

September 9, 2011

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET	
11-RPS-01	
DATE	Sept 09 2011
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RE: Docket No. 11-RPS-01

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the California Energy Commission's (CEC) staff concept paper regarding implementation of 33% Renewable Portfolio Standard Regulations for Publicly Owned Electric Utilities. In addition to general comments, IEP provides in Attachment A and Attachment B, respectively, our comments filed at the California Public Utilities Commission (CPUC) related to (a) product definition and (b) compliance obligations. These comments respond to many of the issues raised in the concept paper.

1) Foundational Issues

a) Meaning of "consistent with" and "in the same manner as" [PU Code Sections 399.30(c)(3), 399.30(d)(1), 399.30(d)(2), 399.30(d)(3)]

Public Utilities Code Section 399.30(c)(3)¹ states "A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16." In addition, Section 399.30(d) states that a local publicly owned electric utility (POU) *may* adopt flexible compliance measures in limited circumstances and conditions as made available to retail sellers. For example, POUs may, but are not required to, apply excess procurement in one compliance period to subsequent compliance periods as long as that treatment is "in the same manner" as applied to retail sellers; they are allowed to delay compliance as long as the conditions for delay are "consistent with" subdivision (b) of 399.15 which applies to retail sellers; and, they are permitted to establish cost limitations for procurement expenditures as long as those limitations are "consistent with" subdivision (c) of Section 399.15, which applies to retail sellers. These so-called "flexible compliance" provisions are afforded POUs as long as they are available consistent with and in the same manner as that afforded retail sellers. Furthermore, the availability of the so-called flexible compliance rules is limited in scope to these specific conditions. In the absence of these conditions, the POUs are directed to adopt procurement requirements consistent with Section 399.16.

IEP recommends that, in these narrow instances where the opportunity for flexible compliance is afforded to POUs, the Commission should employ a standard that creates a

¹ IEP is referring to PU Code as modified by SB 2X, adopted by the legislature and signed by the Governor. While SB 2X is not yet effective due to the continuation of the Extraordinary Session, we treat the language of SB 2X as if it is incorporated in the PU Code now for purposes of discussion.

“high bar” for the POU Governing Boards to ensure that the standards/regulations permitting flexible compliance are truly applied “consistent with” or “in the same manner as” the standards governing retail sellers. The legislature clearly recognized the fact that in some instances POUs may be uniquely positioned when compared to retail sellers. For example, the legislature avoided use of the terms “identical” or “equivalent to” in these code sections. On the other hand, the legislature clearly did not provide a path forward for the POUs in these regards that is inconsistent with or dissimilar to the path forward prescribed for retail sellers. Hence, IEP recommends a “high bar” standard of review when overseeing the POUs’ compliance in the narrow circumstances provided in the statute.

2) Eligibility of Resources (i.e. Procurement Classifications).

See Attachment A: *Comments of IEP on RPS Portfolio Content -- FILED 8-8-11.*

3) Classification of Procurement Products

See Attachment A: *Comments of IEP on RPS Portfolio Content -- FILED 8-8-11.*

4) Compliance and Verification

a) Verification Process

See Attachment B: *Comments of IEP on Procurement Targets Compliance Requirements -- FILED 8-30-11.*

b) Non-Compliance Triggers

See Attachment B: *Comments of IEP on Procurement Targets Compliance Requirements -- FILED 8-30-11.*

c) Criteria and Process for Determining POU Compliance

See Attachment B: *Comments of IEP on Procurement Targets Compliance Requirements -- FILED 8-30-11.*

d) Conditions Allowing Waiver of Enforcement

Section 399.30(d)(2) prescribes the conditions for allowing POUs to delay timely compliance with their RPS obligations. The conditions must be “consistent with” Section 399.15(b) as it applies to retail sellers. Section 399.15(b)(5) prescribes in great detail the three conditions that justify a waiver by the Public Utilities Commission of enforcement of a retail seller’s compliance obligation. If the existence of one of these conditions is not demonstrated, a waiver of enforcement of the retail seller’s compliance obligation is not warranted. Any waiver of enforcement of a POU’s compliance obligation, therefore, must be justified by one of these conditions; and the POUs must be held to a standard similar to that applied to retail sellers.

e) Dispute Resolution Process

IEP agrees with staff’s recommendation on this matter.

5) Reporting

IEP agrees with staff’s recommendation on this matter.

Respectfully Submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, stylized "K" and a long, sweeping underline.

Steven Kelly
Policy Director

Attachment A:

See attachment: *Comments of IEP on RPS Portfolio Content -- FILED 8-8-11.*

Attachment B:

See attachment: *Comments of IEP on Procurement Targets and Compliance Requirements -- FILED 8-30-11.*

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON PORTFOLIO CONTENT CATEGORIES**

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Date: August 8, 2011

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**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON PORTFOLIO CONTENT CATEGORIES**

One of the significant initial challenges the Commission confronts as it implements the provisions of Senate Bill 2 of the First Extraordinary Session of the 2011-2012 legislative session (SB 2X) is the further definition of the portfolio content categories of section 22 of SB 2X. Because the bill also specifies the minimum or maximum procurement levels for each of three portfolio content categories, most of the parties responding to the *Administrative Law Judge's Ruling Setting Prehearing Conference* issued on May 23, 2011, placed the portfolio content categories among the highest priority topics to be addressed in the initial months of this proceeding. Until the retail sellers know *what products* and *how much of each product* they can procure, progress toward the goals of SB 2X will be thwarted.

In response to the urgency the parties assign to this issue, the *Administrative Law Judge's Ruling Requesting Comments on the Implementation of new Portfolio Content Categories for the Renewables Portfolio Standard Program*, issued on July 12, asks for comments on 24 questions designed to elicit the information the Commission needs for a decision on the portfolio content categories. The Independent Energy Producers Association (IEP) respectfully submits its response to these questions in these comments. In addition, IEP

has discussed these issues with representatives of the utilities, generator trade associations, individual generation companies, consumer groups, and labor organizations. These parties have prepared a matrix summarizing the points of consensus, and that matrix is attached to these comments.

1. Section 399.16(b)(1) describes “eligible renewable energy resource electricity products” that meet certain criteria. “Electricity products” is not defined in the statute. Should this term be interpreted as meaning “RPS procurement transactions”?

Yes. For purposes of the portfolio content categories, “eligible renewable energy resource electricity products” should be interpreted as “transactions for procuring eligible renewable energy or RECs.” SB 2X’s provisions on portfolio content categories refers to different types of transactions as “products.” The instruments for retail sellers’ compliance with the Renewables Portfolio Standard (RPS) goals of SB 2X are the renewable attributes of the kilowatt-hours produced from eligible renewable generating facilities, which may be sold in bundles with identical amounts of energy or sold separately from the associated energy as Renewable Energy Credits (RECs). Retail sellers meet their RPS obligation by retiring the RECs that represent the renewable attributes of eligible generation. Section 399.16(b) describes the general characteristics of three categories of transactions that can be used to procure RPS compliance instruments. However, as discussed in the next response, other provisions of SB 2X do not allow for a blanket substitution of the phrase, “transactions for procuring eligible renewable energy or RECs,” for the statutory phrase.

2. Should the first sentence of § 399.16(b)(1)(A) be interpreted as meaning: “The RPS-eligible generation facility producing the electricity has a first point of interconnection with a California balancing authority, or has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or the electricity produced by the RPS-eligible generation facility is scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source.”

Yes. This interpretation is consistent with the intent of the legislature. The suggested interpretation recognizes that facilities (not products) are interconnected to the transmission or distribution systems and that electricity (or, more precisely, electric energy) is scheduled into a CBA or other delivery point.

3. Please provide a comprehensive list of all “California balancing authorit[ies]” as defined in new § 399.12(d).

Currently, the California balancing authorities (CBAs) “with control over a balancing authority area primarily located in” California and that are “responsible for the operation of the transmission grid within [their] metered boundaries” are the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California (Sacramento Municipal Utility District), Imperial Irrigation District, and Turlock Irrigation District. However, the number and configuration of CBAs may change as new CBAs are formed.

4. How should the phrase in new § 399.16(b)(1)(A) “. . . scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source” be interpreted? Please provide relevant examples.

This phrase refers to “real-time” or “simultaneous” deliveries of eligible renewable energy from outside of the area of a CBA into an area of a CBA. The energy would be scheduled into a CBA within the same scheduling interval as it is generated, and eligible energy produced at the renewable generation facility within the scheduling interval (hour or subhour) would match the quantities delivered to the CBA, subject to the use of “real-time ancillary services required to maintain an hourly or subhourly import schedule” referred to in the same paragraph (and discussed below).

5. Does the inclusion of transactions characterized in #4, above, subsume or resolve the work done by Energy Division staff and the parties in response to Ordering Paragraph 26 of Decision (D.) 10-03-021, regarding transactions using firm transmission?

The portfolio content classifications of SB 2X should ease the Energy Division's administrative burden. As a general rule, individual transactions will be categorized based on their temporal characteristics, *i.e.*, when the energy portion of a transaction is actually scheduled into a CBA (*e.g.*, within the hour, outside of the hour but within the calendar year, or outside of the calendar year). Much of the work done in response to Ordering Paragraph 26 of D.10-03-021 was focused on real-time deliveries using firm transmission, *i.e.*, the form or means of delivery. However, the statutory language is not on its face restricted to transactions using firm transmission, and transactions that do not depend on firm transmission rights or reservations could nevertheless meet the statutory definition when deliveries can be made within the same scheduling period that the energy is generated. For example, eligible renewable energy could be generated and delivered within the same scheduling period by using available nonfirm or interruptible transmission. However, the energy would count for RPS purposes only to the extent that deliveries are not interrupted or displaced due to limited transmission capacity.

6. How would transactions characterized in #4, above, be tracked and verified? Please address the roles and responsibilities of both the CEC and the Commission.

The CEC is charged with certifying that qualifying generators are eligible to produce renewable energy to meet RPS requirements.

For the Commission's jurisdictional entities (*e.g.*, investor-owned utilities and energy service providers) and for the CEC's jurisdictional entities (*i.e.*, publicly owned utilities), transactions can be tracked from the CEC-certified renewable energy source to the CBA delivery point using transmission schedules. At the workshop on April 22, 2010, Iberdrola provided an example of how schedules can be used to track a transaction. An e-tag can provide after-the-fact

verification of the transaction. The Commission could also verify the transaction by requiring a source-to-sink transmission schedule for each such transaction (which may not be practical) or by auditing selected transactions. The table below list the sources of information available to help validate eligible transactions:

Information Available to Validate RPS Eligible Transactions

Eligibility of Resource: (e.g., Resource Type, Interconnection, Time of <u>Delivery</u>)	<u>Transmission Path From Source to Sink</u>	
1. WREGIS Certificate	1. NERC E-tag – shows transmission path from source to sink; 2. Transmission Schedule – shows transfer rights from source to sink; 3. For Dynamic Transfer, Agreement with the source BA To Dynamically Transfer to a CBA	

7. Please provide relevant examples of the situation described in the second sentence of § 399.16(b)(1)(A):

“the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California balancing authority. . .”

How should the subsequent qualifying phrase, “but only the fraction of the schedule actually generated by the eligible renewable energy resources shall count toward this portfolio content category” be interpreted in light of your response? Please provide relevant examples.

Ancillary services may be provided from another source to take advantage of available transmission capacity, to balance the transmission system, or to meet contractual obligations. For example, wind Generator X may have an agreement to deliver 100 MWh at a particular delivery point and for a particular hour, and accordingly it secures a transmission reservation for 100 MWh at that delivery point and for that hour. Because of wind variability, Generator X is only able to generate 70 MWh for that hour, and it uses 30 MWh of system energy to complete its delivery. The mixture of system energy and RPS-eligible energy does not disqualify the delivery for RPS purposes, but only the 70 MWh generated from the RPS-eligible

source should count toward the retail seller's procurement obligation.

If the ancillary services are provided by another RPS-eligible generator and the transaction includes the renewable attributes of the ancillary service energy, then the entire transaction (100 MWh in the example above), if verified, should count toward the retail seller's procurement obligation.

8. *Should § 399.16(b)(1)(B) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has an agreement to dynamically transfer electricity to a California balancing authority."*

Yes. The owner or operator of the RPS-eligible facility, not the product, will be the entity having an agreement for dynamically transferring power from eligible renewable resources to a CBA.

9. *The phrase "unbundled renewable energy credit" (REC) is not defined in the statute. Should it be interpreted as meaning:*

"a renewable energy credit [as defined in new § 399.12(h)] that is procured separately from the RPS-eligible energy with which the REC is associated"?

Yes. "Unbundled" means that the REC is sold separately from the energy it is associated with and any other energy.

10. *"Unbundled renewable energy credits" are a type of transaction meeting the criteria of § 399.16(b)(3). Does § 399.16(b)(1) include any transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated (for example, a transaction in which an RPS-eligible generator having a first point of interconnection with a California balancing authority sells unbundled RECs to a California retail seller)? Why or why not? If your response is that unbundled REC transactions are or may be included in § 399.16(b)(1), please also address how a particular transaction can be characterized and verified as belonging in a particular portfolio content category.*

As discussed in the response to Questions 2 and 8, § 399.16(b)(1) describes four "products": (1) facilities that have a first point of interconnection with a CBA); (2) facilities that have a first point of interconnection with distribution facilities used to serve end users within a CBA; (3) electricity that can be scheduled into a CBA without substituting electricity from

another source; and (4) facilities that have an agreement to dynamically transfer electricity to a CBA. Because § 399.16(b)(1)(A) includes facilities having a first point of interconnection with a CBA or with a distribution system within a CBA area, transactions for the renewable attributes of energy produced from those facilities, including transactions for unbundled RECs or for bundled renewable energy and RECs produced by these facilities, are among the products described in § 399.16(b)(1). For these facilities, regardless of whether the facility's output is sold as a bundle of energy and RECs or in a REC-only transaction,¹ the physical characteristics are identical; that is, the energy produced by the facility is most likely consumed within the CBA, and the REC, which § 399.12(h) defines as a "certificate of proof" that a unit of renewable electricity was generated and delivered by an eligible resource, is transferred to an obligated retail seller for use in the RPS compliance accounts.

Moreover, facilities interconnected with a CBA or with a distribution system within a CBA's area provide the "unique benefits" listed in § 399.11(b) regardless of whether they are selling the RECs associated with the output of their plants in a bundled transaction or in a separate sales of RECs. Thus, the policies that SB 2X cites as the reasons for the statute align with the idea that transactions involving facilities that interconnect with a CBA or with a distribution system within a CBA fall into the first category of § 399.16(b). The fact the same facility can simultaneously sell RECs as part of a bundled transaction and as a separate REC-only transaction underscores the point that there is no physical difference between the

¹ Section 399.16(b)(3) refers specifically to "unbundled renewable energy credits," but the products in this category are limited to those "that do not qualify under the criteria of paragraph (1) or (2)." A logical interpretation is to read paragraph (3) to refer to products that do not qualify under paragraphs (1) or (2), which may include fractions of transactions and RECs that do not qualify under the other categories. Reading this paragraph as if it said, "Unbundled renewable energy credits and eligible renewable energy resource products, or any fraction of the energy generated, that do not qualify under the criteria of paragraph (1) or (2)." is a strained interpretation of the statutory language.

transactions and no reason for the statute to treat them differently. Consistent with the physical (interconnection) criteria of § 399.16(b)(1)(A), the products (or transactions, as discussed above) provided by these facilities should be eligible to be classified the same, as § 399.16(b)(1) products.

11. Section 399.16(b)(3) includes “[e]ligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2).”

- Should the phrase, “or any fraction of the electricity generated” be interpreted as meaning “any fraction of the electricity generated by the eligible renewable energy resource”?*
- What metrics should be used to account for “any fraction of the electricity generated?” Please address the time period that may be encompassed in your response.*
- How would the procurement of “any fraction of the electricity generated” be documented? Please address the roles of the Western Renewable Energy Generation Information System (WREGIS), the CEC, and this Commission.*

“Fraction of the electricity generated” should be construed to mean “fraction of the electricity generated by the eligible renewable energy resource.” For facilities that meet the interconnection requirements of § 399.16(b)(1), all of the facility’s eligible output will qualify under paragraph (1). For resources that are not interconnected to a CBA or a distribution system within a CBA, the fraction of an eligible renewable generator’s output that does not qualify under paragraph (1) or (2) can be determined from data from the facility’s meter (when was the energy produced and how much was produced?), transmission schedules, and e-tags (how much energy was delivered to a CBA and when? what real-time ancillary services were used to maintain the import schedule?). The relevant timeframe for paragraph (1) transactions is the scheduling interval (typically one hour), and the relevant timeframe for paragraph (2) transactions is the calendar year when the energy is generated, as discussed below.

12. “Firmed” is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.

IEP will address this question in its comments on the next question.

13. “Shaped” is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.

IEP is unaware of any precise definition for these terms, but they are widely used and generally accepted to refer to techniques to match a variable energy resource with a fixed contractual obligation or transmission reservation. The current version of the CEC’s Guidebook on RPS eligibility states, “Firming 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.² The terms are usually used to refer to arrangements that may, at least at times, separate the energy generated by an eligible renewable resource from the associated RECs. For example, a wind resource may have an average production of 100 MWh and an associated transmission reservation or contractual obligation to deliver 100 MWh at a specified delivery point. The wind resource’s actual production will vary around 100 MWh. When the actual production is 70 MWh, the seller may purchase or supply 30 MWh from another resource to make use of the full transmission reservation. When actual production is 130 MWh, another resource will be backed down so that the full production of energy can be delivered. In the first case, only 70 MWh can be credited toward RPS procurement obligations, unless RECs from other eligible generation can be tagged to the supplemental 30 MWh. In the second case, 100 MWh is immediately available to meet RPS obligations, and the RECs from the supplemental 30 MWh may be retained until they can be associated with other energy for delivery to the delivery point, ideally during a time of undergeneration from the same facility.

Some parties use the term “firmed” to refer to the use of energy from another source to supplement the output from a variable energy resource during a period of

² CEC, *Renewables Portfolio Standard Eligibility* (4th ed., Jan. 2011) p. 37.

undergeneration and “shaped” to refer to the backing down of other generation during a time of overgeneration. Other parties use the two terms together to refer to a situation in which RECs are sometimes delinked from the associated energy and delivered at a time other than the scheduling interval when the energy is generated.

14. *“Incremental electricity” is not defined in SB 2 (1x). Please provide a definition or description of this term. Please also address:*

- *how a particular transaction can be characterized as providing incremental electricity;*
- *whether there are or should be any more particular relationships between the generation of the RPS-eligible electricity and the scheduling of the “firmed and shaped” incremental electricity into a California balancing authority (for example, the electricity must be scheduled into a California balancing authority within one month of its generation; or, the energy that is delivered must come from generators in the same balancing authority area as the RPS-eligible generation).*
- *whether the definition proposed is based on contract terms or on the characteristics of the electricity that is ultimately delivered into a California balancing authority. Please provide relevant examples.*

The purpose of adding the word “incremental” in section 399.16(b)(2) was to avoid a regime in which RECs could be tagged to existing import obligations currently in the utilities’ portfolio and counted for purposes of RPS compliance. The purpose seemed to be to provide an added benefit that is not available from external unbundled RECs—the delivery of additional energy to California.

However, it is extremely difficult to derive a definition that reflects this purpose. SB 2X does not answer the basic question—*incremental to what?* “Incremental” could be defined in relation to at least three different measures: (1) incremental to existing deliveries or other historical baseline; (2) incremental to forecasted deliveries through 2020; or (3) incremental to retail sellers’ current contractual obligations. Each of these potential measures has its problems. Definitions that attempt to define “incremental” against current or historical deliveries confront highly variable conditions from year to year. Even if demand remains unchanged, the level of deliveries into CBAs will vary depending on market conditions, rainfall

in California and the Northwest, weather, and other factors that make it impractical to specify what “typical” deliveries are for the purpose of identifying “incremental” deliveries. For similar reasons, forecasting expected deliveries in future years to determine which deliveries are “incremental” presents even greater challenges. Defining “incremental” as additional deliveries not called for under the retail sellers’ current contracts means that some deliveries associated with contracts that are routinely executed to replace expiring arrangements will be defined as incremental, a problem that increases as time goes on and more existing contracts expire.

On balance, IEP recommends the third approach, defining incremental deliveries against the retail sellers’ current import levels and contractual commitments, primarily because this approach offers a clear, practical way to identify incremental deliveries without creating an excessive administrative burden. Consistent with several other provisions of SB 2X, and after considerable discussion, IEP recommends a definition of “incremental” that has the following elements:

- Firmed and shaped transactions are bundled transactions in which the energy cannot be scheduled into a CBA within the scheduling interval (hour) when the energy and associated REC were generated.³ The commitment to

³ This requirement echoes the discussion of delivery requirements for firmed and shaped resources in the CEC’s Guidebook:

To count generation from out-of-state facilities for RPS compliance, the RPS-certified facility must enter a power purchase agreement with a retail seller, procurement entity, or third party. The power purchase agreement must include both the RECs and electricity generated by the facility as a bundled commodity, and a matching quantity of electricity must be delivered to an in-state market hub (also referred to as “zone”) or in-state point of delivery (also referred to as “node”) located within California. The retail seller or procurement entity and seller may negotiate which party is responsible for securing transmission, as necessary, at any point along the delivery path as long as the energy is delivered into California.

(footnote continued)

purchase the bundled product must be tied to a specific contract to provide firming and shaping services, and the total delivered product must be provided at a fixed price for at least part of the duration of the purchase commitment, as discussed below.

- The REC portion of a firming and shaped transaction must be tagged to energy schedule into a CBA within the calendar year when the associated energy is generated.
- To be “incremental,” the firming and shaped transaction must be priced in a way that does not track electricity or natural gas prices:
 - For transactions of five years’ duration or longer, the total product—energy and RECs, including firming and shaping services—must be provided at a fixed price for at least five years. The fixed price may extend more than five years.
 - For transactions of less than five years, the product must be provided at a fixed price for the term of the renewable energy contract.
 - The fixed price may include escalators that are not tied to energy-prices. For example, a 2 percent annual escalator or a CPI adjustment would be permitted. Transmission and integration charges are not included in the fixed-price requirement and may move up or down based on approved tariffs.

CEC, *Renewables Portfolio Standard Eligibility* (4th ed., Jan. 2011) p. 38 (footnote omitted). The CEC also clarified that it is “acceptable for an RPS-certified facility to sell power to a retail seller, procurement entity, or third party, pursuant to a PPA, provided all such parties are registered as account holders with WREGIS as part of RPS compliance.” CEC, *Renewables Portfolio Standard Eligibility* (4th ed., Jan. 2011) p. 38 fn.62.

15. *Should § 399.16(b)(2) be interpreted to refer only to energy generated outside the boundaries of a California balancing authority, or may it refer also to energy generated within the boundaries of a California balancing authority? Please provide relevant examples.*

- *Should this section be interpreted as applying only to transactions where the RPS-eligible generation is intermittent? Is the location of the generator within or outside of a California balancing authority area relevant to your response?*

At the outset, it is important to clarify that the areas or boundaries of a balancing authority are defined electrically, not geographically. Generally speaking, generators that are located within the electrical boundaries of a CBA will not need to schedule energy into a CBA. Thus, in most cases § 399.16(b)(2) will apply only to generators located outside the electrical boundaries of a CBA. Some exceptions may exist. A generator located within the assumed geographical boundaries of a CBA but not electrically interconnected with the CBA may need to schedule deliveries into a CBA. In addition, energy from a generator located within the electrical boundaries of a CBA for delivery to another CBA may need to be scheduled into the second balancing authority.

Although intermittent resources are the most likely facilities to use firmed and shaped transactions, other types of eligible renewable resources may also find it necessary to use firmed and shaped transactions at times, for example during outages or when fuel is either abundant or scarce.

16. *Should the requirement in § 399.16(b)(1)(A) that the generation must be “scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source” be interpreted to mean that no firmed and shaped electricity, as set forth in § 399.16(b)(2), may be considered as meeting the requirements of § 399.16(b)(1)(A)? Please provide relevant examples.*

Permissible use of “real-time ancillary services required to maintain an hourly or subhourly import schedule” under § 399.16(b)(1)(A) is conceptually similar to firming and shaping services for transactions under § 399.16(b)(2). The distinction between the two is

temporal. While the ancillary services in § 399.16(b)(1)(A) support deliveries of eligible renewable energy within the hourly or subhourly scheduling interval, firming and shaped services provide the same support for deliveries of eligible renewable energy in periods that extend beyond the scheduling period. Thus, although the same resources may provide ancillary services within the scheduling interval and firming and shaping outside of the scheduling interval, the two categories are discrete. What distinguishes these two services is the period in which the REC is associated with energy for delivery to a CBA.

17. Section 399.16(d) provides that:

“Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if [certain] conditions are met. . .”

- How should the phrase “ownership agreement” be interpreted in this context? Please provide relevant examples.*
- How should the phrase “count in full” be interpreted? Include consideration of: a) The requirements in D.07-05-028 (implementing current § 399.14(b)6) that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;*
- b) The requirement in new § 399.13(b)7 for minimum procurement from contracts of at least 10 years’ duration;*
- b) The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years’ duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods.*

“Ownership agreement” appears to refer to arrangements for retail sellers to meet their RPS obligations by taking ownership of eligible renewable energy facilities.

“Count in full” means that the eligible renewable energy or RECs conveyed to a retail seller under contracts or power purchase agreements executed before June 1, 2010 will count toward the retail seller’s RPS obligation and will not be disqualified by application of the percentages prescribed in § 399.16(c). The percentages of § 399.16(c) apply to purchases under contracts executed after June 1, 2010.

The Commission implemented current § 399.14(b)(6) in D.07-05-028, and the provisions of that decision set a specific compliance requirement that took effect for the 2007 compliance year and remains in effect until the effective date of SB 2X. IEP has no information that suggests that the output of any eligible facilities has been disqualified by this provision.

New § 399.14(b)(6) raises the prospect that some of the output from eligible renewable facilities with contracts of less than 10 years in duration and that were signed before June 1, 2010 might not count for RPS compliance purposes, which seems to create a conflict with the “count in full” language of § 399.16(d). IEP recommends resolving this conflict by favoring the clear language of § 399.16(d). Most of the investor-owned utilities’ RPS procurement has been through power purchase agreements of at least 10 years in duration, and it appears that the legislature intended to remove any questions about whether a contract counted or not by declaring a blanket rule that older contracts would count in full and new contracts would be potentially subject to new restrictions added by SB 2X.

18. Please discuss the relationship between the instruction in § 399.16(d), set forth above, and the rules for the use of tradable RECs (TREC)s set out in D.10-03-021 (as modified by D.11-01-025), and in D.11-01-026 (for example, temporary limits on TREC)s usage; application of the temporary TREC limits to previously signed contracts).

As a practical matter, the California Energy Commission’s provisions on RECs and the requirement of delivery in the earlier RPS statute resulted in few, if any, transactions for RECs only, apart from any energy purchase. The legislature seemed to be attempting to clear up the status of any such transactions or similar transactions with its statement that the output of facilities performing under contracts signed before June 1, 2010 would count in full, and that new provisions would apply to contracts signed after that date.

19. When should the portfolio content limitations set forth in § 399.16(d) go into effect (for example, January 1, 2011; or the effective date of SB 2 (1x); or the date of the Commission decision implementing § 399.16)?

The portfolio content limitations of SB 2X cannot take effect until the bill itself becomes effective on the 91st day after the close of the First Extraordinary Session. However, the Commission can use its broad constitutional and statutory authority to implement provisions identical to those set forth in SB 2X for the entities subject to its jurisdiction to the extent that the Commission's actions do not conflict with the requirements of the existing RPS statute.

20. SB 2 (1x) amends Pub. Res. Code § 25741 to, among other things, eliminate the current requirement that RPS-eligible energy must be “delivered” to end-use retail customers in California. The requirement for delivery is implemented by the CEC in its Renewables Portfolio Standard Eligibility Guidebook (RPS Eligibility Guidebook) (3d ed. December 19, 2007). It is also incorporated into the characterization of a REC in D.08-08-028.

- At what point in time should the Commission consider the “delivery” requirement ended (e.g., on the effective date of SB 2 (1x); or as of January 1, 2011; or on the effective date of the CEC’s revisions to the RPS Eligibility Guidebook reflecting the repeal)?*
- Does the “delivery” requirement end at that time for generation under RPS contracts of utilities that were already approved by the Commission? Only for generation under contracts signed by utilities after the end of the delivery requirement?*
- How should the plan you propose be applied to ESPs? to CCAs?*

As described in the response to the preceding question, SB 2X's elimination of the delivery requirement cannot take effect until the bill itself becomes effective on the 91st day after the close of the First Extraordinary Session, but the Commission can use its broad constitutional and statutory authority to implement provisions identical to those set forth in SB 2X for the entities subject to its jurisdiction to the extent that the Commission's actions do not conflict with the requirements of the existing RPS statute. Note also that the references to scheduling into a CBA in new § 399.16(b)(1)(A) and § 399.16(b)(2) are similar to a delivery requirement for certain types of transactions. In short, the energy portion of RPS transactions with facilities that are not interconnected to a CBA or a distribution system within a CBA is still required to be delivered, *i.e.*, scheduled, into a CBA.

Eliminating the delivery requirement involves not just the effectiveness of SB 2X. In addition, the CEC must revise its RPS Guidebook to clarify that delivery is no longer required for RPS eligibility.

When the delivery requirement ends, it also ceases for contracts already approved by the Commission. However, the terms of the contracts remain in effect until the contract terminates or the parties agree to amend the contract. In most cases, IEP expects that the commercial arrangements under these contracts, including the delivery arrangements, will continue for the duration of the contract.

21. What documentation or descriptions should be required in an advice letter to enable Energy Division staff to confirm the portfolio content category of transactions submitted by utilities for Commission approval?

Because IEP, like the general public, sees only the redacted version of advice letters and resolutions, IEP is not fully aware of what documentation the utilities submit now in support of their advice letters. IEP assumes that a utility will provide sufficient information and documentation to support its requested portfolio content category. Depending on the type of transaction, the documentation could include firm transportation agreements, contracts for ancillary services or firm and shaping services, information on the interconnection with the eligible renewable energy resource selling to the utility, or a dynamic transfer agreement, in addition to the contracts between the seller and the utility.

22. Is any post-contracting verification of the portfolio content category needed to track and determine compliance with RPS procurement obligations for utilities? for ESPs? for CCAs? If yes, is the CEC responsible for undertaking it? is this Commission?

- What information would be required for such verification?*
- Would any changes be needed to WREGIS to accommodate your proposal?*

Depending on the nature of the transaction, the verification information could include metered output data from the generator, NERC e-tags, and WREGIS REC identification numbers.

23. Reviewing your proposals above, please describe the value to the buyer, the seller, and ratepayers of transactions in each portfolio content category. Identify the direct and indirect costs that would be associated with transactions in each category.

The overall value of the RPS program is reflected in the benefits listed in new § 399.11(b), although different products will provide the individual benefits in different proportions. In addition, the aggregate value of individual products is part of the distinctions drawn between product content categories in § 399.16(b). In general, Category 1 products provide energy, RECs, and reliability value; Category 2 products provide energy and RECs; and Category 3 provides RECs. Some additional specific values and costs of each content category are summarized in table:

	Category 1 (§ 399.16(b)(1))	Category 2 (§ 399.16(b)(2))	Category 3 (§ 399.16(b)(3))
Value to Buyers	Fewer transmission constraints or issues for generation connected to CBA	Lower prices from best resources; efficient use of import capacity	Lower price, flexible, can be traded readily
Value to Sellers	Procurement from category is not limited	Can develop best sites and resources in the West; flexibility of delivery; able to make most efficient use of import capacity.	Ease of arrangements
Value to Ratepayers	Provides both renewable energy and environmental attributes; promotes local economic development; displaces fossil fuel generation in state;	Provides both renewable energy and environmental attributes; promotes stable retail rates	Reduces regional GHG emissions; promotes stable retail rates

	reduces air pollution in state; reduces GHG emissions; promotes stable retail rates; may provide Resource Adequacy capacity; helps maintain grid reliability; provides local jobs		
Direct Costs	Cost of power under power purchase agreements	Cost of delivered power under power purchase agreements	Cost of REC
Indirect Costs	Renewables integration costs; land use issues	Possible regional integration costs	Can't be banked; few direct local benefits

24. *The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid- October 2011, at the earliest, and the end of 2011, at the latest. Please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?*

The Commission has already identified the most urgent steps that need to be taken to implement SB 2X at the earliest opportunity. Parties generally agreed that the portfolio content requirements (the subject of these comments) and new procurement targets and compliance requirements (the subject of comments due August 30) should be addressed and resolved as early as possible.

The Commission should strive to be in position to implement SB 2X as soon as it becomes effective. Any lag between the effect date of the legislation and the Commission's implementation will produce only uncertainty and paralysis. Timely action by the Commission will help maintain the momentum for achieving RPS goals that California has built up over the last decade.

Respectfully submitted this 8th day of August, 2011 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg

By /s/ Brian T. Cragg
Brian T. Cragg
Attorneys for the Independent Energy
Producers Association

VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Comments of the Independent Energy Producers Association on Portfolio Content Categories," dated August 8, 2011. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of August, 2011, at San Francisco, California.

/s/ Brian T. Cragg

Brian T. Cragg

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Note: The following table was produced by a broad group of stakeholders in order to develop a common conceptual framework for discussing the RPS Product Content Requirements, identifying where stakeholder consensus exists, and allowing individual comments to focus on the identified open issues in the last column. The following stakeholders participated in discussions regarding this table and its refinement based on those discussions: Coalition of California Utility Employees; Division of Ratepayer Advocates; enXco; First Solar; Iberdrola; Independent Energy Producers Association; Large-Scale Solar Association; NextEra; Pacific Gas and Electric Company; San Diego Gas and Electric Company; Southern California Edison; Sunpower; The Utility Reform Network; and the Union of Concerned Scientists.

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
<p><u>What Procurement is Affected?</u></p>	<p>399.16(c) <i>“eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010”</i></p>	<p>“bundled purchase” means the purchase of RPS-eligible energy plus the associated Renewable Energy Credit (REC) “unbundled REC” means the REC associated with the RPS-eligible energy separate from the associated energy</p>	<p>(1) Contract amendments or modifications occurring after June 1, 2010 unless such amendment or modification is grandfathered under the provisions set forth in 399.16(d)(3); (2) New contracts with existing facilities (i.e., recontracting) after June 1, 2010, unless such contract is grandfathered under the provisions set forth in 399.16(d)(3); (3) Any contract executed under an approved IOU Photovoltaic PPA program after June 1, 2010; (4) Engineering, Procurement and Construction or Build Own Transfer</p>	

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
			<p>contracts for renewable utility owned generation (UOG) executed after June 1, 2010;</p> <p>(5) Any Feed in Tariff contract (ie., AB 1969, SB 32, Renewable Auction Mechanism, etc.) executed after June 1, 2010;</p> <p>(6) Any enrollment in the IOU net energy metering (NEM) program for surplus distributed generation (i.e., including but not limited to participants in California Solar Initiative and Self-Generation Incentive Program) after June 1, 2010.</p> <p>(7) Bilaterally-negotiated transactions after June 1, 2010;</p> <p>(8) Any new renewable energy resource contract executed after June 1, 2010, including purchases of unbundled RECs associated with generation under any of the above contract structures.</p>	

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
<u>Bucket #1(a)</u>	<p>399.16(b)(1)(A): <i>[addressing point of interconnection of facility]</i></p> <p><i>“Have a first point of interconnection with a California balancing authority”</i></p>	<p>Facility must be an eligible renewable energy resource located within the WECC and Facility must be directly interconnected to a California Balancing Authority (CBA). CBAs include CAISO, LADWP, TID, IID, and Balancing Authority of Northern California (formerly SMUD).</p> <ul style="list-style-type: none"> Any transaction for a product from an eligible renewable generator physically connected to any CBA Any transaction for a product from an eligible renewable generator located outside of a CBA, but which directly interconnects to a CBA through a gen-tie. “gen-tie” means an electrical conductor directly connecting the generation unit to a CBA 	<ul style="list-style-type: none"> Bundled procurement from eligible renewable generator physically connected to any CBA, including utility-owned generation (UOG) NEM surplus sales 	<ul style="list-style-type: none"> Should the CPUC establish a standard in advance for identifying future or additional CBAs now, or should that process wait until there is some change in the current CBA lineup?
<u>Bucket #1(b)</u>	<p>399.16(b)(1)(A): <i>[addressing point of interconnection of facility]</i></p>	<p>Facility must be an eligible renewable energy resource located within the WECC and Facility must be directly interconnected to the distribution system</p>	<ul style="list-style-type: none"> Bundled procurement from distributed generation facility interconnected at distribution level of any CBA, including UOG 	<ul style="list-style-type: none"> Do RECs associated with generation within a CBA area that serves load “behind-the-meter” (ie.,

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
	<p>“[H]ave a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area...”</p>	<ul style="list-style-type: none"> located within a CBA’s area. Any transaction for a product from an eligible renewable generator physically connected to distribution facilities serving end use customers in a CBA. Any transaction for a product from an eligible renewable generator located outside of a CBA, but which directly interconnects to a CBA’s distribution facilities through a gen-tie. “gen-tie” means an electrical conductor directly connecting the generation unit to a CBA 	<ul style="list-style-type: none"> NEM surplus sales 	<p>CSI/NEM or industrial RPS generation serving on-site load) qualify as Bucket 1 if they are sold (unbundled) to a (1) the retail seller that is also buying the energy, or (2) another RPS-obligated retail seller?</p> <ul style="list-style-type: none"> In general, should the “bucket” attribute of a REC remain with the REC until it is retired for compliance, no matter how many times it is traded as an unbundled product in the secondary market? If so, how can the bucket attribute of a REC best be tracked?

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
<p><u>Bucket #1(c)</u></p>	<p><i>[399.16(b)(1)(A): re specific types of commercial transactions]</i></p> <p><i>“... or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the</i></p>	<ul style="list-style-type: none"> Energy must be scheduled to a CBA from an eligible renewable energy resource (“ERR”) located within the WECC and documented using E-tag information for generator source and delivery sink. Schedule into the CBA may be day-ahead, hourly, or sub-hourly. No specific transmission rights are required. Only the lesser of ERR metered-data and the final adjusted E-tags is eligible as “Bucket 1(c)”. Import schedules may be firm within the hour through the use of ancillary services markets, including intra-hour balancing services. 	<ul style="list-style-type: none"> Generator located in the Pacific Northwest schedules 100 MWh into CAISO over time period X. In that time period, generator meter data shows generation of 90 MWh, and final adjusted E-Tags show delivery of 100 MWh. Retail seller will receive 90 MWh of Bucket 1(c) credit from this resource over this time period. Over time period Y, Generator scheduled 100 MWh, but 110 MWh is actually generated; 100 MWh would be reflected on the E-tag and is counted for “Bucket # 1(c).” 	<ul style="list-style-type: none"> Over what period of time may the facility’s meter data be netted against the final adjusted E-tags from the contract? Hourly? Monthly? What additional technology, data, or systems, if any, are needed to track, compute, and produce for verification these comparisons of meter data with final adjusted E-tags? How does the answer to this question impact the feasibility or reasonableness of any particular netting period, as discussed in the bullet above?

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
	<p><i>eligible renewable energy resource shall count toward this portfolio content category.”</i></p>			

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
<u>Bucket #1(d)</u>	<p>399.16(b)(1)(B): [re dynamically scheduled transactions] “Have an agreement to dynamically transfer electricity to a California balancing authority.”</p>	<ul style="list-style-type: none"> Any transaction in which the energy from an ERR located within the WECC is dynamically transferred into a CBA; Able to show agreement between generator and CBA (and, if necessary for a pseudo-tie, with the host BA) that allows for the CBA to dynamically transfer the electrical output from the eligible renewable resource to serve CBA load. 	<ul style="list-style-type: none"> Qualifying interconnection agreements include pseudo-tie agreements and dynamic scheduling agreements (or functional equivalent). Bundled deliveries pursuant to a dynamic transfer agreement (or functional equivalent). 	
<u>Bucket #2</u> <u>“FIRMED AND SHAPED TRANSACTION S”</u>	<p>Section 399.16(b)(2): “<i>Firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.</i>”</p>	<ul style="list-style-type: none"> Electricity products must derive from eligible renewable energy resources located with the WECC. REC must be “E-tagged” to energy scheduled for delivery to a CBA; Energy to which the REC is “E-tagged” must be “incremental” Energy to which the REC is “E-tagged” must have been delivered to the CBA within the same calendar year of the 	<ul style="list-style-type: none"> Retail seller buys bundled product of energy and RECs from an ERR not located in a CBA. Energy is immediately sold off locally. Retail seller tags the RECs from the RPS PPA to the E-tags for the imported incremental energy within the same calendar year that the RECs were generated. Procurement of bundled product from ERR outside of a CBA. ERR intends generally to qualify as 	<ul style="list-style-type: none"> What is the definition of “incremental electricity?” Are there any additional attributes or contract structures that must be included to qualify procurement as a “firmed and shaped” product (i.e., concurrent procurement, fixed price agreement, etc)? Should there be a grace

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
		creation of the REC within WREGIS.	<p>Bucket #1(c) by scheduling imports directly into a CBA. However, ERR cannot transmit its full contract quantity into a CBA within the time period specified for Bucket #1(c). In the same time period, ERR delivers a firm schedule for import into the CBA using some substitute energy. The “stranded” RECs are tagged to the substitute energy within the same calendar year and qualify as Bucket #2.</p>	<p>period beyond the calendar year during which the tagging process may be “trued up?”</p> <ul style="list-style-type: none"> Must the term of the firming and shaping agreement described in the first illustrative contract structure match the term of the RPS PPA producing the RECs? What other contract structures or variations on the consensus contract structures qualify as bucket #2?
<p>“Bucket #3” All Other RPS Products</p>	<p>[Section 399.16(b)(3):] <i>“Eligible renewable energy resource, electricity products, or any fraction of the electricity generated,</i></p>	<ul style="list-style-type: none"> Any certificate registered within the Western Renewable Generator Information System (WREGIS) that does not qualify as Bucket 1 or Bucket 2. No energy and/or capacity need be associated with this type of 	<ul style="list-style-type: none"> Retail seller procures unbundled RECs from an ERR located within WECC, but not in a CBA. Retail seller does not “tag” these RECs to any energy. Energy to which a REC generated by a non-CBA facility is tagged is 	

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RPS Product Matrix

REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
	<p><i>including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)."</i></p>	<p>transaction.</p>	<p>imported outside the same calendar year or is not "incremental."</p>	

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON PROCUREMENT TARGETS AND
COMPLIANCE REQUIREMENTS**

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Date: August 30, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON PROCUREMENT TARGETS AND
COMPLIANCE REQUIREMENTS**

Among the critical initial issues the Commission must resolve as it implements the provisions of Senate Bill 2 of the First Extraordinary Session of the 2011-2012 legislative session (SB 2X) are the issues of how to translate the goals of the bill into specific actions and how retail sellers can show that they have met their obligation to procure specific levels of renewable energy. The *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program*, issued on July 15, asks for comments on 19 questions on these key issues. The Independent Energy Producers Association (IEP) respectfully submits its response to these questions in these comments. The questions posed by the Ruling are edited for brevity in the following discussion.

Question: *1. Should the transition from the current RPS program to the RPS program as revised by SB 2 (1x) start from the position that the procurement and flexible compliance rules for the 20% program apply through the 2010 compliance year and the procurement and compliance rules for the 33% program apply beginning with the 2011 compliance year?*

IEP's Response: Yes. However, the fact that the SB 2X will not take effect until late in 2011 may require some transitional treatment for 2011.

Question: 2. *New § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them.*

A. New § 399.15(b)(2)(B) states that "for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020..."

- *Should compliance targets for intervening years in the 2011-2013 compliance period be set as:
 - 20% of retail sales for the year ending December 31, 2011;
 - 20% of retail sales for the year ending December 31, 2012; ending with
 - 20% of retail sales for the year ending December 31, 2013, such that the RPS obligation (compliance period quantity) of a retail seller for the 2011-2013 compliance period would equal in megawatt-hours (MWh): $(.20 \times 2011 \text{ retail sales}) + (.20 \times 2012 \text{ retail sales}) + (.20 \times 2013 \text{ retail sales})$?*

IEP's Response: Yes. Actual procurement may vary from year to year, but the compliance obligation for the first compliance period should be established using the formula set forth in the Ruling's question.

In the discussion of the implementation of new § 399.15(b)(2)(B), it is helpful to distinguish between the **procurement targets** expressly established in SB 2X (*i.e.*, 20%, 25%, and 33%) and the **compliance obligations** that result from applying those targets (and any targets established for intervening years) to actual retail sales for the appropriate years. For each intervening year of a compliance period, that year's actual retail sales by a retail seller will be multiplied by that year's percentage procurement target to establish a retail seller's "reasonable progress" target (in GWh) for that intervening year. The targets for the last year of the compliance period are the procurement targets specified in SB 2X. The targets for each year of

the compliance period will be added up to establish the retail seller's compliance obligation (in GWh) for the compliance period. The retail seller's compliance for the period will be determined by comparing the retail seller's procurement (in GWh) of eligible renewable energy during the period against this compliance obligation.

Question: *Should different compliance targets for intervening years be set for this period?*

IEP's Response: No. It is simpler to calculate the compliance targets for this period by multiplying actual retail sales by 20% for each year. This approach is also consistent with the procurement target of 20% for 2010 under the existing RPS statute.

Question: *Should no compliance targets for intervening years be set for this period?*

IEP's Response: No. Procurement targets should be set for the intervening years. Even though compliance is ultimately measured by procurement over the entire compliance period, it is useful to have targets for the intervening years as a gauge of retail sellers' progress toward meeting the initial period's compliance targets. It is the sum of the procurement targets set for each year of the compliance period that determines the retail sellers' compliance obligation for a specific compliance period.

Question: *B. For the compliance period 2014-2016 and 2017-2020, the Commission is required to set compliance period quantities that "reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2015, and 33 percent of retail sales by December 31, 2020."*

- *Should targets for intervening years in the 2014-2016 compliance period be set using a linear trend:
 - 21.5% of retail sales by December 31, 2014;
 - 23.5% of retail sales by December 31, 2015; ending with
 - 25% of retail sales by December 31, 2016,*

such that the compliance period quantity for the 2014-2016 compliance period would equal in MWh: (.215 x 2014 retail sales) + (.235 x 2015 retail sales) + (.25 x 2016 retail sales)?

IEP's Response: Yes. Setting procurement targets for the intervening years by use of a linear trend will help ensure steady progress toward the statutory targets. However, the linear trend should be based on a straight-line linear progression. The percentages set forth in the Ruling's question deviate from a straight-line, linear trend. A linear trend would result in procurement targets of 21.67% in 2014 (slightly higher than indicated in the Ruling) and 23.34% in 2015 (slightly lower than indicated in the Ruling).

Question: *Should targets for intervening years in the 2017-2020 be set using a linear trend:*

- 27% of retail sales by December 31, 2017;*
- 29% of retail sales by December 31, 2018;*
- 31% of retail sales by December 31, 2019; ending with*
- 33% of retail sales by December 31, 2020, and thereafter, such that the compliance period quantity for the 2017-2020 compliance period would equal in MWh: (.27 x 2017 retail sales) + (.29 x 2018 retail sales) + (.31 x 2019 retail sales) + (.33 x 2020 retail sales)?*

IEP's Response: Yes. The procurement targets for the intervening years of a specific compliance period should be determined based on a straight-line, linear calculation for the reasons stated in the response to the preceding question.

Question: *Should different targets for intervening years be set for either of these compliance periods?*

IEP's Response: The targets set for the intervening years of a specific compliance period should be calculated based on a straight-line, linear progression from the percentage target of the immediately preceding compliance period and continuing through to the target set at the end of the current compliance period.

Question: *C. New section 399.15(b)(2)(C) provides that "[r]etail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."*

- *What are the consequences of a retail seller attaining the target in the final year of the compliance period (e.g., 25% of retail sales in 2016), but failing to procure "the quantities associated with all intervening years" by the end of that compliance period?*

IEP's Response: The compliance obligation can be met through procurement over the full duration of the compliance period. If a retail seller procured renewable energy equivalent to 25% of retail sales in 2016 but failed to procure the total GWh for the compliance period that is the sum of multiplying the procurement targets for the intervening years by the actual retail sales for each year, the retail seller would not be in compliance for the compliance period. If the retail seller fails to meet its compliance obligation, it should face penalties if it fails to satisfy the waiver provisions set forth in § 399.15(b)(5).

Question: *3. New section 399.15(a) provides that "[f]or any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article."*

- A. How should "at least 14 percent of retail sales from eligible renewable energy resources in 2010" be interpreted?*

IEP's Response: This provision should be interpreted to mean that at least 14% of a retail seller's retail sales must come from renewable energy credits (RECs), from bundled or REC-only contracts, associated with RPS-eligible energy that was generated and delivered in 2010. The statute offers to forgive any deficits for retail sellers who made significant efforts to meet the 2010 goal (i.e., 70% of the 20% goal). In addition, because SB 2X will not become effective until December, the existing RPS statute will be in effect for almost all of 2011, and retail sellers

may continue to use flexible compliance mechanisms authorized under existing law and regulation to increase their 2010 totals until the effective date of SB 2X.

Question: *B. How should "the deficits associated with any previous renewables portfolio standard" be interpreted?*

IEP's Response: This phrase should be interpreted to apply to any year in which a retail seller had an annual procurement target (APT) obligation, using allowable flexible compliance rules in the calculation of any deficit. If a retail seller achieves the 14% threshold for 2010, deficits for 2010 and for any previous years are in effect disregarded and are not added to the new requirements under SB 2X. A retail seller may continue to use existing flexible compliance mechanisms to reach the 14% threshold until SB 2X becomes effective. In addition, deliveries up to the effective date of SB 2X from any resource that was earmarked to help meet 2010 goals must be counted toward compliance for 2010.

Question: *C. How should "shall not be added to any procurement requirement pursuant to this article" be interpreted with respect to RPS procurement obligations under the 20% program?*

- *Does a retail seller need to satisfy its APT requirements for all compliance years through 2010, using the current flexible compliance rules, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources in 2010?*
- *Is a retail seller subject to penalties for failing to satisfy its APT requirements for any compliance years through 2010, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources in 2010?*

IEP's Response: Deficits for retail sellers who meet the 14 % threshold for 2010 are not carried forward and are not subject to penalties. Retail sellers who do not meet the 14% threshold for 2010 may be subject to penalties for failing to meet the targets for compliance years.

Question: 4. Should new § 399.15(b)(9) be interpreted to mean: "[d]eficits associated with the compliance period in which the deficits occur shall not be added to a future compliance period?" Should this section apply only to compliance year 2011 and future years?

IEP's Response: SB 2X establishes three compliance periods: 2011-13, 2013-16, and 2017-2020. If a retail seller has a deficit for one compliance period, e.g., 2011-2013, that deficit is not to be carried over into the 2013-2016 compliance period. However, the retail seller may be subject to penalties for deficit for 2011-2013.

Question: 5. If a retail seller has deficits from any compliance year through 2010 that must be satisfied with procurement in 2011 or later years, how should the requirement to satisfy the prior deficits be implemented, in light of new § 399.15(b)(9)?

IEP's Response: New § 399.15(b)(9) refers to the three compliance periods established in new § 399.15(b)(1). If a retail seller meets the 14% threshold for 2010, it is not required to make up its deficit for 2010 or earlier years. If a retail seller does not meet the 14% threshold for 2010, it should be permitted to use flexible procurement up to the date that SB 2X becomes effective to meet its obligations for 2010, provided that any such make-up procurement is clearly distinguished from procurement to be counted toward the 2011-2013 target. . In addition, deliveries up to the effective date of SB 2X from any resource that was earmarked to help meet 2010 goals must be counted toward compliance for 2010. If the retail seller fails to meet its compliance obligation, it should face penalties if it fails to satisfy the waiver provisions set forth in § 399.15(b)(5).

Question: 6. New § 399.13(b) amends current § 399.14(b) as indicated below:

(b) A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured ~~either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.~~

In D. 07-05-028, the Commission implemented current § 399.14(b) by requiring that retail sellers enter into contracts for a minimum quantity of 0.25% of the prior year's retail sales that have a minimum duration of 10 years (long-term contracts), or are with RPS-eligible generation facilities commencing commercial operation on or after January 1, 2005.

- *How should the Commission determine the minimum quantity under new § 399.13(b)?*

IEP's Response: The current approach of requiring contracts resulting in at least 0.25% of the preceding year's retail sales to have a minimum duration of 10 years or more provides a simple and easily applied test. As a practical matter, longer-term contracts allow suppliers to offer lower prices to buyers, and retail sellers should have an incentive to enter into long-term contracts whether or not they are subject to a specific minimum procurement requirement. In addition, the Commission may now disregard consideration of whether the contract is with an RPS-eligible generation facility commencing commercial operation on or after January 1, 2005.

Question: *Should the minimum quantity include specific minimum quantities of procurement from long-term contracts in any or all of the portfolio content categories identified in new § 399.16(b)?*

IEP's Response: No. Retail sellers' procurement from resources in the categories described in new § 399.16(b)(2) and (b)(3) are limited to a percentage that declines over time. The declining permitted percentages of procurement of resources in these categories will make retail sellers less likely and less able to enter into long-term contracts for these resources.

Question: *Should the minimum quantity requirement under new § 399.13(b) carry forward the requirement in D.07-05-028 that the long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts sought to be counted for RPS compliance? If not, what basis for accounting for the minimum quantity of long-term contracts should be used?*

IEP's Response: No. Retail sellers should have the ability to respond to changes in demand and market conditions to vary the proportion of long-term and short-term contracts in their portfolios from year to year.

Question: *Should the minimum quantity requirement under new § 399.13(b) have a termination?*

IEP's Response: No. No termination is provided for in SB 2X.

Question: *How should deliveries in 2011 and later years from short-term contracts entered into in 2010 and earlier years, and in compliance with D.07-05-028, be treated?*

IEP's Response: The focus of new § 399.13(b) is on the conditions under which the Commission may authorize a retail seller to enter into contracts of less than ten years' duration. Even if the predicates to this authorization do not occur (*i.e.*, the retail seller has not procured the minimum quantities through long-term contracts), purchases from short-term contracts authorized under the previous statute should continue to count toward retail seller's compliance requirements, particularly if the contract was executed before June 1, 2010.

Question: *Should such deliveries be deducted from actual procurement quantities as part of the calculation of excess procurement that may be applied to a subsequent compliance period pursuant to new § 399.13(a)(4)(B)?*

IEP's Response: Yes. The new statute requires this deduction for "procurement associated with contracts of less than 10 years in duration."

Question: *Should short-term contracts entered into in 2011 but prior to the effective date of SB 2 (1x) be treated differently?*

IEP's Response: No. The new statute does not provide any basis for treating these contracts differently.

Question: *7. New § 399.13(a)(4)(B) requires the Commission to adopt new rules for the calculation and management of RPS procurement that is in excess of the requirements for a given compliance period ("banking"). This new section provides that the Commission must adopt:*

[r]ules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement."

- *Please propose a method of calculating any excess procurement that may be carried over from the 2011-2013 compliance period to the 2014-2016 compliance period.*

IEP's Response: Excess RPS Procurement = {[total RPS procurement 2011-13) – [RPS Compliance Obligation (in %) * (total retail sales for 2011-13)]]} - (procurement in 2011-13 from contracts of less than 10 years' duration) – (procurement in 2011-13 from § 399.16(b)(3) transactions)].

Question: *Should the method you propose also be used for calculating any excess procurement that may be carried over from the 2014-2016 compliance period to the 2017-2020 compliance period?*

IEP's Response: The same method can be used, with appropriate adjustment for the years of the compliance period.

Question: *Please discuss the relationship of the method you propose to your response to #2, above, relating to the calculation of RPS procurement obligations for compliance year 2011 and future years pursuant to new § 399.15(b).*

IEP's Response: In both responses, the appropriate period of measurement is the entire multi-year compliance period, not any individual year.

Question: 8. Current RPS rules set out a system of procurement banking different from that in new § 399.13(a)(4)(B). Current § 399.14((a)(2)(C)(i) directs the Commission to adopt:

Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

The Commission has adopted rules that, among other things, allow unlimited forward banking of excess RPS procurement and allow inadequate procurement to be deferred, in certain circumstances, for no more than the following three years.

With respect to forward banking under the provisions of SB 2 (1x), please comment on the following possibilities.

- *Should the Commission allow unlimited forward banking of excess procurement prior to January 1, 2011 from bundled or REC-only contracts for all compliance periods?*

IEP's Response: Section 399.13(a)(4)(B) allows banking "beginning January 1, 2011" from one compliance period to another. The statutory language indicates that carrying banked amounts from periods prior to January 1, 2011 was not contemplated. Because SB 2X will not become effective until December 2011, retail sellers are free to use banked amounts as they see fit until SB 2X takes effect.

Question: *Should the Commission allow no banking of excess procurement prior to January 1, 2011 from bundled or REC-only contracts for any compliance period later than 2010?*

IEP's Response: Yes. That approach is consistent with the language of new § 399.13(a)(4)(B) which allows excess procurement to be banked beginning January 1, 2011.

Question: *Should the Commission allow forward banking of excess procurement prior to January 1, 2011 from bundled or REC-only contracts through the 2011-2013 compliance period but not beyond 2013?*

IEP's Response: No. That approach is inconsistent with the language of § 399.13(a)(4)(B).

Question: *Should the Commission make some other provision for banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts?*

IEP's Response: No, because the intent of SB 2X is to prohibit banking from one compliance period to another.

Question: *Should any banked procurement be counted in years after 2010 only in accordance with the limits on the use of specific portfolio content categories set out in new § 399.16(c)?*

IEP's Response: No. The portfolio content categories should apply only to procurement under the SB 2X regime. In addition, renewable energy produced under contracts executed before June 1, 2010 and meeting the other requirements of § 399.16(d) shall “count in full” toward a retail seller’s compliance obligation and is not subject to the portfolio content requirements.

Question: *9. If a retail seller did not procure at least 14% of retail sales from RPS-eligible resources in 2010, should its deficit for 2010 be calculated as a shortfall from 20% of retail sales in 2010 or from 14% of retail sales in 2010?*

IEP's Response: From the 20% of retail sales. The 14% criterion is a threshold, and the deficits of retail sellers who do not attain that level of procurement are not excused.

Question: *10. Should the Commission continue to apply the current flexible compliance rules to RPS procurement for 2010 and prior compliance years?*

IEP's Response: Yes. Those provisions were in effect in 2010 and will remain in effect until the effective date of SB 2X.

Question: *11. Since SB 2 (1x) will not become effective until, at the earliest, the last quarter of 2011, should the current flexible compliance rules apply to RPS procurement for 2011?*

IEP's Response: In keeping with the statutory scheme, the first compliance period under SB 2X begins on January 1, 2011. However, the existing statutory and regulatory provisions on flexible compliance remain in place until SB 2X takes effect, and retail seller are entitled to make use of the flexible compliance mechanisms until the date SB 2X becomes effective. Once SB 2X becomes effective, procurement thereafter will be governed by the provisions of SB 2X.

Question: *12. In the current RPS flexible compliance regime, a retail seller is allowed to defer a shortfall of up to 0.25% of APT without explanation, so long as the deficit is made up within three years. Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.*

- *For years after 2010, should the Commission eliminate its current rule allowing deferral of 0.25% of APT without explanation, so long as the deficit is made up within three years?*

IEP's Response: Yes. SB 2X reflects a significant trade-off. Retail sellers who made substantial progress toward 2010 RPS goals were relieved of their RPS obligations through 2010. In addition, retail sellers were provided significant flexibility in how they meet future RPS obligations, including release from annual procurement requirements, elimination of the need to earmark resources to make up for earlier deficits, which freed up contracted resources to meet future obligations, and continuation of banking provisions within each compliance period. In exchange, retail sellers are faced with higher RPS obligations as a percentage of retail sales. This flexibility in achieving RPS compliance obligation must be balanced against increasingly rigorous enforcement by the Commission to ensure that compliance is steadily pursued and achieved. Thus, greater flexibility in program design must be balanced with stricter limits on the use of deferrals and waivers, and retail sellers should face the prospect of penalties for compliance failures.

Question: *13. In the current RPS flexible compliance regime, a retail seller is allowed to defer a deficit in excess of 0.25% of APT by the use of any allowable reason for noncompliance (e.g.,*

"earmarking."). Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- For years after 2010, should the Commission eliminate its current rule allowing deferral of deficits in excess of 0.25% of APT through earmarking?

IEP's Response: Yes. Because the compliance period is 3 or 4 years and deficits cannot be carried forward into a later compliance period, earmarking has no function or meaning after SB 2X takes effect.

Question: *How should the Commission treat RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013?*

IEP's Response: Up to the date SB 2X becomes effective, RECs from earmarked contracts must be used to reduce deficits for years up to 2010. After the effective date, when earmarking is no longer allowed, electricity from contracts previously characterized as "earmarked contracts" can apply toward current or future compliance obligations.

Question: *Should the RECs be allocated to the portfolio content categories (and their respective limits) of new § 399.16?*

IEP's Response: No. Only RECs used to meet the compliance obligations under SB 2X and not associated with contracts executed before June 1, 2010 are subject to the portfolio content requirements.

Question: *Should the RECs be allocated to the procurement categories that applied in the year in which the contract was signed? How would these categories connect to the portfolio content categories of new § 399.16?*

IEP's Response: RECs from contracts signed before June 1, 2010 shall "count in full" toward compliance requirements (new § 399.16(d)) and are not subject to the portfolio content categories of new § 399.16. RECs from contracts received after

the effective date of SB 2X should be assigned to the appropriate portfolio content category of new § 399.16.

Question: *Please address the application of new § 399.16(d) to your proposals.*

IEP's Response: Procurement from contracts executed before June 1, 2010 and meeting the other requirements of § 399.16(d) count in full toward compliance targets and are not subject the portfolio content requirements.

Question: *14. Should retail sellers be required to apply the RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013 to any deficits in meeting APT in years prior to 2011, regardless of whether the retail seller attained at least 14 percent of retail sales from eligible renewable energy resources in 2010 (new § 399.15(a))?*

IEP's Response: No. Retail sellers who procure at least 14% of 2010 retail sales from eligible renewable resources no longer have a deficit and have no need to use earmarked contracts to reduce their deficits. Deliveries from earmarked contracts before the effective date of SB 2X may be used by a retail seller to meet the 14% threshold.

Question: *15. Questions about local publicly owned utilities (POUs).*

IEP's Response: IEP has no comment on these questions but may respond to other parties' proposals in reply comments.

Question: *16. In D.03-06-071 and D.03-12-065, the Commission set the basic parameters for enforcement of RPS obligations. Among other things, the Commission set a penalty amount for retail sellers failing to meet their annual RPS obligations at \$0.05/kilowatt-hour (kWh) for each kWh below the annual procurement target, with an annual cap of \$25,000,000. New § 399.15(b)(2) institutes two three-year compliance periods and one four-year compliance period. New § 399.15(b)(1)(C) specifies that retail sellers "shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."*

- *To what obligation should a penalty apply?*

IEP's Response: The relevant obligation is the compliance requirement calculated for a particular compliance period.

Question: *Should the penalty amount of \$0.05/kWh be changed? If so, what method should be used to set a new penalty amount?*

IEP's Response: The penalty amount has not changed since it was adopted in 2003. At a minimum, the penalty amount should be increased to reflect inflation since 2003. A secondary function of the penalty amount is to serve as a price cap on the renewable attributes of generation from eligible resources. Even if no penalty is *ever* imposed, the penalty amount should be raised to increase the ability of market forces to accurately reflect the supply of and demand for renewable attributes used for RPS compliance.

Question: *For compliance periods beginning in 2011, should a penalty cap be in place?*

IEP's Response: The new statute does not suggest that there should be any cap on potential penalties.

Question: *If a penalty cap is imposed, should it cover an entire compliance period?*

IEP's Response: Yes. Any deficits are measured against the target for the entire compliance period, not for targets associated with intervening years. For example, the penalty cap until SB 2X become effective is \$25 million/year, at a time when the retail sellers are subject to an annual compliance obligation. With the additional flexibility in procurement afforded retail sellers in SB 2X, at a minimum the penalty cap should be increased to reflect the longer compliance periods (\$25 million/per year) * (number of years of the compliance period).

Question: *What method should be used to set a new penalty cap under SB 2 (1x)?*

IEP's Response: The maximum annual penalty until SB 2X takes effect is \$25 million/year, at a time when the retail sellers are subject to an annual compliance obligation. With the additional flexibility in procurement afforded retail sellers in SB 2X, at a minimum the new penalty cap should be increased to reflect the longer compliance periods (\$25 million/per year * (number of years of the compliance period)).

Question: *17. Please identify how the Commission would verify compliance with any proposal you have made, above. Please provide specific mechanisms and examples.*

IEP's Response: Compliance with IEP's proposals can be verified using existing reporting mechanisms and simple arithmetic.

Question: *18. Question related to the verification by the CEC and the use of the Western Renewable Energy Generation Information System (WREGIS).*

IEP's Response: IEP has no comment on this question but may respond to other parties answers in reply comments.

Question: *19. The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid-October 2011, at the earliest. In light of this, please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011?*

IEP's Response: In keeping with the statutory scheme, the first compliance period under SB 2X begins on January 1, 2011. However, the existing statute remains fully in effect until SB 2X becomes effective, and retail sellers are entitled to use existing statutory and regulatory mechanisms as they see fit. To the extent possible and lawful, procurement for 2011 should be governed by the provisions of SB 2X.

Respectfully submitted this 30th day of August, 2011 at San Francisco,
California.

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By /s/ Brian T. Cragg
Brian T. Cragg

Attorneys for the Independent Energy
Producers Association

VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Comments of the Independent Energy Producers Association on Procurement Targets and Compliance Requirements," dated August 30, 2011. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of August, 2011, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg

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