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STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of,
Implementation Of Renewables
Portfolio Standard Legislation

Docket No. 03-RPS-1078

**M-S-R PUBLIC POWER AGENCY COMMENTS ON THE JUNE 17, 2011 STAFF
WORKSHOP ON 33 PERCENT RENEWABLES PORTFOLIO STANDARD
REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES**

Pursuant to the California Energy Commission (Commission or CEC) June 7, 2011, Workshop Notice, as amended on July 1, 2011, the M-S-R Public Power Agency (M-S-R) submits these comments on the June 17, 2011 *Staff Workshop On 33 Percent Renewables Portfolio Standard Regulations For Publicly Owned Electric Utilities* (Workshop). M-S-R offers these comments on the implementation of SBX1 2 and the 33% renewable portfolio standard (RPS) legislation in the interest of expediting the establishment of a single set of clear and unambiguous procedures regarding the interaction between the CEC and POUs with regard to RPS programs.

I. INTRODUCTION

Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. As such M-S-R does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members. M-S-R pursues the development of renewable energy projects and contracts within California and outside of the

State, on behalf of its member agencies who are obligated to meet the 33% RPS. As a joint powers agency that contracts for renewable energy resources on behalf of its members, M-S-R has a direct interest in the outcome of this proceeding and the manner in which SBX1 2 is implemented.

M-S-R understands that the CEC is at the beginning stages of implementing its obligations under the new statute, and in doing so, will be reviewing existing data and materials to determine what further actions are going to be necessary to effectuate its responsibilities under SBX1 2. During this process, M-S-R urges the Commission to remain cognizant of the existing RPS programs. CEC Staff has indicated that they are at the very nascent stages of this process and M-S-R looks forward to working closely with CEC Staff in the development of the regulatory language in upcoming workshops and Staff discussions, with an emphasis by all parties on ensuring that the objectives of SBX1 2 are met. This coordination is especially relevant due to the fact that the CEC has acknowledged that its rulemaking process will be completed by June of 2012; between now and the final adoption of the CEC's rules, the POU's will also be working on meeting their statutory mandates.

II. COMMENTS ON STAFF'S WORKSHOP PRESENTATION

A. Definitions of Portfolio Content Categories Must Reflect Grandfathering of Resources and Use of Firmed and Shaped Contracts.

One of the most important issues for the CEC to address in the context of this proceeding is the legislation's treatment of existing contracts for renewable energy. Like M-S-R, many parties have invested substantial sums in the development of zero-GHG emitting renewable energy resources, and it is imperative that those resources continue to be properly classified and counted towards the utility's compliance obligation under the RPS.

During the Workshop, Staff identified several issues regarding portfolio content categories that should be discussed and addressed. M-S-R agrees that is important to address these issues, and further notes that while these issues are necessary for clarification, any regulations adopted by the CEC must also reflect the express language contained in the legislation. Therefore, such regulations or implementation plans must also explicitly include the provisions regarding the grandfathering of pre-June 1, 2010 contracts as set forth in § 399.16(d).

The legislation very specifically calls out these contracts, making it imperative that they be addressed in the development of the portfolio content categories contemplated by Staff. To that end, the CEC's regulation should clearly set forth language to demonstrate that the calculation of the resources to include in each "bucket" of resources excludes the pre-June 1, 2010 grandfathered contracts.¹

The Commission's clarification and treatment of grandfathered resources is very important. For M-S-R members, those resources include firmed and shaped wind contracts from the northwest. Staff's Workshop presentation notes that the CEC must come up with definitions for several key terms, including "firmed and shaped." (Workshop Presentation, p. 26) M-S-R urges the Commission to begin development of this and other key terms by looking at its existing regulations. The Commission's Renewable Portfolio Standard Eligibility Guidebook (Fourth Edition), provides a brief explanation for firmed and shaped agreements: "In particular terms, out-of-state energy may be 'firmed' or 'shaped' within the calendar year. Firing and shaping refers to the process by which resources with variable delivery schedules may be backed up or supplemented with delivery from another source to meet customer load." (RPS Eligibility Guidebook, p. 37) However, this explanation does not specifically set forth the definition for firmed and shaped, but rather describes how it works. Since renewable resources are primarily intermittent resources by nature, firming and shaping such resources is vitally important. A similar issue was also raised in the context of the Emission's Performance Standard (EPS). In that regulation, the CEC addressed the concept of substitute energy associated with "specified contracts with intermittent renewable resources." In the context of determining compliance with the EPS, these contracts were still deemed compliant, as long as the amount of energy that was purchased from other resources was limited so as not to exceed "the total reasonably expected output of the identified renewable powerplant over the term of the contract."² (Chapter 11,

¹ As a result, therefore, in calculating POU's 2020 compliance, the relative size and proportionate distribution of the three buckets applies only to that portion of the total load that is not met using contracts for resources executed prior to June 1, 2010 (the "grandfathered resources.").

² Section 2906 provides that: "For specified contracts with intermittent renewable resources, the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract, whether from the intermittent renewable resource or from substitute unspecified resources, do not exceed the total reasonably expected output of the identified renewable powerplant over the term of the contract."

Greenhouse Gases Emission Performance Standard, § 2906) M-S-R urges the Commission to look at this regulatory language and how it can be used in the context of the RPS.

During the Workshop, Staff noted that the RPS Guidebooks will be updated and revised to reflect implementation of the 33% RPS. (Workshop Presentation, p. 18) Staff has opined that completing these revisions will be an iterative process. Due to the fact that the RPS Guidebook will serve as an important source of guidance and information regarding project eligibility, M-S-R urges the Commission to work on these revisions concurrently with development of its 33% RPS implementation regulations. As a starting point, the CEC should begin with updating and clarifying the ongoing treatment of existing resources, including further clarifying the necessary definitions for key terms.

B. Local Governing Boards Should Have Sole Discretion Regarding Determination of Excess Procurement and Cost Limitations.

While SBX1 2 creates additional RPS obligations for the state’s retail electricity providers – both IOUs and POUs – it also continues the distinction between those two programs and acknowledges that particular aspects of each entities’ programs need not be identical. It is important that this distinction be accurately reflected in any regulations promulgated by the CEC. This distinction is particularly relevant with regard to the provisions of § 399.30(d) regarding the measures for application of excess procurement (§ 399.30(d)(1)), conditions for delaying timely compliance (§ 399.30(d)(2)), and cost limitations for procurement expenditures (§ 399.30(d)(3)). In each of these provisions, local governing boards of POUs may adopt measures “in the same manner” or “consistent with” the provisions of §§ 399.13 and 399.15(b) and (c). For purposes of interpreting these obligations, it is important to note that “consistent with” the provisions of § 399.15(b), for example, does not mean that the POUs must adopt the exact same process that may be adopted by the CPUC for the IOUs. Rather, each of the specific categories set forth in § 399.15(b)(5) must be reviewed and analyzed in determining whether compliance is beyond the control of the POU. Likewise, the POUs will need to take into account all of the data set forth in § 399.15(c) when adopting measures regarding cost limitations on renewable expenditures, which is consistent with § 399.15(c), but at the same time, the POUs are not required to implement their program using the same interpretation or limitation values that the CPUC may adopt. This difference is clearly set forth in the legislation, and is important to keep in mind; the

CEC should not rely on an overly broad interpretation that would have a single rule applied to all the IOUs and to each individual POU program.

C. The CEC Should Continue to Use WREGIS for Tracking Eligible Resources.

As with previous versions of RPS legislation, the Legislature wanted to ensure that there is an accounting system that would allow entities to track and monitor the energy from eligible renewable energy resources. The Western Renewable Energy Generation Information System (WREGIS) does this, and is currently being used by the Commission. The CEC should take no further actions to design or develop a different system, but rather should work to ensure that all of the state's eligible renewable resources are registered with WREGIS. While the legislation calls for the CEC to adopt a tracking system, this language mirrors the previous version of the legislation that called for a comprehensive REC tracking system. Accordingly, the CEC should not waste valuable resources – both its own and those of stakeholders – in trying to create a new system that would do the same thing as WREGIS. For purposes of verifying compliance, the CEC should focus on the information provided to it by the POUs, as contemplated in § 399.25(b): the CEC “shall collect data *from electricity market participants* that it deems necessary to verify compliance of retail sellers and local publicly owned electric utilities.” Therefore, while § 399.25 (formerly § 399.13) directs the CEC to “design and implement an accounting system to verify compliance,” the CEC should continue to use WREGIS for all accounting and tracking.

D. Existing Reporting and Data Collection May be Sufficient.

The provisions of § 399.30 specifically set forth the only mandatory requirements for POU's RPS. The legislation is not lacking in details regarding the local governing board's obligations when adopting and implementing their RPS programs, including an obligation to adopt a program for enforcement of the RPS. (§ 399.30(e)) Additional information is likely to be included in the final plans adopted by some POUs, but those plans are going to be narrowly tailored to meet the specific needs of the customers and communities that they serve. Mandating the inclusion of other information is neither necessary, nor authorized under the provisions of the legislation. Furthermore, under the SBX1 2, POUs have an annual obligation to submit to the Energy Commission documentation regarding eligible renewable energy resources procurement contracts that it executed during the prior year. (§ 399.30(g)) Each year, POUs are also required

to report information regarding expenditure of public goods funds, resource mix, and implementation status to the CEC and the POU's customers pursuant to § 399.30(1).³ Sufficient information regarding the POU's programs will be publicly available between the publicly adopted programs and these annual reporting requirements.

III. CONCLUSION

Implementation of the 33% RPS pursuant to the provisions set forth in SBX1 2 is a very important step in furthering the State's renewable energy and greenhouse gas emission reductions goals. However, as noted above, the vast majority of the provisions relevant to the POU programs require implementation at the individual POU level. The CEC's role in this process is vitally important, but must be conducted in concert with the POU's to ensure the most effective and efficient program development, consistent with the provisions of the legislation. M-S-R appreciates the opportunity to provide these comments on Staff's initial Workshop and presentation, and looks forward to continued coordination with Staff on development of the 33% RPS regulations.

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Respectfully submitted,



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³ M-S-R notes that this requirement is not a new mandate for POU's.