



ANTONIO R. VILLARAIGOSA  
Mayor

Commission  
THOMAS S. SAYLES, *President*  
ERIC HOLOMAN, *Vice President*  
RICHARD F. MOSS  
CHRISTINA E. NOONAN  
JONATHAN PARFREY  
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS  
*General Manager*

September 12, 2011

California Energy Commission  
Docket Office, MS4  
Re: Docket No. 11-RPS-01  
1516 Ninth Street  
Sacramento, CA 95814-5512

<b>DOCKET</b>	
<b>11-RPS-01</b>	
DATE	SEP 12 2011
RECD.	SEP 12 2011

To Whom It May Concern:

Subject: California Energy Commission Docket No. 11-RPS-01: Comments from the Los Angeles Department of Water and Power (LADWP) Related to the Staff Meeting on 33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper, Dated September 1, 2011

Based on the Request for Written Comments as solicited on the California Energy Commission Notice dated September 1, 2011, on the above Docket, LADWP respectfully submits the attached comments.

An electronic file was also submitted to [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us) and to [RPS33@energy.state.ca.us](mailto:RPS33@energy.state.ca.us) on September 12, 2011.

If additional information is necessary concerning this matter, please contact Mr. Oscar Alvarez at (213) 367-0677, or Mr. Oscar Herrera at (213) 367-4880.

Sincerely,

Randy S. Howard  
Director of Power System  
Planning and Development

MG:ec  
Enclosures

c: Mr. Oscar A. Alvarez  
Mr. Oscar Herrera

**Water and Power Conservation ... a way of life**

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700  
Telephone: (213) 367-4211. Cable address: DEWAPOLA

### **33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper**

California Energy Commission (Energy Commission, or CEC) staff has drafted this concept paper to explore the issues underlying the regulations specifying procedures for enforcement of the renewable portfolio standard (RPS) for publicly owned electric utilities (POUs). Staff has provided a list of options for each issue, as well as staff recommendations where they exist. Staff requests that stakeholders respond to staff recommendations, supplying rationale for those areas in which the stakeholder disagrees with staff's opinion. Staff also requests that stakeholders provide their own recommendations where no staff recommendation exists and list additional issues and/or options they feel should be considered by the Energy Commission in drafting the regulations. In contributing these additional recommendations, issues and/or options, stakeholders should include an explanation as to why the Energy Commission should consider them.

#### **Foundational Issues**

The CEC is not permitted to expand its jurisdiction beyond the plain meaning of the legislation.<sup>1</sup> The Los Angeles Department of Water and Power (LADWP) disagrees with the Concept Paper's suggestion of potential regulations that are beyond the scope of the CEC's jurisdictional authority under California Renewable Energy Resources Act (also known as and referred to as SB 2 (1X)). The only grant of authority to the CEC over POUs or their governing boards is to "adopt regulations specifying procedures for enforcement of this article" pursuant to Section 399.30(n). The CEC's regulations must not exceed the specific regulatory authority granted to the CEC under SB 2 (1X) or abrogate the authority of LADWP's governing board. LADWP comments on a particular question should not be interpreted to mean that LADWP is agreeing to CEC jurisdiction on a given issue.

The LADWP generally supports the comments being filed concurrently by the California Municipal Utilities Association's (CMUA).

- a) Meaning of "consistent with" and "in the same manner as" (Public Utilities Code Sections 399.30 (c)(3), 399.30 (d) (1), 399.30 (d) (2), 399.30 (d)(3))
- i. Options:
    - 1) Always same as those for retail sellers
    - 2) In spirit of rules for retail sellers; up to POUs and Energy Commission to define for specific cases
    - 3) Some rules the same as those for retail sellers (for instance, definitions of portfolio content categories), and some in the spirit of the rules for retail sellers, as determined by POUs and the Energy Commission
  - ii. Staff recommendation: Option (3); the law should be applied to all entities using the same rules to the extent practicable. In areas in which different rules apply to POUs, those rules will be as consistent as possible with those for retail sellers. (In response to this particular issue, staff requests that stakeholders specify which rules should be the

<sup>1</sup> See *DWP v. Energy Resources Conservation & Development Com.* (1991) 2 Cal. App. 4<sup>th</sup> 206,222. See also Article 11, Section 9 of the California Constitution.

same for POU's and retail sellers and what criteria should be used to determine "in the spirit of." Please include rationale.)

Regulations imposed by the California Public Utilities Commission (CPUC) on the Investor-Owned Utilities (IOUs) may be different than those adopted by the POU governing boards; The statute recognizes this basic principle.

SB 2 (1X) Sections 399.30 (c)(3), 399.30 (d) (1), 399.30 (d) (2), 399.30 (d)(3) directs POU's to adopt various procurement requirements and measures that are "consistent with" or "in the same manner" as retail sellers. This does not imply that POU's have to adopt their program elements and measures "identical" to the regulations adopted by the CPUC for CPUC-jurisdictional entities. What is implied by these sections is that the POU governing boards have the same level of discretion to adopt program elements that the CPUC adopts, which in turn allows POU's to tailor their procurement requirements to the operating structure of their utility.

LADWP procurement plans are continuously being shaped by technology, community engagement processes, and system modeling. Further, the POU's resource procurement and ratemaking process is different from the IOUs, as they are consolidated within the POU and costs are recovered from the POU's customer-owners.

For example, POU's are devoted to community engagement in these important procurement decisions, and not just to POU ratepayers who ultimately pay for the RPS programs, but the whole community. For example, in developing the LADWP 2010 Integrated Resource Plan (IRP) (which includes the RPS), the LADWP held numerous community and neighborhood meetings to gather input on the timing and the mix of these important renewable resources and activities.

Therefore, it is paramount that POU's maintain discretion over costs incurred for eligible renewable resources, and thus some program elements adopted by LADWP *may* differ from those adopted by the CPUC.

LADWP would like to emphasize that Section 399.30 (c) (3) states that a POU "shall adopt procurement requirements consistent with Section 399.16" and Sections 399.30 (d) states that the POU governing board "may adopt the following measures." The CEC's authority is therefore limited to determining whether POU's abide by their procurement plan.

#### Eligibility of POU resources

- i. Pre-June 1, 2010, contracts approved by POU under former Public Utilities Code 387 (Public Utilities Code Sections 399.12 (e)(1)(C))
- ii. Options:
  - 1) Resources must meet Energy Commission's eligibility rules at time of contract execution
  - 2) Resources must meet the definition of renewable electric generation facility in Public Resources Code Section 25741
  - 3) Resources must meet the Energy Commission's eligibility requirements applicable at the time the facility applies for RPS certification.

iii. Staff recommendation: Option (3).

Resources contracted for after June 1, 2010 must meet the definition of an updated RPS eligibility guidebook in effect at the time that application for certification is submitted. However, contracts approved by POU's prior to June 1, 2010 as part of the POU's RPS requirements should count *in full* towards the RPS requirements, regardless of whether the contract meets CEC eligibility requirements as long as it is adopted by its governing board as a procurement contract and consistent with SB2 (1X).

The CEC needs to update the RPS eligibility guidebook in order to ensure that all utilities can proceed with procurement activity that qualifies. All pre-June 2010 contracts approved by POU governing boards that meet the existing eligibility guideline as of the date of approval should count towards the RPS and be deemed certified. This is extremely important now that we are operating under the first compliance period. Any retroactive application of future eligibility requirements or delays in certifying current procurements would be costly to ratepayers and disruptive to current efforts.

Furthermore, the CEC needs to ensure that disconnects between the Public Resources Code Section 25741 and the Public Utilities Code Section 399.13(e)(1)(C) are addressed in the new guidebook. For example, Section 399.12(e)(1)(A) states that “[a] small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system is an eligible renewable energy resource if the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005.” This language is clearly not addressed in the Public Resources Code 25741.

Classification of procurement products

a. Portfolio content categories

- i. Portfolio Content Category 1 (also known and referred to a Bucket 1) – interconnected or scheduled to a California balancing authority (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))

1. Definition:

a) Options (one or more of the following):

- i) Generation from a facility that has its first point of interconnection with a California Balancing Authority (or with distribution facilities used to serve end users within a California balancing authority) is automatically considered eligible, even if it is procured as an unbundled product or is unbundled after procurement
- ii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as and remains a bundled product
- iii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California

- balancing authority) is only considered eligible if it is procured as a bundled product, even if it is subsequently unbundled
- iv) Generation scheduled into a California balancing authority is considered eligible if it is procured as a bundled product, even if it is subsequently unbundled
  - v) Generation scheduled into a California balancing authority is considered eligible only if it is procured as and remains a bundled product
  - vi) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as a bundled product, even if it is subsequently unbundled
  - vii) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as and remains a bundled product.
- b) Staff recommendation: None at this time

A more detailed definition of “Bucket 1” that goes beyond the language in SB 2 (1X) exceeds the CEC’s jurisdictional authority. Transactions that transfer solely unbundled RECs could count as “Bucket 1” RECs as defined in Section 399.16(b)(1) as long as the conditions identified in the statute are met. Furthermore, options for Bucket 1 should encompass all possible scheduling methods as described below.

As stated in LADWP’s Comments on 7/12/2011 to the CPUC’s R11-05-005 proceeding, an eligible renewable resource does not have to be directly connected to a California Balancing Authority (BA) in order to exclusively fall into Bucket 1. The phrase “scheduled from eligible renewable energy resource[s] into a California Balancing Authority” in 399.16 (b)(1)(A) should encompass all possible scheduling methods, including scheduled into a California BA using a generator-tie into a BA, or from one BA to the ultimate California BA, or using multiple BAs to ultimately serve a California load.

For example, the Willow Creek Wind Project (Willow Creek) is interconnected to the Bonneville Power Administration’s (BPA’s) BA, a non-California BA. The energy generated from this project is scheduled by a Purchasing/Selling Entity (PSE) directly to LADWP as a California BA at the Nevada/Oregon Border (NOB) scheduling point. The energy from Willow Creek, an eligible renewable energy resource, is scheduled into a California BA, regardless of the fact that it has to use BPA’s interconnection to ultimately reach a California BA. This example supports the position that the intent of the phrase is to show a complete path of scheduled electricity from a renewable energy resource into a California BA.

In addition, the phrase “scheduled from eligible renewable energy resource into a California Balancing Authority without substituting electricity from another source” means that only scheduled energy from an eligible renewable energy resource may be counted towards Bucket 1. For example, if 100 MW are scheduled into a California BA, but 110 MW are actually generated and received by the BA, then the 100 MW scheduled would fall under Bucket 1 and the additional 10 MW received would fall under Bucket 2 or 3.

On the other hand, if 100 MW are scheduled but only 90 MW are actually generated and received, the 100 MW schedule would have to be firmed up using 10 MW of system power from the balancing authority. In this situation, the 90 MW actually generated by the eligible renewable energy resource would count towards Bucket 1, but the remaining 10 MW of firming system power may only be counted towards Bucket 2 or Bucket 3 if it came from an eligible renewable energy resource; otherwise, it would not be counted.

Also, the options provided by the CEC above do not make reference to 399.16 (b) (1) (B), which states that renewable energy resource electricity products fall under Bucket 1 if the POU “[h]as an agreement to dynamically transfer electricity to a California Balancing Authority.” The options provided should not exclude other options available under Bucket 1.

2. Minimum percentage of reduction of procurement content requirement, upon successful application by POU, applied to this category (Public Utilities Code Sections 399.16 (e) and 399.30 (c)(3))

a) Compliance period ending December 31, 2013

i) Options:

1. Not less than 40%
2. Not less than 33%
3. Not less than 25%
4. No defined limit; decided on a case-by-case basis

ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.

b) Compliance period ending December 31, 2016

i) Options:

1. Not less than 50%
2. Not less than 40%
3. Not less than 33%
4. No defined limit; decided on a case-by-case basis

ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.

It would be unsuitable for the CEC to adopt rules requiring pre-approval of deviations and constraining the percent reduction allowed on every POU. Section 399.30 (d)(2) specifically states that “the governing board of a local publicly owned electric utility *may* adopt the following measures: Conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15.” As such, the POU governing boards would have the authority to adopt rules allowing for deviation from RPS procurement targets for any compliance periods, which allow them to adopt rules suitable for their specific POU structure.

The POU governing boards are therefore the ultimate entity that approves any deviation from RPS target compliance, and the CEC lacks statutory authority to require POU's to apply for

reduction in Bucket 1.

The CEC's authority under Section 399.30(n) is limited to determining whether a POU's determination is consistent with the language in Section 399.16(b)(1).

3. Determination that generation belongs in this category

a) Options (one or more of the following):

- i. POU indicates which generation it believes belongs in this category as part of compliance reporting
- ii. POU indicates which generation it believes belongs in this category as part of the compliance reporting.
- iii. Staff determination at request of POU
- iv. Committee determination at request of POU
- v. Commission determination at request of POU
- vi. At end of compliance period as part of compliance and verification by staff, approved by Commission

b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

As stated above in its comment to "Foundational issues," LADWP disagrees with the Concept Paper's suggestion of potential regulations that are beyond the scope of the CEC's jurisdictional authority under SB 2 (1X). The Legislature mandated the CEC to focus on "procedures for enforcement" under 399.30(n). The Legislature limited the CEC's role. Therefore, POU's would decide which generation it believes belongs in this category.

LADWP would like to emphasize that POU ratepayers ultimately pay for the projects developed to comply with RPS programs and thus, the POU governing boards, as representatives of the customers, should have the authority and flexibility to reasonably interpret the portfolio content categories identified in Section 399.16 of the Public Utilities Code. This would align with the POU governing boards' ability to have the discretion and ability to make important decisions on rate impacts to the customers, including setting cost-limiting rules for procurement expenditures based on the financial challenges faced by the POU's.

ii. Portfolio Content Category 2 (also known and referred to a Bucket 2)– firmed and shaped incremental (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))

1. Definition:

a) Location of renewable resource interconnection:

i. Options:

1. May or may not be interconnected to a California balancing authority
2. Not interconnected to a California balancing authority

ii. Staff recommendation: None at this time

b) Timing of incremental electricity resource scheduling into California balancing authority (scheduling may not precede generation of renewable product)

- i. Options:
      - 1. Within one month of generation
      - 2. Within same calendar year as generation
      - 3. Within 12 months of generation
      - 4. Within same compliance period as generation
      - 5. Within 36 months of generation
    - ii. Staff recommendation: None at this time
  - c) Renewable resource
    - i. Options:
      - 1. Intermittent resources only
      - 2. Both intermittent and non-intermittent resources permitted
    - ii. Staff recommendation: None at this time
  - d) Incremental resource
    - i. Options:
      - 1. Incremental to California
      - 2. Incremental to POU
    - ii. Staff recommendation: None at this time
  - e) Location of incremental resource relative to renewable resource
    - i. Options:
      - 1. Must be within same balancing authority
      - 2. May or may not be within same balancing authority
    - ii. Staff recommendation: None at this time
  - f) Execution of incremental resource contract
    - i. Options:
      - 1. Must occur at the same time or after renewable resource contract is executed
      - 2. May occur before, at the same time, or after renewable resource contract is executed
    - ii. Staff recommendation: None at this time
  - g) Contractual relationship between renewable and incremental resources
    - i. Options:
      - 1. Clear relationship must exist in contract for the renewable and/or incremental resource in order for the generation to count toward this category
      - 2. No contractual relationship necessary
    - ii. Staff recommendation: None at this time
- 2. Determination that generation belongs in this category
  - a) Options (one or more of the following):
    - i. POU indicates which generation it believes belongs in this category as part of compliance reporting
    - ii. Staff determination at request of POU
    - iii. Committee determination at request of POU
    - iv. Commission determination at request of POU
    - v. At end of compliance period as part of compliance and verification by staff, approved by Commission
  - b) Staff recommendation: Option (i), (v); these options will allow for the

minimum administrative burden and backlog of essential work.

With the CEC's limited role under 399.30(n), if it still would like to assess the portfolio content categories for purposes of its process, then LADWP directs the CEC to its comments in the CPUC Proceedings, which is provided, in part, herein. It is LADWP's view that "firmed and shaped" products clearly belong to the portfolio content category described in Section 399.16 (b) (2). However, the use of firming alone does not qualify an electricity product for inclusion in Bucket 2. The statute states that firmed electricity products in fact do meet the requirements of Bucket 1.

Firmed eligible renewable energy resource electricity products are not precluded by this portfolio content category. The remainder of Bucket 1 provides that "the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California BA shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category." "Real-time" ancillary services include "firming." Firmed eligible renewable energy resource electricity products are not precluded by this portfolio content category.

#### Location

The location of the eligible renewable energy resource is relevant to whether the eligible renewable energy resource electricity products fall under Bucket 1 or Bucket 2. Bucket 2 should only refer to "shaped" electricity products generated outside the boundaries of a California BA. Eligible renewable energy resource electricity products generated within the boundaries of a California BA, regardless of the renewable resource being shaped, would already be scheduled into a California BA, therefore making it subject to Bucket 1.

For example, LADWP previously purchased renewable energy from an energy marketing firm. The source was a biomass generator within the CAISO BA; An energy marketing firm then delivered the energy to LADWP in California on a shaped schedule. In this case, all of the attested energy would effectively count towards the Bucket 1 category, regardless of the specific delivery profile.

#### Incremental Resources and Timing

As inferred from Section 399.16 (b) (2) of the statute, in general, the term "Incremental Energy" is energy needed to firm and/or shape an eligible renewable energy resource in order to make schedules and deliveries into a California BA whole. The statute did not contemplate or specify any timeframe requirement for firming or shaping. Such energy is not counted towards RPS compliance until it is scheduled and delivered. Due to the complexity of renewable energy integration, the need to balance GHG mandates, and eliminate once-through-cooling at coastal power plants, utilities such as LADWP will need extreme flexibility in scheduling and delivering energy to maintain reliability, and should not be limited by arbitrary timeframes.

Determination that generation developed in this category is under the purview of the POU Board. Further, Section 399.16 (b)(2) does not discriminate between intermittent and non-intermittent resources. There is no need to artificially restrict the definition of renewable resource.

- iii. Portfolio Content Category 3 (also known and referred to a Bucket 3)– all other, including unbundled renewable energy credits (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))
  - 1. Definition:
    - a) Options:
      - i. All unbundled renewable energy credits and any other generation that does not qualify for portfolio content category 1 or 2
      - ii. Any generation that does not qualify for portfolio content category 1 or 2
    - b) Staff recommendation: None at this time
  - 2. Determination that generation belongs in this category
    - a) Options (one or more of the following):
      - i. POU indicates which generation it believes belongs in this category as part of compliance reporting
      - ii. Staff determination at request of POU
      - iii. Committee determination at request of POU
      - iv. Commission determination at request of POU
      - v. At end of compliance period as part of compliance and verification by staff, approved by Commission
    - b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

With the CEC's limited role under 399.30(n), if the CEC still would like to assess the portfolio content categories for purposes of its process, then LADWP directs the CEC to its comments in the CPUC Proceedings, which is provided, in part, herein. An unbundled REC is an underlying commodity with beneficial environmental attributes that may be obtained separately from the originating energy. Therefore, unbundled RECs can be procured separately from the RPS-eligible energy with which the REC is associated. The determination of what generation belongs in this category is under the purview of the POU governing boards; thus, POUs should determine what generation does not qualify under portfolio content category 1 or 2 and which generation it believes belongs in portfolio content category 3.

#### Compliance and verification

- a. Verification process
  - i. Options:
    - 1. Include POU verification as part of current RPS Verification Report; full report will be sent to both CPUC and ARB
      - a) Adopt annually
      - b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
    - 2. POUs have a separate verification report
      - a) Adopt annually
      - b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
  - ii. Staff recommendation: Option (2)(b); Verification of POU and IOU compliance should take place under separate reports, so that a complication in verifying

information from one group will not needlessly delay the timely verification of the other. As compliance can only be determined at the end of each compliance period, staff recommends only adopting a verification report after each period. For years when a report is not adopted, annual procurement data will be posted to allow tracking of progress toward RPS targets. An annual workshop could be held to publicly discuss findings.

LADWP agrees with the staff recommendation. It is important to ensure that there is a separation of reports between the IOUs and the POU. The verification report should remain consistent with the data reporting requirements of Section 399.30 (g) and 399.30 (l).

b. Non-compliance triggers

i. Options (one or more of the following):

1. Does not meet procurement target requiring the utility to procure a minimum quantity of eligible renewable energy resources for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance
2. Does not meet portfolio content category required minimum or maximum percentages for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance
3. Not timely filing sufficient documentation for the Energy Commission to determine POU compliance with the law at the end of a compliance period, without successful application for a late filing
  - a) More than 30 days late
  - b) More than 60 days late
  - c) More than 90 days late
  - d) Not submitted
  - e) Other
4. One or more required annual reports is not received in a timely manner
  - a) More than 30 days late
  - b) More than 60 days late
  - c) More than 90 days late
  - d) Not submitted
  - e) Other
5. Procurement plan is adopted late
6. Does not provide adequate documentation to demonstrate that conditions exist beyond the control of the POU that would delay timely compliance, and that reasonable measures were taken to overcome those conditions

ii. Staff recommendation: Options (1), (2), (3)(c), (3)(d), (6); the law clearly sets targets for each compliance period and minimum and maximum percentages for each portfolio content category. Additionally, the Energy Commission will need to timely determine each POU's status in achieving the goals of the RPS targets for each compliance period and will rely on reports and documentation submitted by the POU for those compliance years.

The phrase “without a demonstration of conditions beyond the control of the POU that would delay timely compliance” should be deleted from 1 and 2. It is up to the POU governing boards to adopt conditions that allow the delay in timely compliance with the rules. This section should be rewritten to state the following:

“Unless the POU governing boards adopted conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15 and such conditions were met, or unless the POU’s governing board adopted cost limitations for procurement consistent with Section 399.15 (c) and compliance would exceed such limitations”.

Option 3(c) with the 90 day request seems reasonable to LADWP. Option 6 should not be adopted as the CEC does not have authority in approving waiver conditions or cost limitations.

Also, the statute does not contemplate the application of penalties if a procurement plan was adopted late. Furthermore, LADWP would like to emphasize that Section 399.30 (b) states “the governing board shall implement procurement targets for a local [POU].” The CEC’s authority must be interpreted as limited to a process to determine whether POU’s abide by their procurement plan.

- c. Criteria and process for determining whether POU’s have met procurement requirements
  - i. Procurement targets for each compliance period
    - 1. Process used to determine POU compliance
      - a) Options:
        - i. Same process as that used for retail sellers
        - ii. Same process, but require POU’s to procure renewable resources for the remaining unmet need after long-term contracts executed after June 1, 2010, are removed, up to the total number of kWhs that represents the percentage of total retail sales required for that compliance period
      - b) Staff recommendation: None at this time

None of the presented options should be adopted by the CEC’s regulations. The two available options provided by the CEC would subject POU’s to the same compliance process as that employed on retail sellers. Section 399.30 (b) explicitly sets up three compliance periods of January 1, 2011 – December 31, 2013, January 1, 2014 – December 31, 2016, and January 1, 2017 – December 31, 2020, and requires POU’s to show “reasonable progress” in the intervening years. With using the term “reasonable progress” the Legislature intended utilities to be diligent in pursuing the second and third target for the compliance periods, but avoided defining how to measure their pursuit.

In other words, the CEC has to adopt “regulations specifying procedures for enforcement of this article.” The Legislature did not intend for the CEC to have granular oversight over POU’s, nor did it intend for the CEC to adopt regulations that directly modify the procurement plans adopted by each POU. The POU’s were provided exclusive authority to develop its own plans in order to ensure that the plans are tailored to the utility’s specific operations.

2. Time period used to determine compliance for compliance period ending December 31, 2016 (Public Utilities Code Section 399.30 (c)(2))
  - a) Options:
    - i. January 1, 2016 to December 31, 2016
    - ii. January 1, 2014 to December 31, 2016
    - iii. Other time period
  - b) Staff recommendation: None at this time
3. Time period used to determine compliance for compliance period ending December 31, 2020 (Public Utilities Code Section 399.30 (c)(2))
  - a) Options:
    - i. January 1, 2020 to December 31, 2020
    - ii. January 1, 2017 to December 31, 2020
    - iii. Other time period
  - b) Staff recommendation: None at this time

The time period, if any adopted, is under the purview of the POU governing authority. Section 399.30 (b) specifically states that the “governing board [of a local POU] shall implement procurement targets for a local publicly owned electric utility that require the utility to procure a minimum quantity of eligible renewable energy resources...” but does not provide a specific time period to determine compliance. LADWP believes that the POU’s Boards have the authority to set the appropriate compliance period that best suits the utility. This would allow utilities to make an interpretation of the phrase “reasonable progress” and adjust the compliance periods according such interpretation.

It is expected that the LADWP governing Board will adopt a target of January 1, 2016 to December 31, 2016 and January 1, 2020 to December 31, 2020.

- ii. Percentage limitations for portfolio content categories
  1. Portfolio content category 1 (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))
    - a) Options (one or more of the following):
      - i. Use contract information, which could demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable resource and whether generation in this category is procured as a bundled product
      - ii. Use NERC e-Tags to verify generation scheduled into a California balancing authority; the NERC e-Tag must show that the generation came from the same RPS-eligible resource as the RECs with which the NERC e-Tag is matched
      - iii. Use dynamic transfer agreements to verify generation dynamically transferred to a California balancing authority
    - b) Staff recommendation: Options (i), (ii), (iii); contract information would provide appropriate assurance, as needed,

that generation counted toward this category is scheduled into a California balancing authority and/or bundled. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority from the renewable resource. Dynamic transfer agreements with the balancing authority sufficiently demonstrate that the generation represented belongs in this category.

The options listed by the CEC staff provide for flexibility in showing that a resource fits within Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3)). However, option “i.” should be modified to delete the phrase “and whether generation in this category is procured as a bundled product” because RECs can be included in Bucket 1 if the underlying resource satisfies Bucket 1 criteria. Also, LADWP would like to add renewable energy firming, shaping and redelivery agreements to the list of options provided by the CEC. This goes beyond “contracts for scheduling of the renewable resource” as currently provided in Option 1.

2. Portfolio content category 2 (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))

a) Firmed and shaped:

i. Options (one or more of the following):

1. Use contract information to demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable and incremental resources and/or a contractual link between the renewable resource and the incremental resource

2. Use NERC e-Tags to verify firmed and shaped generation scheduled into a California balancing authority; NERC e-Tags must include the RPS ID # of the resource with which the NERC e-Tag is matched

ii. Staff recommendation: Options 1, 2; contract information would provide appropriate assurance, as needed, that generation counted toward this category is scheduled into a California balancing authority and/or demonstrates a contractual connection. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority and can show a link to the RPS-eligible resource via the RPS ID#.

b) Incremental:

i. Options:

1. Contract information to demonstrate, as necessary, the timing of contract execution for and/or the contractual relationship between the renewable and incremental resources

- ii. Staff recommendation: Option 1; contractual information should be adequate to demonstrate the incremental nature of the generation that is used to firm and shape renewable generation.

The staff's formulation of the first option language of "the portfolio content definition" suggests that the CEC has authority to set a definition for "bucket 2" beyond any more detailed definition set by a POU in exercising its authority under Section 399.30 (c)(3). The CEC does not have this authority. The local governing board of the POU is set to ensure the procurement requirements adopted are consistent with Section 399.16.

As stated above, as inferred from Section 399.16 (b) (2) of the statute, in general, the term "Incremental Energy" is energy needed to firm and/or shape an eligible renewable energy resource in order to make schedules and deliveries into a California BA whole. The statute did not contemplate or specify any timeframe requirement for firming or shaping. Such energy is not counted towards RPS compliance until it is scheduled and delivered into a California BA. Further, the definition of "incremental energy" has not been uniformly defined among utilities; therefore, the definition might vary from entity to entity. This is an outstanding issue that needs to be resolved among the POUs.

3. Portfolio content category 3 (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))

a) Options:

- i. Any generation that does not qualify for the first two categories is automatically counted in this category
- ii. All unbundled renewable energy credits, regardless of whether the renewable resource has its first point of interconnection with a California balancing authority, automatically count toward this category

b) Staff recommendation: None at this time

Option (i) is appropriate. Section 399.16 (b)(3) clearly states that Portfolio Content Category 3 are "Eligible 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 [B]ucket 1 or [B]ucket 2."

iii. Reasonable progress in intervening years of each compliance period (Public Utilities Code Section 399.30 (c)(2))

1. Options (one or more of the following):

- a) Summarize how POUs define their own reasonable progress without opinion
- b) Define reasonable progress in the regulations as a percentage
- c) Define the process and criteria in the regulations used to determine reasonable progress for POUs
- d) Release verified data
  - i. Adopted by full Commission

- ii. Not adopted by full Commission
  - e) Release unverified data
    - i. Adopted by full Commission
    - ii. Not adopted by full Commission
- 2. Staff recommendation: Options (c), (e)(ii); statute limits the authority to mandate demonstration of specific quantities of procurement for intervening years. If a reasonable process was identified in regulations for POU's to follow in achieving their ultimate RPS achievement goals at the end of each compliance period, the Energy Commission could release unverified data submitted in the POU's annual reports to serve as a snapshot of POU progress in intervening years.

Section 399.30 (b) explicitly sets up three compliance periods of January 1, 2011 – December 31, 2013, January 1, 2014 – December 31, 2016, and January 1, 2017 – December 31, 2020, and requires POU's to show “reasonable progress” in the intervening years. By using the term “reasonable progress,” the Legislature intended utilities to be diligent in pursuing the second and third target for the compliance periods, but avoided defining incremental steps in the intervening years.

It is evident from Section 399.30 (c)(2) that the Legislature left it to the discretion of the POU governing authorities to ensure that “reasonable progress” is made to meet the December 31, 2016 and December 31, 2020 compliance-period end targets.

LADWP's governing authority has chosen to pursue renewable energy development utilizing a number of different structures with an eventual goal of owning and operating such facilities. So, reasonable progress could be purchasing land for future project development, planning and environmental work for new transmission that will transport renewable energy, or exploring geothermal wells. While publicly sharing some of this information is necessary, other reasonable progress might need to be held by the governing authority as confidential information, if such disclosure would lead to a competitive disadvantage. POU's governing authorities need the discretion to determine reasonable progress.

- iv. Deficits associated with a previous renewables portfolio standard (Public Utilities Code Section 399.15 (a))
  - 1. Options:
    - a) No deficits shall be applied to future compliance periods if a POU procured at least 14 percent of retail sales from renewable energy resources in 2010 (from 399.15 (a))
    - b) No deficits shall be applied to future compliance periods if a POU procured at least 10 percent of retail sales from renewable energy resources in 2010
    - c) No deficits shall be applied to future compliance periods regardless of the percentage of retail sales procured from renewable energy resources in 2010
  - 2. Staff recommendation: None at this time

If the CEC were to develop an enforcement process under 399.30(n) for deficits, the CEC would unlikely be able to legally retroactively assess deficits without affording a POU with some form of due process to challenge such a retroactive application for the enforcement of a regulation a POU had no original notice of in which to comply.

Therefore, if the CEC were to have a valid process for enforcing deficits, option c) can be the only option for any deficits associated with a previous renewable portfolio standard. In addition, Section 399.15 (a) addresses IOU deficits and implies that in some instances there may be carryover of a 2010 deficit. There are no comparable provisions for POUs.

v. Excess procurement from previous compliance periods (Public Utilities Code Sections 399.13 (a)(4)(B) and 399.30 (d)(1))

1. When can excess procurement begin to be applied to future compliance periods, for those POUs that adopt rules permitting the use of excess procurement?

a) Options:

- i. January 1, 2011 (date provided in 399.13(a)(4)(B))
- ii. June 1, 2010
- iii. Another date
- iv. At the discretion of POUs

b) Staff recommendation: Option (i); staff can see no compelling reason to apply a different standard from that applying to retail sellers.

Section 399.30 (d)(1) states that a POU *may* adopt “rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers.” The POU may, in its discretion, adopt rules to “apply excess procurement . . . in the same manner as allowed for retail sellers.” This discretionary act does not mandate a specific date; therefore, it would be at the POU’s discretion.

2) Can excess procurement from portfolio content category 3 be applied toward a future compliance period, for those POUs that adopt rules permitting the use of excess procurement?

a) Options:

- i. Yes
- ii. No (from 399.13 (a)(4)(B))

b) Staff recommendation: Option (ii); staff can see no compelling reason to apply a different standard from that applying to retail sellers.

Section 399.30 (d) states that a POU *may* adopt “rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers.” The POU may, in its discretion, adopt rules to “apply excess procurement.” This discretion does not mandate a specific rule by a POU. It would be easier for CEC staff if the POUs were to adopt similar rules, but the Legislature did not make this subsection mandatory. Therefore, POUs may make rules to include or exclude portfolio content category 3 for excess procurement.

3) Length of contracts allowed for excess procurement that can be applied to a future compliance period, for those POU's that adopt rules permitting the use of excess procurement?

a) Options:

- i. At least 10 years (from 399.13(a)(4)(B))
- ii. At least 5 years
- iii. At least 3 years
- iv. At the discretion of POU's

b) Staff recommendation: Option (iv); as contracts remain under the purview of POU's and are not approved by the Energy Commission, it is reasonable to leave this issue to the discretion of POU's.

Section 399.30 (d) states that a POU *may* adopt "rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers." The POU may, in its discretion, adopt rules to "apply excess procurement." This discretion does not mandate a specific rule by a POU. Therefore, the staff recommendation, which recognizes POU discretion, is appropriate.

d. Conditions allowing waiver of enforcement

i. Reasonable conditions that allow for delay of timely compliance (including inadequate transmission, unanticipated curtailment of resources, and permitting, interconnection or other circumstances that delay procurement), for those POU's that adopt such conditions (Public Utilities Code Sections 399.15 (b)(5)-399.15 (b)(9) and 399.30 (d)(2))

1. Options (one or more of the following):

- a) Use the same criteria for timely compliance delays as those used for retail sellers
- b) Establish criteria in regulations by which Energy Commission will determine reasonableness of timely compliance delays; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POU's that do not meet targets
- c) Tiered compliance based on size of POU
- d) Exemption from demonstrating compliance for POU's under a certain size

2. Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of timely compliance delays should be similar for retail sellers and POU's, there may be different considerations that need to be taken into account, requiring slight disparities. In addition, no language in the statute indicates that exemptions or variations in the rules are necessary for smaller POU's.

Section 399.30 (d)(2) states that a POU *may* adopt "conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15." The POU has discretion. This discretion does not mandate a specific rule by a POU. Therefore, none of the options are acceptable.

- e. Dispute resolution process
  - i. If POU's dispute Energy Commission findings
    - 1. Options:
      - a) Same process currently used for retail sellers that dispute Energy Commission findings
      - b) Different process from that used for retail sellers
    - 2. Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that applying to retail sellers.
  - ii. If another party disputes Energy Commission findings
    - 1. Options:
      - a) Same process outlined in the Renewable Energy Program Overall Program Guidebook
      - b) Different process from that outlined in the Renewable Energy Program Overall Program Guidebook
    - 2. Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that presented in the RPS Guidebook.

LADWP has no recommendations at this time.

- ii) Reasonable conditions that allow procurement expenditures to meet or exceed cost limitations, for those POU's that adopt such conditions (Public Utilities Code Sections 399.15 (c) and 399.30 (d)(3))
  - 1. Options:
    - a) Use the same criteria for cost limitations as those used for retail sellers
    - b) Establish criteria in regulations by which Energy Commission will determine reasonableness of cost limitations; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POU's that do not meet targets
  - 2. Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of exceeding cost limitations should be similar for retail sellers and POU's, there may be different considerations that need to be taken into account, requiring slight disparities.

Section 399.30 (d)(3) states that a POU *may* adopt "cost limitations for procurement expenditures consistent with subdivision (c) of Section 399.15." The POU has discretion. This discretion does not mandate a specific rule by a POU. Moreover, section 399.30(m)(2) expressly states that a POU "shall retain discretion over . . . the reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility." Therefore, all the options are unacceptable. If the CEC were to establish criteria for cost limitations, the CEC would be superseding the authority provided to POU's under Section 399.30 (d)(3) and 399.30(m)(2).

#### Reporting

- a) Regulatory streamlining
  - i. Options (one or more of the following):

- 1.* Modify existing forms submitted to the Energy Commission by POUs to reflect reporting requirements imposed by SB X1 2
  - 2.* Allow consolidated/aggregated reports at the discretion of POUs; those whose reports are aggregated by another party must submit an attestation verifying that all of the information representing their POU is correct and complete
  - 3.* Do not allow consolidation of reports
- ii.* Staff recommendation: Options (1), (2); staff feels that reporting should be streamlined in any possible way, including aggregated reports and modifications to existing reports already submitted to the Energy Commission.

The staff recommendation is appropriate. Furthermore, CEC requests for data pursuant to SB 2 (1X) should not exceed what is needed by the data reporting requirements of Section 399.30 (g) and 399.30 (l).