

**STATE OF CALIFORNIA**  
**BEFORE THE CALIFORNIA ENERGY COMMISSION**

**In the matter of,  
Implementation Of Renewables  
Portfolio Standard Legislation**

**Docket No. 11-RPS-01**

**COMMENTS OF THE  
NORTHERN CALIFORNIA POWER AGENCY ON THE  
“33 PERCENT RENEWABLES PORTFOLIO STANDARD PUBLICLY OWNED  
ELECTRIC UTILITY REGULATIONS CONCEPT PAPER”**

Pursuant to the California Energy Commission (Commission or CEC) Notice dated September 2, 2011, the Northern California Power Agency<sup>1</sup> (NCPA) submits these comments on the August 26, 2011 *33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper* (Concept Paper).

**I. INTRODUCTION**

NCPA was established in 1968, and is a California Joint Powers Agency. NCPA’s members are publicly owned entities interested in the purchase, aggregation, scheduling, and management of electrical energy. NCPA is a long-time supporter of a 33% statewide renewable portfolio standard (RPS) target for all state utilities, and supports the Legislature’s recognition in Senate Bill (SB) X1 2 that the oversight of local publicly owned utility (POU) RPS programs should remain—as is now the practice—with the local governing boards and elected officials who are directly accountable to their residents and communities. NCPA supports federal, regional, and statewide efforts to reduce greenhouse gas emissions and combat global climate change, and believes that its members’ RPS programs help to advance those efforts. Accordingly, NCPA and its members have a long history of environmental

<sup>1</sup> NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and Associate Members Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

stewardship and have expended considerable resources to develop significant amounts of renewable electric generation resources, investments that are consistent with the fundamental objectives of climate change policy and a 33% RPS. All NCPA member communities, consistent with Senate Bill 1078 (Sher), have formally adopted RPS programs that are tailored to their individual communities, and in most instances are already exceeding the state average RPS numbers. Collectively, NCPA members are above the current 20% RPS, and many individual NCPA member utilities already have California-eligible RPS levels that exceed a 33% threshold.

NCPA has a strong interest in furthering the goals of SBX1 2, and actively participated in the June 17 Staff Workshop, as well as the July 2011 POU Focus Group meetings with CEC Staff, and will continue to work with the CEC and Staff as the CEC develops a program for enforcement of the RPS. As NCPA previously noted, of vital importance to this process is the development of an enforcement program and corresponding regulation that accurately reflects the CEC's responsibilities and limitations under the legislation, as well as affecting the legislative intent that all load serving entities achieve 33% RPS.

## **II. COMMENTS ON STAFF'S CONCEPT PAPER**

### **A. INTRODUCTION**

#### **1. The Legislation Confers Distinct Obligations on the POU's, the POU Governing Boards, and the Commission**

NCPA appreciates the efforts of staff to provide a proposed definition and their interpretation of various provisions of the statute for inclusion in the regulation. However, by attempting to adopt its own definitions of various portions of the legislation, including the categories of resources, the CEC would usurp the authority expressly provided to the POU governing boards in the statute, and insert its own interpretation rather than that of the POU governing boards. **Development and implementation of the POU RPS programs, which begins with adoption of a procurement plan, is within the exclusive purview of the local governing boards.** The Legislature sent a clear message regarding the entity responsible for adopting and implementing the POU 33% RPS programs; the local governing boards of the POU's. (§ 399.30(c)) Any inclusion in the regulation of an interpretation of the legislation that goes beyond the plain language in the statute would place the CEC in the role that the

legislation has expressly granted to the governing boards of the POU. This is an outcome that is inconsistent with the clear language of the statute and should be avoided. The role of the Commission defined in SBX1 2 is clear – **the Commission is required to (1) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers and local publicly owned electric utilities, and (2) adopt a procedure for enforcement of the RPS for the POU.** NCPA believes that the Concept Paper blurs the line between these two distinct roles.

## **2. Commission Procedures for Enforcement of the RPS**

The legislation clearly requires the Commission to adopt a regulation that specifies procedures for enforcement of the RPS (§ 399.30(n)). The regulation regarding POU enforcement procedures should be limited to that sole function. Additional information that attempts to provide detailed interpretations of content categories and product definitions, for example, is not properly included in the enforcement procedure, and should not be included in the regulation dealing with enforcement procedures. All the guidance needed for purposes of establishing this procedure is set forth in the text of the legislation and in the express grant of authority found in § 399.30(n).

## **3. Commission System to Verify Compliance for POU and Retail Sellers**

SBX1 2 also clearly sets forth a role for the CEC to “verify compliance with the renewables portfolio standard by retail sellers and local publicly owned electric utilities,” and to verify and track renewable energy credits (§ 399.25). Since this process applies to retail sellers and publicly owned utilities, it should be included in the CEC’s RPS Guidebook. That document should be the basis for “guidance” on the information that the CEC will review and consider when determining whether or not a retail seller or publicly owned utility has complied with the provisions of the legislation. Accordingly, the CEC should move forward expeditiously with updating the current RPS Eligibility Guidebook to address SBX1 2 program changes. Only after this task is completed will the parties have a clear understanding of the Commission’s direction regarding those areas where SBX1 2 has granted exclusive purview to the Commission. There is no need for the regulation that addresses the CEC’s procedure for enforcement for the POU to include this kind of information, and indeed, it is inappropriate to do so. The Commission should keep separate its roles under § 399.25 and § 399.30(n).

**B. FOUNDATIONAL ISSUES**

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))

Option (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 POU 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 POU, those rules will be as consistent as possible with those for retail sellers.

**1. “Consistent With” and “in the Same Manner” are not Synonymous**

The Legislature clearly distinguishes between POU and IOU programs; these distinctions are found throughout SBX1 2, including in provisions regarding RPS adoption and implementation requirements, as well as reporting and enforcement. This distinction must be kept at the forefront of any discussion regarding program implementation. Accordingly, Staff’s recommendation with regard to the treatment of the terms “in the same manner as” and “consistent with” conflicts with the clear meaning of the statute. These terms should not be used interchangeably, as they have very different meanings.

**2. “In the Same Manner is Used Only Once”**

Only one section of SBX1 2 requires that POU measures – if adopted – be “in the same manner” as a provision applicable to retail sellers. That provision applies expressly to the rules that would govern the application of excess procurement to future compliance periods, pursuant to § 399.30(d) and § 399.13. Since the legislation clearly sets out the requirement (*beginning January 1, 2011 . . . 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*), there is no need for any further interpretation or guidance on the part of the Commission. If a POU opts to adopt a banking measure allowing the POU to apply excess procurement to future compliance periods, they must follow the defined parameters set forth in the legislation, and therefore, their excess

procurement would be applied to future compliance periods “in the same manner” as retail sellers.

### 3. “Consistent With” Refers to the Express Direction in SBX1 2

Other provisions of the legislation require the POU’s implementation and adoption of RPS related rules to be “consistent with” provisions of the legislation applicable to retail sellers. As a practical matter, it is imperative to properly interpret both the language of the legislation and the legislative intent when developing these rules and note that “consistent with” *does not mean* “the same as.” Under no circumstances should the Commission look to adopt “the same” rules for POU RPS procurement as those that are adopted by the California Public Utilities Commission for retail sellers. Furthermore, the plain language of the statute dictates the guidance necessary to determine the “same manner” and there is no need to further add language or speculate as to what rules are in the spirit of the rules for retail sellers. Consistent with requires the POU’s to look to the factors set forth *in the legislation* (and not in another entity’s interpretation of the legislation) and apply them when implementing their RPS programs. These measures, however, may not be (and likely will not be) exactly the same for each POU. Nor do they need to be. Instead, the only limitation is that these measures are to be “consistent with” the provisions of §§ 399.15(b)(5) and (c). As noted above, it is imperative that the Commission remain cognizant of the distinctions recognized by the Legislature between IOU and POU programs, which acknowledges that particular aspects of each entity’s program need not be identical.

## C. ELIGIBILITY OF RESOURCES

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| <ul style="list-style-type: none"><li>i) Pre-June 1, 2010, contracts approved by POU under former Public Utilities Code 387 (Public Utilities Code Sections 399.12 (e)(1)(C))</li><li>ii) Options:<ul style="list-style-type: none"><li>(1) Resources must meet Energy Commission’s eligibility rules at time of contract execution</li><li>(2) Resources must meet the definition of renewable electric generation facility in Public Resources Code Section 25741</li><li>(3) Resources must meet the Energy Commission’s eligibility requirements applicable at the time the facility applies for RPS certification.</li></ul></li><li>iii) Staff recommendation: Option (3).</li></ul> |
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The list of options set forth in the Concept Paper, and indeed Staff’s preferred recommendation, goes beyond the direction set forth in SBX1 2. The Concept Paper fails to account for all of the various cross-referenced provisions at issue, including the express acknowledgment in SBX1 2 of the differences between POU and IOU RPS programs, which were statutorily authorized prior to the passage of SBX1 2. Option 3 is contradictory to the provisions of the § 399.16(d)(1) that specifically references the resource eligibility “under the rules in place as of the date when the contract was executed,” and does not require the resource to be eligible under the “Energy Commission’s eligibility requirements applicable at the time the facility applies for RPS certification.”

**D. CLASSIFICATION OF PROCUREMENT PRODUCTS**

**1. Portfolio Content Category 1 (Bucket 1)**

i) Portfolio Content Category 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))
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In the Concept Paper, Staff has set forth a number of options for proposed definitions for the resources that meet the first portfolio content category (Bucket 1). First off, NCPA believes that definitional issues are outside of the scope of the regulation that would establish procedures for enforcement, as set forth in § 399.30(n). Second, this determination is exclusively a POU function in adopting and implementing a procurement plan (§ 399.30(a)) and adopting procurement requirements (§ 399.30(c), § 399.16). Accordingly, there is no statutory authorization for the Commission to make these determinations, nor to include them within the procedures for enforcement developed pursuant to the authority in § 399.30(n). However, in the appropriate document, the Commission should take care to ensure that the guidance it provides regarding the eligibility of resources does not constrain, in any way, the definition set forth in the legislation. For example, with regard to Bucket 1, the legislation makes not distinctions between unbundled and bundled renewable energy credits, and therefore, neither should the Commission.

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

Option 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.

Staff’s observation that there is no defined limit in § 399.16(e) regarding the quantity of excess procurement that may be carried over into the 2013 compliance period is correct. However, Staff errs in making a recommendation that would require the POU to obtain approval from the Commission regarding its use of the excess procurement. The rules governing the applicability of excess procurement are clearly set forth in § 399.13(a)(4)(B), and as long as the POU has adopted a measure that allows for the POU to utilize this option, the Commission’s only role is to verify – at the end of the compliance period – that the rules were followed. Requiring an application and subsequent Commission approval of the POU’s exercise of its discretion to utilize this measure is inappropriate and outside the scope of the Commission’s authority as prescribed in SBX1 2.

(b) Compliance period ending December 31, 2016

Option 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.

When looking at the 2016 and subsequent compliance periods, the same principles apply as were stated above.

- (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
    - (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.

Pursuant to the provisions of § 399.30(a), the POU's are required to adopt and implement a procurement plan, and pursuant to § 399.30(c), that plan shall include procurement requirements consistent with § 399.16. Under that authority, it is the POU that makes the determination of what products belong in which categories (or "Buckets"). The enforcement procedures developed under § 399.30(n) should not include provisions that review the POU's determination of eligible resources, but rather that the POU's determinations are consistent with the provisions of § 399.16(b)(1) at the end of each compliance period.

**2. Portfolio Content Category 2 (Bucket 2)**

ii) Portfolio Content Category 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:
  - (b) Timing of incremental electricity resource scheduling into California balancing authority
  - (c) Renewable resource
  - (d) Incremental resource
  - (e) Location of incremental resource relative to renewable resource
  - (f) Execution of incremental resource contract
  - (g) Contractual relationship between renewable and incremental resources

In this section of the Concept Paper, Staff has proposed establishing "definitions" for Bucket 2 resources that include seven separate elements. As a starting point, Staff's proposed interpretation of the resources is inconsistent with § 399.30(n) and not properly included in the POU enforcement procedures. As noted above, it is exclusively within the purview of the POU



to adopt and implement a procurement plan and procurement requirements consistent with § 399.16 (§ 399.30(a) and (c)).

Furthermore, the list of options for each of the seven definitional components set out in the Concept Paper are unnecessary, and erroneously interpret restrictions into the category that are not included in the legislation. There is no reason for the definition of these resources to include arbitrary limitations on the available resources not specifically set forth in the legislation. The sole role of the Commission's enforcement procedures should be to review the POU procurement based on the plain meaning set forth in the legislation, and not to add additional factors. Therefore, resources that are included in Bucket 2 must be consistent with the provisions of § 399.16(b)(2), which does not include limitations based on the location of the resources, nature of the incremental energy contract, nor the type of relationship.

(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  
    (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.

The treatment of resource categorization for Bucket 2 is the same as for Bucket 1 above.

### **3. Portfolio Content Category 3 (Bucket 3)**

iii) Portfolio Content Category 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

The legislation makes no distinction between bundled and unbundled renewable energy credits, and therefore, resources eligible for Bucket 3 include any generation that does not qualify for Buckets 1 or 2. As with the discussion regarding the applicable resources for Buckets 1 and 2, there is neither the need, nor the statutory authority, for an interpretation that would place restrictions on the available resources that is not already set forth in the legislation.

- (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
    - (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.

Treatment of resource categorization for Bucket 3 is the same as for Buckets 1 and 2, above.

## **E. COMPLIANCE AND VERIFICATION**

### **1. Verification Process**

- i) Options:
  - (2) POUs have a separate verification report
    - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
  - ii) Staff recommendation: Option (2)(b)

NCPA believes that the POU verification report should be separate from the IOU verification report, and that the verification should only be done at the end of each compliance periods (which would be annually after 2020). The Commission has the clear authority to verify compliance pursuant to § 399.25. Accordingly, NCPA concurs with Staff's recommendation.

## 2. 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
    - (c) More than 90 days late
    - (d) Not submitted
  - (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 POUs for those compliance years.

NCPA generally supports Staff's recommendations for actions that would be deemed non-compliance, with the clarifications set forth below. NCPA specifically concurs with Staff's conclusion **not** to include Option 5, which would have been contrary to the legislation since there is no timeline for adoption of a procurement plan for the POUs in SBX1 2. However, with regard to Option 1 and Option 2, NCPA recommends that the Commission reference the POU's adoption of measures that authorize a delay for timely compliance pursuant to § 399.30(d)(2) and § 399.15(b)(5), and strike the reference to option 6, which is duplicative of 1 and 2.

### 3. 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

As a preliminary matter, NCPA has concerns regarding the application of a procedure that is currently not employed by the Commission, and with which the POU's and the Commission have no familiarity, especially a procedure that was designed exclusively by the California Public Utilities Commission and intended to be applicable only to retail sellers. Before being able to embrace a single review process, as recommended by the Commission, stakeholders must have more information regarding what that process looks like. Setting aside the reference to the same process for retail sellers, when determining whether or not a POU has met its procurement targets for each compliance period, the Commission must factor in grandfathered resources (per § 399.16) consistent with the POU's treatment of those resources in its procurement plans.

- (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

The list of proposed options set forth in the Concept Paper does not include an option that reflects the plain language of the statute that requires "25% of retail sales by December 31, 2016." Accordingly, the correct time to measure compliance is on December 31, 2016, the last day of the compliance period.

(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

As noted above, the appropriate time to determine compliance for the period ending December 31, 2020 is 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.

NCPA supports Staff's recommendation that a broad range of options to verify compliance, as that is the most appropriate way to ensure that all of the relevant resources are accurately accounted for within Bucket 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#.

As noted above, NCPA objects to Staff’s characterization of Bucket 2 resources that would include specific definitions or criteria that are additional to the plain language set forth in § 399.16(b)(2) and outside the scope of the Commission’s authority pursuant to § 399.30(n). The Commission does not have the statutory authority to add requirements to the definition, and should not incorporate these additional and extra-statutory mandates into the enforcement procedure.

(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.

As noted above, NCPA disagrees with Staff’s proposed limitations as it pertains to the use of the term incremental energy.

- (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

Bucket 3 resources properly include all generation and renewable energy credits that do not meet the requirements of Bucket 1 or Bucket 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):
    - (c) Define the process and criteria in the regulations used to determine reasonable progress for POUs
    - (e) Release unverified data
      - (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 POUs 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 POUs' annual reports to serve as a snapshot of POU progress in intervening years.

As NCPA reads SBX1 2, the only mandates that must be the *exactly the same* for each and every compliance entity, is the 33% by 2020 standard, with 20% by 2013, and that each compliance entity must make reasonable progress during the intervening compliance periods to ensure that the 25% and 33% goals can be met. (§ 399.15(b)(1) and (2) and § 399.30(b) and (c)). However, even what is deemed “reasonable progress during the intervening periods” is going to be a subjective determination based on the entity at issue, as is the determination of factors regarding the provisions of § 399.30(d). A determination of reasonable progress is not subject to a simple formula; what may be reasonable for one entity may not to be the same another entity. Further, NCPA does not see anything within the legislation, and specifically not in § 399.30(n) that would require (or even authorize) the Commission to make this determination. NCPA supports Staff’s recommendation that unverified data be released, but

the process by which a determination of reasonable progress is based is subject to the exclusive purview of the POU, and Commission defined process and criteria are not appropriate.

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

The provisions of § 399.15(a) are not applicable to POU, and accordingly, option C is the only appropriate position.

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 POU 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 POU

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

POU may, at their discretion adopt measures that allow for the carryover of excess procurement pursuant to the provisions of § 399.30(d)(1) and § 399.13(a)(4)(B). As long the POU have adopted such measures, and they are applied in the manner set forth in § 399.13(a)(4)(B), their application is solely up to the discretion of the individual POU.



(2) Can excess procurement from portfolio content category 3 be applied toward a future compliance period, for those POU's that adopt rules permitting the use of excess procurement?  
(a) Options:  
(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.

As long the POU's have adopted measures for carrying over excess procurement, and they are applied in the manner set forth in § 399.13(a)(4)(B), their application is solely up to the discretion of the individual POU.

(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:  
(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.

As noted above, as long the POU's have adopted measures regarding the banking of procurement, and they are applied in the manner set forth in § 399.13(a)(4)(B), their application is solely up to the discretion of the individual POU.

#### **4. 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):  
(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  
(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.

Pursuant to § 399.30(d)(2), POU's are authorized to adopt measures regarding delay of timely compliance consistent with the provisions of §399.15(b)(5). These provisions would also include additional procedures for the POU's to follow upon approval of the waiver. However, **approval of the waiver is solely within the discretion of the POU**, and if the conditions are met, the statute provides that the waiver "shall" be granted. Since the criteria are already set forth in the § 399.15(b)(5), there is no need (nor statutory authority) for the including additional criteria within the enforcement procedure.

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:

(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.

Similar to the provisions regarding the establishment of procedures for a delay of timely compliance, POU's are authorized to adopt measures regarding expenditure limitations. While the POU measures are required to be consist with §399.15(c), they are going to be entity specific and based on considerations unique to each entity. Since the legislation already sets out the criteria to be considered, there is no need to have the Commission's own criteria included in the enforcement procedure; to do so would usurp the authority expressly granted to the POU's in the legislation. Rather, when reviewing the POU's compliance, the Commission will look to the measures adopted by the POU, if applicable, and at the end of each compliance period, ensure that the POU's determination that expenditures would have exceeded cost

limitations is consistent with the measure adopted by the POU. Furthermore, the legislature's express acknowledgment of importance of POU cost determinations is emphasized in § 399.30(m) that provides that the POU retains sole discretion over both of the following: "(1) The mix of eligible renewable energy resources procured by the utility and those additional generation resources procured by the utility for purposes of ensuring resource adequacy and reliability and (2) The reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility."

## 5. 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.

NCPA supports the implementation of a dispute resolution process, but believes that additional information is needed regarding that process. If, in fact, the process applies solely to the enforcement procedure, then there may be compelling reasons to have a process that reflects just that procedure.

- 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.

NCPA understands from Staff that the procedure for third party disputes is currently under revisions, and reserves the right to comment on the proposed procedure once those revisions have been made.

## F. 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
  - 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.

NCPA supports Staff's recommendation that, to the greatest extent possible, reports by consolidated and streamlined. There is no reason for the preparation or submittal of duplicative documents, and in large part, the information mandated under SBX1 2 is already being provided to the CEC in some form. Consolidation and streamlining of this process is the best way to promote efficiencies for both the POUs and the Commission.

## III. CONCLUSION

NPCA appreciates the opportunity to provide these comments on the Concept Paper and looks forward to further working with the Commission in development of the Commission's procedure for enforcement of the RPS. If you have any questions regarding these comments, please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or [scott.tomashefsky@ncpa.com](mailto:scott.tomashefsky@ncpa.com).

September 12, 2011

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