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March 30, 2012

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

<b>DOCKET</b>	
<b>11-RPS-01</b>	
DATE	<u>MAR 30 2012</u>
RECD.	<u>MAR 30 2012</u>

Re: 33% Renewables Portfolio Standard; Comments of Pacific Gas and Electric Company on the Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities

Pacific Gas and Electric Company (“PG&E”) appreciates the opportunity to provide comments on the 33 Percent Renewables Portfolio Standard (“RPS”) Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities (the “Draft Regulation”) issued by the California Energy Commission (“Commission”) on March 6, 2012.

## I. INTRODUCTION

These comments build upon and incorporate by reference PG&E’s July 8, 2011 Scoping Comments on the Commission’s Implementation of SB 2 (1x)<sup>1/</sup> and PG&E’s September 12, 2011 Comments on the Commission’s 33% RPS POU Concept Paper. PG&E continues to believe that the Commission’s top priority in this proceeding should be to ensure that its regulations implementing SB 2 (1x) are fully consistent with the decisions of the California Public Utilities Commission (“CPUC”) implementing the same legislation. In particular, the Commission and the CPUC must ensure that the same RPS-eligible product definitions are used in describing the compliance requirements of all RPS-obligated load-serving entities (“LSEs”) so that a broad and liquid market for RPS-eligible products can continue to develop and provide the most cost-effective renewable power.

Aside from the consistency in these crucial commercial definitions, the Commission should implement the remaining provisions of SB 2 (1x) in light of the legislature’s intent,

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<sup>1/</sup> Senate Bill 2 (2011-12 First Extraordinary Session, Stats. 2011, Ch 1).

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expressed clearly in the new statute, to create a level playing field in which all but a very few California LSEs are subject to the same RPS requirements.

PG&E provides comments in two parts: (1) conceptual comments regarding the regulatory approach of the Draft Regulation; and (2) specific responses to the questions presented by the Commission in Attachment A to the Draft Regulation.

## **II. GENERAL COMMENTS ON THE COMMISSION'S REGULATORY APPROACH**

Consistent with the goals of statewide consistency and a fair competitive landscape for all LSEs, PG&E offers the following conceptual comments on the Draft Regulation.

### **A. The Commission Should Revise the Draft Regulation to Be Consistent with the CPUC's Approach to Reasonable Progress Targets and Enforceable Procurement Quantity Requirements.**

Without discussing or summarizing the CPUC's approach to calculating RPS compliance requirements for retail sellers, the Draft Regulation takes a significantly different approach to RPS compliance requirements for POUs. PG&E finds no reasoned basis for departing from the CPUC's approach and submits that the two agencies should not interpret the same statutory language differently where there is no compelling reason to distinguish POUs from other LSEs.

The Commission should follow the CPUC's adopted methodology in calculating compliance period requirements, including reasonable progress targets.<sup>2/</sup> Specifically, the only enforceable procurement requirements (through 2020 and excluding the portfolio content requirements) should be that a POU procures and retires RPS-eligible products equal to an average of 20% of sales in 2011-2013, and then the sum of the reasonable progress target of each year in 2014-2016 and 2017-2020 based on straight line trajectories in each of those periods.<sup>3/</sup>

Requiring, as the Draft Regulation does, different reasonable procurement targets for POUs and counting procurement only in the years 2016 and 2020<sup>4/</sup> could lead to unfair market advantages or disadvantages. The Draft Regulation provides no compelling reason why POUs are sufficiently distinct from other retail sellers such that applying the same compliance

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<sup>2/</sup> See generally Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program, CPUC Decision ("D.") 11-12-020 (Dec. 1, 2011). Note that the "straight line" trajectories calculated by the CPUC differ in part from the reasonable progress targets that Section 3206(a)(1)(D) of the Draft Regulation would use to calculate bankable surplus for the POUs. The CPUC adopted 21.7% in 2014, while the Commission uses 21.5%; the CPUC uses 23.3% in 2015, while the Commission uses 23% only. Compare D.11-12-020 at p. 24 (Ordering Paragraph 2) with Draft Regulation, Section 3206(a)(1)(D)(2). In addition to adopting the straight-line trajectory approach to determine each enforceable compliance period requirement, consistent with the CPUC approach, the Commission should ensure that it is using the same trajectory and percentages for each year.

<sup>3/</sup> *Id.* at pp. 23-25 (Ordering Paragraphs 1-3).

<sup>4/</sup> Draft Regulation, §§ 3204(a)(2)-(3), (d).

requirements adopted by the CPUC would not be feasible. Accordingly, the Commission should adopt the same compliance requirements and reasonable progress targets established by the CPUC.

**B. Compliance Requirements Should Only Apply to WREGIS Certificates Retired for a Particular Compliance Period.**

The Draft Regulation should be revised to clarify and confirm that portfolio content requirements will only be applied to RPS-eligible Products that are retired in WREGIS for use in a particular compliance period. If an LSE purchases RECs, but then holds them in an active WREGIS account until the following compliance period, those RECs are not counted against the portfolio content limitations for the earlier compliance period.

This interpretation is required by Public Utilities Code Section 399.21(a)(6), which gives RECs a “shelf life” of 36 months before they must be retired within WREGIS for RPS compliance. Any reading of the Draft Regulation that requires any RPS-eligible products acquired in a compliance period to be included in a calculation of the portfolio content requirements in the same compliance period – whether or not those products had been retired for compliance – is in conflict with the statute.

The compliance calculation formulas set forth in Sections 3204(a)(1) and 3206(a)(1)(D) of the Draft Regulation correctly state that the metrics for compliance and excess procurement include only those “Electricity Products procured *and retired* for the specified year.” (Emphasis added). Nonetheless, the language in Section 3204(e), dealing with the portfolio content requirements, is subject to more ambiguous interpretation since it simply states that the applicable compliance metric is the product “used to meet the RPS procurement requirement for the compliance period.” While the quantities “used to meet the RPS procurement requirement” should logically be the same as the numerator in the overall procurement requirement formula – namely, retired products – the regulation should be revised to make this clear.

**C. Compliance Reports Should Be Due on August 1 of Each Year.**

Section 3207(b) of the Draft Regulation requires POUs to file progress reports by June 1 of each year. This date should be changed to August 1 to allow all necessary time for WREGIS certificates to be created and any errors corrected.

The Commission’s RPS Eligibility Guidebook currently requires reporting of RPS-eligible procurement for the prior calendar year to the Commission on June 1.<sup>5/</sup> However, PG&E has proposed to the Commission that its annual procurement report due date be moved to July 1 of each year.<sup>6/</sup> The June 1 reporting date does not provide sufficient time to receive, reconcile,

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<sup>5/</sup> Renewables Portfolio Standard Eligibility Guidebook, 4<sup>th</sup> Ed., CEC (Jan. 2011) at p. 71 (available at <http://www.energy.ca.gov/2010publications/CEC-300-2010-007/CEC-300-2010-007-CMF.PDF>)

<sup>6/</sup> Letter from Mark Krausse, PG&E, to Melissa Jones, CEC, dated May 16, 2011 (included as Attachment 1).

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correct and retire all WREGIS certificates for the prior year. Since WREGIS Certificates are issued 90 days after the end of each generation month,<sup>7/</sup> certificates for the last month of the prior year are not available as a practical matter until early April of the following year. Moreover, since WREGIS creates certificates only once per month, the first opportunity to make any necessary corrections to newly issued certificates is in the month following issuance.<sup>8/</sup> Therefore, any corrected certificates for generation occurring at the end of the prior year will not be practically available until early May at the earliest. In some more complicated circumstances, corrections have taken an additional month – until June - to resolve. Only after any necessary corrections are made can the certificates be transferred from the counterparty to an LSE.<sup>9/</sup>

Based on this timeline, an LSE may not receive some of its WREGIS certificates for the prior year until June of the following year. The LSE then must review the certificates and verify that they are consistent with settlements between the parties. Finally, the LSE will retire the certificates within WREGIS for purposes of RPS compliance. PG&E's recommendation to the Commission of a July 1 reporting deadline is the earliest that will allow up to two certificate creation cycles to occur for corrections, which PG&E believes will be adequate to cover most circumstances.

Assuming the Commission adopts PG&E's proposal and moves the Commission reporting date to July 1, the annual POU progress reports to the Commission should be due no earlier than August 1. The minimum period of 30 days between submission of the verification data and submission of a full progress report should be adequate. In sum, August 1 is the earliest date by which LSEs will be in a position to make a definitive statement with regard to the “percentage of RPS-eligible procurement, based on total retail sales, for the reporting year” in compliance with Section 3207(b)(2).

#### **D. The Section 399.30(k) Exemption Should Apply to Only Municipal Load.**

Section 3204(a)(7) of the Draft Regulation implements a statutory exemption from the generally applicable RPS compliance requirements for a POU meeting more than 67% of its load with non-RPS-eligible hydroelectric generation. PG&E understands that this provision likely applies only to the City and County of San Francisco's (“CCSF”) POU, which serves only municipal load. The regulation should make clear that the exemption for CCSF's POU does not apply in any way to any future Community Choice Aggregation (“CCA”) program initiated by or within the boundaries of CCSF. CCAs are retail sellers under the RPS compliance jurisdiction of the CPUC, and are not POUs subject to the Commission's Draft regulation.

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<sup>7/</sup> WREGIS Operating Rules, WREGIS (December 2010) (“WREGIS Operating Rules”), Sec. 12.2, pg. 37 (available at <http://www.wregis.org/uploads/files/851/WREGIS%20Operating%20Rules%20v%2012%209%2010.pdf>).

<sup>8/</sup> See WREGIS Operating Rules, Sec. 9.4.2., pg. 30 (noting that adjustments to certificates “will be reflected in the next certificate issuance cycle”); *Id.* at Sec. 12.2., pg. 37 (certificates are issued once per month).

<sup>9/</sup> See WREGIS Operating Rules, Sec. 9.4.2., pg. 30 (“Adjustments . . . shall take place in the Account/sub account to which the Generating Unit is assigned.”).

**E. POU Rules Implementing the Draft Regulation Should Be Subject to Public Comment and Should Be Effective Only Upon Express Commission Approval.**

All POU rules or revisions adopted under Section 3206 of the Draft Regulation should be subject to public notice and comment when submitted to the Commission, and a Commission failure to make a determination of statutory consistency of any such rule or revision should not be deemed approval. A consistency determination is at the core of the CEC's statutory responsibility under SB 2 (1x). Given the need to ensure that all LSEs are competing in the retail electricity market on the same terms and by the same rules, any regulations adopted by POUs pursuant to Section 3206 that would reduce or eliminate their RPS obligations should be subject to full notice-and-comment rulemaking at the Commission in which the rules are scrutinized by other LSEs that would remain subject to the obligations. The comments provided by these parties will help the Commission to determine the most reasonable, equitable, and consistent application of the statutory requirements.

**III. RESPONSES TO SPECIFIC QUESTIONS IN ATTACHMENT A**

PG&E provides responses below to some of the specific questions set forth in Attachment A to the Draft Regulation. To the extent PG&E has no initial response to a question, it has not included that question here. However, PG&E reserves the right to respond to other parties' comments on all questions.

**A. (A1) Should the Energy Commission determine reasonableness for cost limitations and delay of timely compliance based on the structure to be determined for retail sellers? Should rules for excess procurement for POUs also be consistent with excess procurement rules for retail sellers? If not, explain how the rules should differ. Please discuss any pertinent legal or policy arguments in support of your position.**

Yes. The structure of SB 2 (1x), including the cross-references between the cost limitation, banking, and compliance excuse provisions for POUs and retail sellers, demonstrates a clear legislative intent to generally subject California LSEs to the same RPS rules and requirements. These provisions should be based on the same criteria and methodologies for all LSEs. Ensuring consistency across all LSEs is important to ensure a level playing field.

- B. (B1) Is there any reason why RECs generated before January 1, 2011, could be used for the first compliance period? Should this depend on whether the utility met its procurement target in 2010, or in years before? How would the Energy Commission verify that a POU has met these targets? How would the Energy Commission verify that a REC generated prior to January 1, 2011, has not been claimed for RPS compliance in a previous year?**

Nothing in SB 2 (1x) prohibits LSEs from using RECs generated before 2011 for purposes of compliance in the new 33% RPS Program if those RECs were not retired for compliance before 2011. The Commission can verify that a REC has not been claimed for RPS compliance prior to 2011 by referencing WREGIS, which is the database the Commission also relies upon to verify LSE claims of RPS compliance and to ensure against double-counting of RECs.

- C. (B2) Considering a 36 month timeframe for retiring RECs, can RECs generated under a contract approved prior to June 1, 2010, in accordance with PUC section 399.16 (d), be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?**

Nothing in SB 2 (1x) prohibits use of RECs generated pursuant to contracts executed prior to June 1, 2010 for RPS compliance, so long as they are retired within WREGIS within 36 months.<sup>10/</sup> In fact, as the question itself suggests, the grandfathering provision of the statute, Section 399.16(d), would be made impermissibly superfluous if the RECs generated from such contracts could not count toward compliance.

Pursuant to Sections 399.16(c) and (d), RECs generated under a grandfathered contract do not count toward any portfolio content category limitation or requirement. Rather, they “count in full” in any compliance period.

- D. (B3) Can RECs produced from contracts that were approved after June 1, 2010 be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?**

RECs from non-grandfathered contracts can be used in the 33% program, including in the first compliance period, although they are subject to the portfolio content requirements for the compliance period in which they are retired.<sup>11/</sup>

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<sup>10/</sup> See Cal. Pub. Util. Code § 399.21(a)(6).  
<sup>11/</sup> See *id.* at § 399.16(c).

**E. (B4) Must electricity products be retired in the same compliance period as when they are procured to be used for compliance?**

No. Section 399.21(a)(6) expressly allows RECs to be actively traded for up to 36 months before they must be retired. This trading life can span compliance periods.

**F. (D1) How should late reporting, failure to report, or late submittal of an approved enforcement plan or procurement plan be included in findings of RPS non-compliance for a POU? How should these items be evaluated when determining reasonable progress?**

Although PG&E does not take a position at this time with regard to late reporting or submission, any failure to submit a compliance report within a reasonable period of time of the due date should be deemed noncompliance.

As discussed in Section I of these comments, above, reasonable progress targets should not be independently enforceable requirements, consistent with the CPUC's approach for retail sellers.

**G. (E2). Should other individuals or entities be allowed under the Energy Commission's regulations to file a complaint against a POU for failing to comply with the regulations? If so, what other individuals and entities, and why? What public purpose is served by allowing these individuals and entities to file a complaint against the POU, if Energy Commission staff have already determined the POU to be in compliance?**

PG&E does not see a public purpose in allowing entities to file complaints at the Commission against POUs where Commission staff have already determined a POU to be in compliance.

**H. (E3) If the Energy Commission initiates a public proceeding to consider a staff complaint against a POU, should other individuals or entities be allowed to intervene or otherwise be granted party status in the proceeding? If so, what other individuals or entities, and why? What public purpose is served by allowing these individuals and entities to intervene as parties in the proceeding?**

Yes, any member of the public should have the right, upon a showing of good cause and the ability of the party to contribute substantially to the decision-making process at the Commission, to intervene and participate in a RPS enforcement proceeding before the Commission and/or the Air Resources Board. The Commission's decision-making process will be improved through the active participation of parties representing diverse public interests.

PG&E Comments on the 33% POU Pre-Rulemaking Draft Regulation

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#### **IV. CONCLUSION**

PG&E appreciates the opportunity to provide comments on the Draft Regulation. In these comments, PG&E urges the Commission to: (1) harmonize its regulations with the CPUC decisions implementing the same statute; (2) apply the portfolio content requirements only to RECs that are retired in WREGIS for use in a compliance period; (3) follow public notice and comment rulemaking procedures, including issuance of a final decision, when considering the statutory consistency of any rules or regulations adopted by POUs under Section 3206 of the Draft Regulation; (4) require POUs to submit annual progress and compliance reports by no earlier than August 1; (5) make clear that the Section 399.30(h) exemption for CCSF does not apply in any way to any CCA program initiated by CCSF; and (6) adopt the other proposals and recommendations on specific issues that PG&E has set forth above.

Best regards,

/s/

M. Grady Mathai-Jackson

cc: Paul Douglas, CPUC, via E-mail at psd@cpuc.ca.gov  
Sean Simon, CPUC, via E-mail at sean.simon@cpuc.ca.gov



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May 16, 2011

Melissa Jones, Executive Director  
California Energy Commission  
1516 9<sup>th</sup> Street  
Sacramento, CA 95814

Subject: 2010 Renewables Portfolio Standard (RPS) Compliance Year Reporting Deadline

Dear Ms. Jones:

Pacific Gas and Electric Company (PG&E) requests that the CEC postpone the deadline for submission of the 2010 RPS procurement data until no earlier than July 1, 2011, instead of the current deadline of June 1, 2011 (per the CEC's *RPS Eligibility Guidebook* at page 67).

PG&E requests this postponement for several reasons. First, the 2010 report will be the third annual report to be filed in a four-month period, starting with the filing of the 2008 report on February 1, 2011, and the June 1, 2011, due date for the 2010 report is only one month after the May 1, 2011, due date for the 2009 report. As reporting entities have learned over the past months through hands-on experience preparing and filing these reports, gathering and submitting data accurately and thoroughly requires significant time and resources.

Second, there are outstanding issues with WREGIS functionality that have delayed the creation of 2010 Certificates, making full and accurate retirement by June 1 impossible. For example, while some improvements have been made to the WREGIS functionality for matching out-of-state WREGIS Certificates with import NERC E-tags, the existing functionality is still extremely burdensome and slow. Likewise, due to the time required to correct errors in certificate creation, some meter data corrections to December 2010 vintage certificates have yet to be made. Also, as a result of timing constraints, some counterparties have not yet transferred all applicable 2010 certificates to PG&E; therefore some certificates cannot be retired by the June 1, 2011, deadline.

Third, with the 2007 RPS verification report still under review, and the 2008 and 2009 RPS procurement forms just filed, parties and CEC staff need time to resolve any issues that will arise as the reports are reviewed. Resolving these issues before submission of the 2010 report would minimize the likelihood of the same issues impacting the 2010 report.

Accordingly, PG&E requests that the RPS reporting date for the 2010 compliance year be postponed until no earlier than July 1, 2011. While this requested postponement is for 2010 only, PG&E requests that the CEC consider setting future annual RPS procurement filing deadlines for July 1 to allow adequate time to work with counterparties to make necessary adjustments to WREGIS Certificates, particularly those created in the final months of the prior year.

Should you have any questions, please contact me, or John Pappas at 415-973-3595.

Sincerely,