogue that you've
19 expressed an interest in doing, to try to get these
20 revisions and these clarifications set forth.

21 One of those areas is the actual interpretation
22 of the legislation, and I know even Commissioner Peterman
23 said some will think it goes too far, some will think it
24 doesn't go far enough. But one issue that we think needs
25 to be addressed is this notion of being consistent with

1 the legislation as the legislation is drafted, and not
2 consistent with the CPUC's interpretation of the
3 legislation. And that goes to one of the issues that
4 Randy was just talking about; to the greatest extent
5 possible, it would be nice to have the same rules, but
6 the Legislature acknowledged that that's not entirely
7 possible and that's why there are separate provisions
8 applicable to the POU's, and I think that we need to keep
9 that in mind when we're developing the specific
10 provisions.

11 There are also provisions where the statute
12 specifically allows the POU's to develop rules and
13 programs, for example on the flexible compliance
14 mechanisms, that are consistent with the legislation and
15 that's not necessarily what is in the proposed regulation
16 and, in fact, we believe that there are parts of the
17 proposed regulation that assert that POU authority and
18 that there are parts of those provisions that also go
19 beyond what is even written in the statute in some
20 respects. That latter might be an issue of capturing the
21 nuances, like Jim Hendry mentioned earlier, so that's one
22 of the things that we look forward to working with you
23 and talking about.

24 We have some concerns with regard to the
25 reporting. We understand that the legislation calls for

1 the annual reporting of certain information and you need
2 to have compliance reports, but there's also -- that
3 which reports you're asking for in July -- but there's
4 also these January reports where you're asking us to
5 submit our procurement plans and any changes to our
6 enforcement plans, and we have concerns regarding the
7 timelines that this may involve and the implications that
8 this may have for ongoing POU activities if you're
9 looking to those programs -- I mean if you're looking to
10 our plans to make any kind of a determination with regard
11 to our ongoing compliance. So that could be problematic
12 and we need to talk about those provisions, as well. And
13 that goes to the concerns we have with regard to this
14 demonstration, that it appears that the CEC is asking the
15 POUs to make regarding reasonable progress, and if you
16 don't have the 1.5 or the 2.0 percent annual trajectory,
17 or if for some reason you didn't meet your compliance
18 obligation, but that was excused because of one of the
19 other flexible compliance mechanisms you can't use that
20 trajectory, so you go to a subjective review each year,
21 and we want to talk about what that looks like in your
22 interpretation, and what standards, and what exact
23 information you're going to be looking to, and how your
24 interpretation is going to be reflected on the POUs; the
25 subjective nature is very problematic, so we'd like to

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1 have some more information from you about what you're
2 envisioning in that respect.

3 With regard to Attachment B, wondering if you can
4 let us know a little bit more about what context it is
5 that you're looking to use that information. We think
6 that looking at the financial implication is not only
7 procuring renewables is very important, but the
8 administrative costs that are going to be associated with
9 those because those administrative costs are not de
10 minimus, especially for smaller POU's, and that's not just
11 the newer POU's, there's a number of existing POU's in the
12 state that are decades old, but they're also very small,
13 so the administrative burden is a big issue and we were
14 just curious if you could give us a little more
15 information about the context in which you intend to use
16 that information.

17 And also, with regard to Section 3204, you've
18 referenced in there the provisions of the statute that
19 apply to entities that have special -- I don't know if
20 "accommodations" is the word we're looking for -- but
21 special mention in the statute, and we'd like to point
22 out that Section 399.30(i) also pertains to one of those
23 entities that is similarly situated, that will have a
24 little bit different rules, statutorily mandated. So we
25 think that should be referenced in there, as well.

1 And finally, we agree with the need to have these
2 continuing discussions and ideally have these discussions
3 before the final workshop comments are due and would
4 prefer something closer to a March 30 deadline date for
5 comments on this initial draft and the workshop itself.
6 Thank you very much.

7 MS. ZOCCHETTI: Thank you. Is there anyone else
8 here at the Energy Commission who would like to make a
9 comment? Bill. Make sure you state your name again,
10 please.

11 MR. WESTERFIELD: Bill Westerfield again with
12 SMUD. There was one question that I did not bring up in
13 my earlier comments, and I noticed in the Regulation that
14 the Regulations follow the CPUC rules for allowing
15 contracts that start in a particular bucket to be resold
16 and stay in that bucket, and that's very clear. But it
17 didn't address the situation where we would have pre-June
18 2010 grandfather contracts and what happens when they are
19 sold. So I would hope that we could follow a similar
20 concept where grandfathered contracts could continue to
21 be grandfather contracts in the event they're sold. So
22 that was my comment. Thank you.

23 MS. ZOCCHETTI: That's a good point. Thank you,
24 Bill. Anyone else in the room? Okay, before we move to
25 the WebEx comments, could I get a show of hands for the

1 folks that, recognizing that it could push our whole
2 schedule out farther, I think I'm going to know the
3 answer to this, how many would prefer an extended comment
4 period, say, to March 30th? Just a date that comes to
5 mind. Okay, thank you. All right, I do have at least
6 one comment from the WebEx -- it's from Norman Pedersen
7 with SCPPA, and he preferred that I read his questions,
8 so he has three questions and I'll go ahead and read
9 those. And then we can see if staff cares to comment.

10 First, so for the Court Reporter, it's Norman
11 Pedersen, P-e-d-e-r-s-e-n, with Southern California
12 Public Power Authority. Number one, would establishing
13 procurement requirements for the entire TF Period 2 and
14 Period 3, as Tim Tutt suggested, obviate the need for
15 reasonable progress rules proposed in Section 3204(d)?
16 Number two, why does the staff propose establishing
17 procurement requirements for the single calendar year
18 2016 and 2020 instead of proposing procurement
19 requirements for the entirety of periods 2 and 3? And
20 Question 3, Sections 3204(a)(2) and (3) provide for
21 procurement requirements for calendar years 2016 and
22 2020, respectively; in contrast, Section 3206(a)(1)
23 provides for excess procurement for periods 2 and 3
24 calculated as the sum of procurements during the entirety
25 of the compliance period, less the sum of imputed

1 procurement requirements for the years of the compliance
2 period. What is the rationale for proposing procurement
3 requirements that apply to single years, while proposing
4 excess procurement rules that apply to entire compliance
5 periods? And how would these rules work together? So,
6 thank you, Norman, for these questions. I think some of
7 them have already -- have been echoed by other
8 commenters. Does anyone on the staff have any responses
9 for these questions?

10 MR. HERRERA: Kate, I'll comment. This is Gabe
11 Herrera with the Commission's Legal Office. I think
12 perhaps Tony raised a question earlier about reasonable
13 progress in the intervening years, and I think our intent
14 was to provide flexibility to the utilities. I think
15 there was one correction that Lorraine made to one of the
16 slides to try to uncouple excess procurement with the
17 reasonable progress requirements, but first of all, the
18 notion concerning reasonable progress in the intervening
19 years is that the POUs would be required to demonstrate
20 that in each of the intervening years, you know, they
21 could provide this quantitative analysis, or they could
22 show that it was more qualitative, you know, and I guess
23 the quantitative analysis that they had procured a
24 certain amount in each of the intervening years was
25 really supposed to be kind of a safe harbor provision

1 that, if a POU could demonstrate that in each of the
2 intervening years, then there was no need to demonstrate
3 through documentation, or other means, that they had
4 taken reasonable efforts to meet the procurement goals
5 and fell short.

6 In terms of the excess procurement, the way that
7 we're looking at that is, if a facility -- excuse me, if
8 a POU procured on average more than the -- I guess it
9 would be the quantitative intervening year requirements,
10 that that amount, if it meant that the excess procurement
11 requirements could be, in fact, transferred to the next
12 compliance period. So maybe that doesn't address
13 Norman's comments, I'm not sure if Norman is on the line
14 if he can -- can he speak, Norman? Are you on the line?

15 MS. ZOCCHETTI: I'm not sure we have the phone
16 lines unmuted, but he is writing through chat with
17 Theresa here. Yes, if you could. Norman, we're going to
18 unmute you if you're on the phone line; if you're not,
19 please let us know in the chat box. So you're unmuted,
20 Norman. Are you -- do you care to make a verbal comment
21 or respond to Gabe's explanation?

22 MR. PEDERSEN: Hello? Can you hear me?

23 MS. ZOCCHETTI: Yes, we can.

24 MR. PEDERSEN: Okay, I just moved to a place
25 where I think I can talk. Thank you. Let's see, on the

1 excess procurement, I guess the question, Gabe, is if you
2 calculate the excess procurement for the entirety of
3 period 2, how would we use any excess procurement for,
4 say, the first two years of period 2 to help us in the
5 last year of period 2?

6 MR. HERRERA: So are you talking about a
7 situation, say, where when you look at, I guess, the safe
8 harbor provisions in our Draft Regulations, they indicate
9 for the second year, or the first year, and the
10 compliance in the second compliance period, that you have
11 to be at 21.5 percent, and then at the end of the second
12 year, you need to be at 23 percent, and then 25 in the
13 final year. So if you had a situation where you had a
14 POU that procured, say, 22 percent in the first year, and
15 then 24 in the second year, well, in theory what the
16 utility could do is they could report and retire just
17 what they needed to meet that 21.5 percent in the first
18 year of the compliance period, and then carry over into
19 the next year the surplus, and then carry over from the
20 second year, you know, just what is needed to meet the 23
21 percent and meet the safe harbor provision, so that in
22 the final year, then you could have some procurement from
23 the first two years carrying over. So I think that's how
24 we're seeing things, at least now from an accounting
25 perspective.

1 MR. PEDERSEN: Well, the Regulation actually
2 reads a little bit differently, this provides for
3 calculation for the entirety of period 2, so really what
4 you're proposing, then, if I'm following you, is not what
5 is actually written there, but you're going to have --
6 you're proposing a 21.5 percent requirement for 2014, and
7 a 23 percent requirement for 2015, and if you -- if a POU
8 procures more than those percentages, then you have
9 excess procurement that can be carried over to 2016.

10 MR. HERRERA: So I think that's right. So take
11 my example again, say you had 22.5 percent in the first
12 year, right, that's one percent more than you needed in
13 that first year; in the next year, you're then at 22.0
14 percent, whereas when you look at the Regulations, they
15 identify 23. Well, you could carry over that one percent
16 from the first year into the second year, now be at 23
17 percent; if in the final year you're at 25, then the
18 average of that would show that you have no net excess
19 procurement, right? Because you've procured what you
20 needed to meet those safe harbor provisions.

21 MR. PEDERSEN: Okay, but if I had 21.5 percent in
22 the first year, period 2, and 24 percent in the second
23 year, I could carry that extra percent from the second
24 year --

25 MR. HERRERA: Right.

1 MR. PEDERSEN: -- into the third year, 2016.

2 MR. HERRERA: That's right.

3 MR. PEDERSEN: Right? Okay.

4 MR. HERRERA: And so, if in 2016 at the end of
5 that compliance period you are at 26 percent, and you
6 only needed to be at 25, then that one percent could be
7 treated as excess procurement provided it met the excess
8 procurement requirements, for example, couldn't be a
9 Bucket 3 procurement.

10 MR. PEDERSEN: Okay. Now, supposed I have excess
11 procurement for the entirety of Period 2 calculated as
12 provided in the Regulation, can I use the entirety of the
13 excess procurement from period 2 to count toward my 33
14 percent for 2020, the single calendar year 2020?

15 MR. HERRERA: So are you asking whether you could
16 carry that forward to the next compliance period? I
17 think the answer is yes, you could, you could carry that
18 over to the next compliance period provided that, you
19 know, the excess procurement rules were satisfied.

20 MR. PEDERSEN: And I'm asking whether I could use
21 all of my excess procurement for period 2 to meet my 33
22 percent obligation for calendar year 2020, because the
23 way the rule is written right now, there's only a
24 requirement for 2020, there's a requirement that you show
25 reasonable progress before 2020, but the procurement

1 requirement is 33 percent for 2020. So I kind of use all
2 my period 3 procurement to meet my 2020 requirement of 33
3 percent --

4 MR. HERRERA: So I think there would be some
5 problems with that. First of all, I mean, the RECs need
6 to be retired within three years from generation, so you
7 kind of run afoul of that. So you might have procurement
8 in, say, 2016 that you could -- if it met the excess
9 procurement requirements, carried over to the third
10 compliance period, but then it would have to be retired
11 within that three-year period with the RECs.

12 MR. PEDERSEN: Assume I've used all my RECs, I've
13 retired all my RECs to meet my 2016, so that I don't have
14 any RECs left, I've retired all of them, and assume that
15 I don't have any contracts under 10 years.

16 MR. HERRERA: Well, so assuming you could satisfy
17 the excess procurement rules and all of that could be
18 carried forward into the final year of the third
19 compliance period, I guess one problem there would be
20 that you might run short of reasonable progress, so, for
21 example, you couldn't try to bank forward all your
22 generation from 2017, 2018, and 2019 and show no
23 reasonable progress there, and then try to increase all
24 that, or use all that procurement in the final year. You
25 might satisfy the final year compliance requirements, but

1 then the POU would fall short of meeting reasonable
2 progress in the intervening year requirements.

3 MR. PEDERSEN: Okay, what if I went up by two
4 percent each year, but I just didn't make my 33 percent
5 in the last year? In that scenario, would I be able to
6 carry forward my excess procurement for period 2 and
7 apply it to the last year?

8 MR. HERRERA: So you're kind of breaking up a
9 little bit, Norm. Could you repeat that?

10 MR. PEDERSEN: Sure. Suppose I went up by two
11 percent in each of the intervening years during periods
12 3, but I didn't have enough procurement to get to 33
13 percent in the final year. Could I carry forward my
14 excess procurement from period 2 to satisfy my third year
15 requirement -- or my fourth year requirement, my 2020
16 requirement for the 33 percent?

17 MR. HERRERA: Yeah, I think it would depend. I
18 mean, that's probably not the answer you want, but I just
19 -- first of all, I want to just respond to the question
20 about assuming you retired all your RECs, so I think we
21 need to look at the RECs issue a little bit different
22 because there's the REC requirement in Bucket 3 that
23 says, you know, that you can't carry -- you can't have
24 excess procurement that comes from Bucket 3, so that's
25 clear on the excess procurement, so you couldn't carry

1 forward excess procurement from Bucket 3 into the next
2 compliance period. But then, also, with procurement
3 Categories 1 and 2, you still have RECs associated with
4 those, and those are RECs that are tracked through
5 WREGIS, that need to be retired within a three-year
6 period. So, for example, if you had excess procurement
7 from Bucket 1 in the final year that could carry over
8 into the next compliance period, those RECs again tracked
9 through WREGIS would still have to be retired by the POU
10 within that 36-month period. So, at most, you could
11 carry those forward until, say, the end of the second
12 year of the third compliance period. But then you'd have
13 obviously --

14 MR. PEDERSEN: Well --

15 MR. HERRERA: Go ahead.

16 MR. PEDERSEN: Well, we've been assuming that a
17 utility, any utility, IOU or a POU, would have authority
18 to make the decision about which compliance instruments
19 to retire at which time. So, in other words, if we
20 wanted to require -- if we wanted to retire unbundled
21 RECs, we could retire unbundled RECs first in, say, 2016,
22 so that all we would have left to carry over to the next
23 compliance period would be bundled RECs, RECs that would
24 not be in Category 3.

25 MR. HERRERA: Right.

1 MR. PEDERSEN: So our entire excess procurement
2 carryover, if we elected to retire RECs first, would be
3 eligible for carryover, would be eligible as excess
4 procurement.

5 MR. HERRERA: So your scenario assumes that the
6 bucket requirements, the minimums and maximums -- or the
7 minimum from Bucket 1 requirement would be satisfied in
8 that first compliance period, and then maximum for RECs
9 --

10 MR. PEDERSEN: Right, right, right, that when it
11 comes to a decision about retiring unbundled RECs, we
12 could retire the RECs, we could retire the unbundled RECs
13 first to meet our procurement requirement obligation. So
14 we would avoid the three-year problem, and I think that's
15 the way certainly the IOUs have been seeing it in their
16 comments to the PUC. Are you saying the CEC sees it
17 differently and the utility would not have authority to
18 decide which credits to require first and which to
19 require later?

20 MR. HERRERA: No, I don't think so. That is
21 certainly not my position and I don't think it's the
22 Energy Commission's position either. I just want to make
23 sure that, you know, when we're talking about these
24 examples, that we keep in mind that there are certain
25 rules that apply, for example, to excess procurement,

1 rules that are based on what the statute says, that limit
2 how you can carry forward or use Bucket 3 procurement.
3 And since the Bucket 3 is RECs, that's a requirement that
4 needs to be satisfied in terms of excess procurement, and
5 then also keeping in mind --

6 MR. PEDERSEN: And am I also correct in
7 understanding you, Gabe, to be saying that, in order to
8 meet the safe harbor requirement of the reasonable
9 progress rules, you would actually have to retire
10 compliance instruments up to, say, 21.5 percent for 2014,
11 or 23 percent for 2015, but actually be retirements for
12 those years, and that's what you'd have to do to meet the
13 safe harbor?

14 MR. HERRERA: Yeah, I think that's what we have
15 in mind.

16 MR. PEDERSEN: Well, that really gets me back to
17 my first question that was read. If you did what Tim
18 Tutt was suggesting and had compliance period long
19 obligations, wouldn't that obviate that entire section on
20 reasonable progress? In other words, you could just cut
21 it out of the Regulation?

22 MR. HERRERA: Yeah, I think that's a possibility.
23 I mean, is that something that you're advocating, Norman?

24 MR. PEDERSEN: Well, it certainly would make the
25 Regulations, I think Tim Tutt explained, must easier to

1 administer, both from our standpoint and from your
2 standpoint. I could see it being difficult for a POU to
3 meet annual requirements at 21.5, 23.5, 25 percent, 27
4 percent, it would be difficult for you to meet those safe
5 harbor requirements and actually be retiring RECs in that
6 straight line progression, retiring credits in a straight
7 line progression. On the other hand, suppose POUs to a
8 substantial extent relied on coming in with a showing
9 about how they made reasonable progress for each year,
10 that means every year you'd have these POUs coming in and
11 making these showings. That would be burdensome for
12 POUs, but it also seems like it would be burdensome for
13 staff. I mean, we just had a discussion, I think, about
14 how the pre-certifications have been somewhat delayed by
15 lack of person power at the Commission, how would --
16 don't you see there being a burden on the Commission
17 staff, as well as on the POUs if you had this flood of
18 requests for determination of reasonable progress from
19 other than the safe harbor basis.

20 MR. HERRERA: Yeah. I agree, it would require
21 more work and there is, as another commenter raised
22 earlier, you know, that is a subjective call and this is
23 something that we're throwing out as an option in this
24 version of the Regulations, to provide some flexibility.
25 I mean, if you go with this kind of straight line

1 trajectory that requires a certain procurement, each of
2 the intervening years of the compliance period, then,
3 that could be onerous for some POU's to satisfy, in which
4 case, then, would you find them in violation each of the
5 intervening years for not making reasonable progress? Or
6 would you provide the flexibility to let them demonstrate
7 that they tried to make reasonable progress, but things
8 fell short? And so, as a result, they weren't able to
9 procure as much as they needed to meet that straight line
10 trajectory.

11 MR. PEDERSEN: I agree, having annual
12 requirements of the straight line trajectory would be
13 burdensome, absolutely. Now, I guess that takes me to
14 what was my second question, and that was what was the
15 staff's rationale for proposing the procurement
16 requirements for the single calendar years 2016 and 2020,
17 instead of, as Tim suggested, proposing procurement
18 requirements for the entirety of period 2 and the
19 entirety of period 3?

20 MR. HERRERA: I think that was the intent there
21 was just to provide some flexibilities to POU's. I'm not
22 sure what Tim had in mind, he's still here in the crowd
23 and I'm looking at him, so maybe he can step forward, but
24 just to clarify his comment there. But I think staff's
25 position was that, by only measuring compliance in the

1 last year that it provided POUs discretion in the early
2 years to do what they needed to do, to make sure they
3 were in compliance by the end of the compliance period,
4 and then, of course, we had to address this issue of, you
5 know, reasonable progress in the intervening years
6 sufficient to get them to that compliance point, and it
7 was in thinking about that that we decided, well, perhaps
8 if the POUs fell short in a given intervening year, that
9 there could be a good reason as to why they did that, and
10 that if they could explain that to us, perhaps that would
11 be a way of showing, you know, reasonable progress.

12 MR. PEDERSEN: Okay, thanks a lot, Gabe.
13 Actually, on the excess procurement part, I don't think
14 the way you've written up the Regulation as it stands
15 right now actually provides for year to year carryover
16 excess procurement, and the Regulation doesn't provide
17 for that provision of retiring them, for annual
18 retirement. So it might be helpful if -- I don't know
19 how you feel about getting something to us that would
20 express this concept, but if we could get something in
21 writing that we could comment on, that would probably be
22 helpful because there does seem to be a difference in the
23 way it's written and the way you just explained it. But
24 those are my questions and I appreciate it, Gabe. Thanks
25 a lot.

1 MR. HERRERA: If you have comments on that point
2 or some clarification to the proposed language, you know,
3 we welcome that input.

4 MR. PEDERSEN: Okay. Thank you.

5 MS. ZOCCHETTI: Thank you, Norman. Before we go
6 to any other callers or on the line, Randy Howard would
7 like to address the group again from LADWP.

8 MR. HOWARD: Thank you. Norm's question kind of
9 raised some additional question for me and so I just
10 wanted to pose it, I kept thinking it was going to get
11 answered in that dialogue back and forth, and I didn't
12 quite hear the answer. The question in that discussion
13 under the Section 3206 under (a)(1)(C), RECs need to be
14 retired within 36 months of the generation month. Is
15 that a WREGIS requirement?

16 MS. ZOCCHETTI: That's a statutory requirement.

17 MR. HERRERA: That's in statute.

18 MR. HOWARD: That's in the statute. Because it
19 is a little bit of a challenge when you look at that last
20 compliance period that's a four-year compliance period,
21 so there is a challenge, but it's a statute requirement
22 for the retirement, okay. That was just the question I
23 had, thank you.

24 MS. ZOCCHETTI: Thank you. Theresa, do we have
25 anyone else on WebEx? Okay, how about -- could we open

1 the phone lines, then? Thank you. Callers, we are
2 unmuting everyone's phones. You are on the audio at the
3 Energy Commission. Yeah, mute again. So those of you
4 who have called in and that are on the phone, we were
5 opening the audio lines, however, we could hear lots of
6 conversations going on, so we would ask now that you mute
7 your individual phones. And can you call them one-by-
8 one, Theresa? Can you tell who wants to speak? I guess
9 there are some, though, that might not have Internet
10 access. So we'll just ask that you, in an orderly
11 fashion if you can, as best you can, to respond one at a
12 time and mute your individual phone if you are not
13 speaking, and we'll go ahead and re-open the audio lines
14 at this time. Are we open, Theresa? Not yet, standby.
15 Okay, I guess that's a silly question -- you are open and
16 we can hear you. So the first caller? Everyone on the
17 phone, we can hear you at the Energy Commission. And so
18 please state your name -- we have an M. Wong speaking?
19 Excuse me, hello? Mr. Wong, excuse me? We're not going
20 to be able to take audio comments, then. We have tried
21 that. They apparently can't hear us. Mr. Wong? Sorry
22 everyone. Hello? Is there anyone on the phone lines
23 that would like to comment at the Energy Commission's
24 workshop on the POU Regulations? We opened the lines,
25 but we had a lot of folks talking and apparently they

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1 could not hear us. We're giving it another try. Hello,
2 is that someone on the line? Okay, going once. Hello?
3 If someone is speaking, we are not able to hear you.
4 Please make sure that your individual phone is unmuted if
5 you are trying to call in. Well, we are going to go
6 ahead and close the session, then. I apologize to
7 callers that have been perhaps unable to call in. Please
8 know that we would accept your comments in written form,
9 of course, and we apologize if our technical difficulties
10 have not made it possible for you to participate in this
11 workshop, but we appreciate your time. I would like,
12 then, to let you know that we will -- excuse me, do we
13 have a caller? Let's just go ahead and mute the lines,
14 please. Thank you. We will consider your requests to
15 extend the comment period and let you know on the
16 Renewables List Server, we will probably send out a
17 revised Notice, that's what it would look like, we
18 definitely see that the majority of you would like it
19 extended another couple of weeks.

20 Also in the spirit of a lot of the requests that
21 we received to have meetings with many of you today, this
22 afternoon, and those of you that have expressed the
23 desire to meet with staff before the end of the comment
24 period, what we'd like to do, what we'd like to offer as
25 kind of an in between is that we have reserved this room

1 for the whole day and we know some of you have flights
2 and so forth, but for those of you that would like to
3 stay, rather than having individual meetings with parties
4 and staff, we're going to try to stagger meetings and
5 find conference rooms, we think it might be a good idea
6 if you all agree that anyone that would like to just have
7 kind of a roundtable chat with staff this afternoon after
8 lunch, just come back here, we'll reconvene, say, at 2:00
9 if that works for everyone, it's almost 12:30, and we can
10 chat for however long you need to, I mean, within reason,
11 and does that seem like something that parties would like
12 to take advantage of? Raise your hand, maybe, so I can
13 make sure. Okay, great. And then that doesn't mean
14 we're not going to invite future meetings and so forth,
15 but this might be a good way to kick off talking in some
16 detail on some of your concerns, so I think that's about
17 all I had to say. Commissioner Peterman has joined us.
18 Do you have any closing remarks?

19 COMMISSIONER PETERMAN: Again, I extend -- I'll
20 re-extend the offer, I did this morning in my opening
21 comments, if any of you want to meet with my office and
22 further discuss some of these issues, especially after
23 you have a chance to follow-up with staff, you're more
24 than welcome, just reach out to my scheduler. Thanks.

25 MS. ZOCCHETTI: Bawa, you did raise your hand.

1 Do you want to just discuss your question this afternoon?
2 Okay, thank you. Well, then, unless anyone else has
3 anything to say, any other hands? Then I'll go ahead and
4 close this meeting, whatever the right word is, and have
5 a nice lunch. There are a couple of restaurants if you
6 go down Q Street, or, excuse me, R Street, follow the
7 railroad tracks, there's a Mexican restaurant and a LeBou
8 Deli right there. We have on our second floor a little
9 deli, as I mentioned. So it is almost 12:30. Let's come
10 back at 2:00. Please have an enjoyable lunch and we'll
11 see some of you this afternoon. Thank you.

12 [Adjourned at 12:18 p.m.]

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