

BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA

DOCKET

11-RPS-01

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In the matter of:)
)
Developing Regulations and Guidelines)
For the 33 Percent Renewables)
Portfolio Standard)

Docket No. 11-RPS-01

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER
TO THE CALIFORNIA ENERGY COMMISSION'S STAFF WORKSHOP ON 33
PERCENT RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT
REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES**

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Dated March 30, 2012

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Pursuant to the procedures established by the California Energy Commission (Energy Commission or CEC), the Los Angeles Department of Water and Power (LADWP) respectfully submits these Comments on the CEC's 33 Percent Renewables Portfolio Standard (RPS) Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities (Draft Regulations).

I. INTRODUCTION AND OPENING COMMENTS

The City of Los Angeles is a municipal corporation and charter city organized under the provisions of the California Constitution. LADWP is a proprietary department of the City of Los Angeles, pursuant to the Los Angeles City Charter, whose governing structure includes the Mayor, 15 member City Council and five member Board of Water and Power Commissioners. As a Publicly Owned Electric Utility (POU), LADWP has no profit motive.

As the third largest electric utility in the state and the nation's largest municipal utility serving a population of over four million people, LADWP is a vertically integrated utility, both owning and operating the majority of its generation, transmission and

distribution systems. LADWP has annual sales exceeding 23 million megawatt-hours (MWhs) and has a service territory that covers 465 square miles in the City and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles that transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles.

The LADWP is undertaking a utility-wide transformation and investing billions of dollars on behalf of its ratepayers to replace more than 70 percent of the energy resources over the next 25 years that it has relied upon for the last 50 years, as a result of combined regulatory mandates for increased renewable energy, emissions performance standard on fossil fuel generation, energy efficiency, solar roofs, reduction in GHG emissions, and the elimination of using once-through cooling (OTC) for coastal power plants.

II. COMMENTS

California's most recent legislation for its RPS Program requires "each local publicly owned electric utility [to] adopt and implement a renewable energy resource procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources."¹ Since LADWP is a local publicly owned electric utility, it is required to comply with Senate Bill (SB) 2 (1X).

The authority of the CEC in the California Renewable Energy Resources Act² (commonly known as and referred to as SB 2 (1X)) is specifically within the California Renewables Portfolio Standard Program³ found in Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code. The LADWP wants to ensure that the CEC's regulations do

¹ Public Resources Code, §399.30 (a)

² Granting authority of SB2 (1X) found in Section 1 of chaptered law.

³ PUC §399.11 (a)

not exceed the specific regulatory authority granted to the CEC under SB 2 (1X) or abrogate the authority of LADWP's governing board. LADWP's comment on a particular question should not be interpreted to mean that LADWP is agreeing to CEC oversight on a given issue. LADWP's comments will represent modifications to the Proposed Regulations which will align with LADWP's interpretation of the statute.

The intent of the Legislation, found in the Legislative Counsel's Digest for the legislation, specifically states that the new law would:

“generally make the requirements of the RPS program applicable to local publicly owned electric utilities, except that the utility's **governing board** would be responsible for implementation of those requirements, instead of the Public Utilities Commission, and certain enforcement authority with respect to local publicly owned electric utilities would be given to the Energy Commission and State Air Resources Board, instead of the PUC. By placing additional requirements upon local publicly owned electric utilities, the bill would impose a state-mandated **local program**.”⁴

Here, the Legislative Counsel's Digest maps out the general oversight authority for local publicly owned electric utilities (POUs). The goal of the law for POUs is to have a “local program.” The governing board of a POU is “responsible” for implementing the RPS program instead of the Public Utilities Commission, while the Energy Commission and the State Air Resources Board are given “certain enforcement authority.” The law, as enacted, follows this legislative rubric, as outlined in the Legislative Counsel's Digest.

The authority of the Energy Commission for the Renewables Portfolio Standard Program is set forth in Section 399.25 of the Public Utilities Code (PUC). In this Section the Legislature mandated the CEC to (a) “certify eligible renewable energy resources,” (b) “design and implement an accounting system” to count renewable energy, to certify renewable energy credits, and to verify retail product claims; (c) “establish a system for

⁴ Legislative Counsel's Digest, subsection (3). Emphasis added.

tracking and verifying renewable energy credits;” and (d) certify renewable energy credits so that POU’s may sell them to retail sellers.

There are other places where the Energy Commission is specifically mentioned. However, these generally relate to the Legislature’s intent and the aforementioned duties in PUC Section 399.25. For example, PUC Section 399.12 (e)(1)(C) directs the CEC to certify “an eligible renewable energy resource” if it was approved by a POU “pursuant to former Section 387.”⁵

The LADWP disagrees with regulations that are beyond the scope of the CEC’s jurisdictional authority under SB 2 (1X). The only grant of authority to the CEC over POU’s or their governing boards is to “adopt regulations specifying procedures for enforcement of this article” pursuant to PUC 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 a POU’s governing board.

As such, LADWP requests that the CEC take into consideration the changes to the Proposed Regulations, as they are tailored to align with POU’s operations and need for exclusive jurisdiction on key aspects of the legislation. LADWP also provides the attached Redlines to the Proposed Regulations (Redlines). The Redlines contain supplemental modifications to the redlines being submitted by the California Municipal Utilities Association (CMUA). LADWP does not comment on each modification made on the Redlines, as most of the modifications are either corrections to administrative errors

⁵ See also 399.12(h)(1) [accounting system for renewable energy credits], 399.12(h)(3) [accounting system for “de minimis nonrenewable fuels” for each renewable energy technology], 399.21(a)(1) [tracking system is operational], 399.21(a)(5) [tracking of electricity purchase contracts for retail sellers], 399.17(b)(2) and (3) [electrical corporation serving 60,000 or fewer customers participates in the Energy Commission’s accounting system], 399.18 [electrical corporations with a limited number of customers participates in an accounting system], 399.19 [reporting to the Legislature of its progress].

or further clarifications on the CEC’s language. LADWP generally supports the comments being filed concurrently by CMUA.

A. General Comments – RPS Eligibility Guidebook

The LADWP is deeply concerned that the CEC did not issue the RPS Eligibility Guidebook (Guidebook) in parallel with the Proposed Regulations. The Proposed Regulations and the Guidebook are interrelated documents that cannot function individually: modifications to any of the documents are causal. As such, LADWP requests that the CEC consider delaying adoption of the RPS Regulations until industry has fully vetted the Guidebook.

B. Section 3201 – Definitions

i. Consistency with the Statute

The CEC needs to utilize definitions that are already defined in SB 2 (1X) and not create additional restrictions on such definitions. For example, PUC Section 399.12(f) defines the term “Procure” as “to acquire through ownership or contract,” whereas the Draft Regulations Section 3201 (q)⁶ defines it as “means to acquire electricity procure from RPS-certified facilities through executed contracts or ownership agreements.” LADWP recommends that unless it is absolutely necessary, the CEC conform to the statutory language. LADWP has provided related modifications to the definitions of “Procure,” “Eligible Renewable Energy Resource,” and “Procurement Target” in the Redline.

ii. Necessary Definitions

The LADWP noticed that there are key terms utilized throughout the Proposed Regulation that are not defined in Section 3201. LADWP requests that the CEC

⁶ All code section references are to the Draft Regulations, unless otherwise specified.

consider adding the terms (as proposed in the Redline) for “Distributed Generation,” “Metered Boundaries,” “Ownership Agreement” and “Renewable Portfolio Standard” in its list of definitions.

iii. **“Eligible Renewable Energy Resource” Definition**

Section 3201 (i) states the following: “Eligible Renewable Energy Resource’ means an electrical generating facility that the Commission has determined meets the definition of a “renewable electrical generation facility” in Section 25751 of the Public Resources Code and has certified as an RPS-Certified facility.” This definition does not fully align with the provisions and Legislative intent set forth in SB 2 (1X).

The PUC 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” (emphasis added). This section is not located in Section 25741 of the Public Resources Code. Therefore, LADWP recommends that the definition be modified as provided in the Redline to align with the full intent of SB 2 (1X).

iv. **“RPS Certified Facility” Definition**

Section 3201 (s) states the following: ““RPS-Certified facility” means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission’s RPS Guidelines. To become an RPS-certified facility, the facility must demonstrate to the Commission that it satisfies the requirements of the RPS Guidelines in place at the time the facility applies for RPS Certification.” This definition does not take into consideration Pre-June 1, 2010 contracts.

The PUC Section 399.12 (e)(1)(C) states that “a facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010...shall be certified as an eligible renewable energy resource by the Energy Commission... if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.” The Energy Commission’s definition would retroactively apply certification requirements (that are yet to be adopted) upon renewable resources previously adopted by the governing boards of POUs prior to June 1, 2010. This provision of the statute provides selective grandfathering of RPS resources adopted under the full legal authority granted to POU governing boards prior to SB 2 (1X), within the limitations of the Public Resources Code (PRC) Section 25741. Therefore, LADWP recommends that the definition be modified as provided in the Redline to align with the full intent of SB 2 (1X).

Also, as stated above, entities have not had a chance to review the Guidebook. Entities need time to vet the Guidebook revisions to ensure consistency between the Proposed Regulations and the Guidebook.

v. Superfluous Definitions – Procurement

The LADWP recommends that the CEC delete the term “Procurement” from Section 3201. This definition is superfluous and redundant given that the term “Procure” is defined.

C. Section 3202 – Qualifying Electricity Products

i. “is RPS Certified” is not aligned with SB 2 (1X)

The LADWP disagrees with the appended language “is RPS Certified” currently found in Section 3202 (a)(2)(B) and 3202 (a)(3)(A). The language “is RPS Certified”

trails back to the definition of the term “RPS-Certified Facility,” which is misrepresented in Section 3201 (s). As stated above, the Energy Commission’s definition would retroactively apply certification requirements that are yet to be adopted upon renewable resources previously adopted by the governing boards of POU’s prior to June 1, 2010. Furthermore, PUC Section 399.16(d)(1) requires that “the renewable energy resource was eligible under the *rules in place* as of the date when the contract was executed” (emphasis added) For contracts executed by POU’s prior to June 1, 2010, the ‘rules in place’ are the POU’s adopted RPS Policy, not the CEC’s RPS Eligibility Guidebook.

Therefore, LADWP recommends that this language “is RPS certified” be removed from these sections.

ii. **“Count in Full” provision**

The LADWP appreciates the CEC’s efforts in addressing the “count in full” language in Section 3202(a)(3). But given that pre-June 2010 contract eligibility are addressed in Section 3202(a)(2) and 3202(a)(3), the CEC should explain this language by adding a Section to the Proposed Regulations that explicitly describes the meaning of this language, as illustrated in Section 3202(b) of the Redline.

The CEC needs to expressly state that ALL pre-June 2010 contracts will “count in full” towards POU’s Renewable Portfolio Standard for compliance under SB 2 (1X). Procured resources approved by POU’s prior to June 1, 2010 as part of the POU’s Renewable Portfolio Standard requirements should count *in full* towards the Renewables Portfolio Standard Program requirements, regardless of whether the procured resource currently meets CEC eligibility requirements.

In addition, the phrase “count in full” means that the electricity products procured prior to June 1, 2010 will count towards compliance with the Renewables Portfolio Standard Program without regard to the quantitative requirements of any portfolio content category. 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 POU's current efforts to meet their statutory targets.

D. Section 3203 – Portfolio Content Categories

i. Distributed Generation – Solar Incentive Program

As LADWP has commented in the past, LADWP's Solar Incentive Program (SIP) provides ratepayer-funded incentives for residential and commercial customers to install solar photovoltaic systems on their facilities. The SIP has been in existence for over 10 years, is in full compliance with SB 1 guidelines, and has successfully promoted the installation of over 4,400 solar photovoltaic systems (totaling over 40 megawatts). All of these installations meet the definition of a “Eligible Renewable Energy Resource” as well as the criteria set forth in PUC Section 399.16 (b)(1)(A), as these facilities are connected to distribution systems that serve end users within a California Balancing Authority. Therefore, these installations should qualify as a renewable energy resource electricity product that meets the portfolio content category under 399.16(b)(1)(A).

The LADWP recommends that the CEC consider adding the following Section (Section 3203(a)(1)(E) of the Redline) into its draft regulations: “All Renewable energy generated in California where the utility owns the REC, including net-metered facilities counts towards Procurement Content Category 1.”

ii. Remove Unnecessary Language for Energy Transactions Agreements

Section 3203 (a)(1)(C) needs to be modified to remove the language “[a]nd the POU’s governing board must have approved an agreement, before...” The CEC did not specify the type of agreement that is required, although the language does allude to a Scheduling Agreement, which is also nebulous, as these agreements do not have to be taken to our governing bodies.

Furthermore, this language does not take into consideration Board delegations. For example, LADWP’s Wholesale Energy Resource Management group has the delegated authority from LADWP’s Board of Commissioners to enter into contracts for up to 18 months. LADWP recommends that the CEC modify Section 3203 (a)(1)(C) to remove this language from the regulations.

iii. Qualifying Electricity Product Measurement

The LADWP recommends that the CEC add Section 3203(a)(4) and Section 3203(b)(5) of the Redline in its Proposed Regulations. These two Sections clarify that the renewable energy credits counted for compliance has to be measured at the busbar of the facility.

iv. Resale of Portfolio Content Category 1 Resources

The LADWP recommends that the CEC remove the language specified in Section 3203 (a)(3), as this section is impractical. The resale of Portfolio Content Category (Bucket) 1 resources should always be considered Bucket 1 resources. If a resource satisfies the Bucket 1 criteria and is resold to another California entity (or Balancing Authority), such transaction is still within a California Balancing Authority. Therefore, LADWP suggests rewriting Section 3203(a)(b) as proposed in the Redline.

v. Missing Bucket 1 Criteria

The LADWP would like to emphasize that the Proposed Regulations for Bucket 1 do not make reference to PUC Section 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 Proposed Regulations provided needs to include PUC Section 399.16 (b)(1)(B) under the language for Bucket 1.

vi. Substitute Energy Delivery

Section 3203 (b)(2)(D) currently states that “substitute electricity used to firm and shape the electricity from the RPS-certified facility must be scheduled into a California balancing authority *within the same calendar year* as the electricity from the RPS-certified facility is generated” (emphasis added). This requirement is not feasible. Several firming and shaping entities perform balancing in January and February for December energy, which conflicts with the CEC’s Proposed Regulations. In order to preserve this existing business practice, the LADWP recommends that the CEC consider a “rolling 12-month” approach, where a POU would be required to schedule substitute energy within 12 months from the date the electricity is generated (modifications reflected in the Redline, Section 3203 (b)(2)(D)). The accounting for the compliance period should be when the renewable energy is consumed.

vii. Bucket 2 Energy Resale

Section 3204 (b)(3) specifies criteria for the resale of Bucket 2 products. Such restrictions on resale are not found in the statute. The LADWP recommends that the CEC remove these resale restrictions for Bucket 2.

E. Section 3204 – RPS Procurement Requirements

i. Quantitative and Qualitative Analysis

In the draft Regulations, the CEC proposes to apply interim targets for the compliance periods 2014-2016 and 2017-2020. However, SB 2 (1X) does not support this interpretation. Section 399.30(c)(2) expressly states that a POU “shall ensure . . . reasonable progress in each of the intervening years.” Therefore, LADWP requests that the CEC clearly recognize that interim targets, if any, are determined by POUs, not the CEC.

Also, multi-year compliance periods serve the purpose of increasing the economic efficiency of a public policy program. Specifically, by giving POUs a longer time frame to comply with compliance targets, POUs can allocate resources in a more cost-effective manner. Alternatively, if an interim target requires compliance over a shorter time frame, then the program may cause POUs to sacrifice efficiency for the sake of meeting compliance due to any number of organizational and/or financial pressures. In the instance of SB 2 (1X), the statute created multi-year compliance periods to give POUs flexibility in complying with renewable energy procurement targets.

Procurement of electricity, in the words of legislative analysis, “tends to be lumpy and to come online in chunks when new generation is interconnected.”⁷ Consequently, giving POUs a longer time frame to comply with compliance targets would give POUs the time needed to make cost-effective, sound, and carefully reviewed electricity procurement decisions. Without such flexibility, POUs might be rushed to comply with SB 2 (1X), potentially resulting in poor procurement decisions and stranded costs.

⁷ See Bill Analysis for Senate Energy, Utilities and Communications Committee, at 6.

As such, LADWP proposes that the CEC adopt two compliance mechanisms in its proposed regulations, as described in Section 3204 (a)(2)-(3) and Section 3204 (a)(5)(A)-(B). This recommendation aligns with the CEC’s proposal to allow POU’s to comply with the RPS by either utilizing a Quantitative or a Qualitative analysis to demonstrate “reasonable progress.”

The POU’s that rely on a numerical expression per year to demonstrate reasonable progress can select the Quantitative Analysis option and can demonstrate that it has achieved the minimum procurement targets specified in Section 3204(a)(2) – (3) of the Redline.

If a POU elects the final year compliance option, they are obligated by PUC Section 399.30 (c)(2) to demonstrate “[r]easonable progress in each of the intervening years” to its POU governing board. The set of actions that demonstrate “reasonable progress” are listed in Section 3204 (d)(2) of the Redline. Since these actions are commonly contained within the POU’s procurement plans, LADWP requests that the CEC consider utilizing a POU’s procurement plan as demonstration of “reasonable progress” for intervening years for those POU’s who decide to elect the final year of compliance option (Section 3204(d)(2)(A)).

F. Section 3205 – Procurement and Enforcement Plans

The CEC lacks the statutory authority to dictate the information that must be included in a POU’s procurement plans. There is no directive to adopt procurement plans “consistent with” any related statutory provision for retail sellers. Therefore, the contents of the procurement plan should be left to the discretion of the POU governing boards.

Even SB 2 (1X) limits direct involvement by the Public Utilities Commission in implementing a retail seller's plans until a retail seller notifies the Public Utilities Commission that it will not be able to meet the targets.⁸ Only then is authority granted to the Public Utilities Commission to grant a waiver, or delay from compliance.⁹

For POUs, the CEC's role is further limited than that of the Public Utilities Commission. There is no statutory directive to adopt enforcement programs "consistent with" any related statutory provisions for retail sellers. The CEC's role is proscribed to those duties found in 399.25 and for POUs it is limited to "specifying *procedures* for enforcement" (emphasis added).¹⁰ Furthermore, POU governing boards, such as LADWP, may have already adopted an enforcement program on or before January 1, 2012. Hence, the Legislature left the "program for the enforcement of" the California Renewables Portfolio Standard Program to the discretion of the POU governing boards."

G. Section 3206 – RPS Compliance Options

i. Delays

The Legislature recognized that in some instances the targets may be unachievable due to real-world implementation issues when looking to PUC Sections 399.15(e) and 399.19 in SB 2 (1X). The Public Utilities Commission, "in consultation with the Energy Commission," is required to report to the Legislature in 2016 "assessing whether each electrical corporation can achieve a 33-percent renewable portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted

⁸ Section 399.15(b)(5)

⁹ Id. and Section 399.15(b), (c)

¹⁰ 399.30 (n), (emphasis added).

cost limitations.”¹¹ In addition, the Commission and the CEC are required to report to the Legislature every other year to assess the “ability of each electrical corporation” to meet the RPS targets.¹²

Reporting to the Legislature is the extent of the CEC’s role when a POU may be faced with a delay. As stated above, SB 2 (1X) limits direct involvement by the Public Utilities Commission in implementing a retail seller’s plans until a retail seller notifies the Public Utilities Commission that it will not be able to meet the targets.¹³ Only then is authority granted to the Public Utilities Commission to grant a waiver, or delay from compliance.¹⁴

The SB 2 (1X) is then specific as to the exceptions that will be tolerated. Those exceptions are itemized in PUC Section 399.15 (b)(5), including transmission issues as in PUC Section 399.15(b)(5)(A) and some exceptions will not be allowed, as in failing to obtain a waiver from the Public Utilities Commission per PUC Section 399.15(b)(8). No such similar authority is granted to the Energy Commission over POUs.

The LADWP would like to emphasize that PUC Section 399.30 (c) (3) states that a POU “shall adopt procurement requirements consistent with PUC Section 399.16” and PUC 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 POUs abide by their procurement plan.

Moreover, LADWP would like to remind the CEC that procurement plans are continuously being shaped by technology, community engagement processes, and

¹¹ Id.

¹² Id.

¹³ Section 399.15(b)(5)

¹⁴ Id. and Section 399.15(b), (c)

system modeling. Furthermore, the POU's resource procurement and ratemaking process is different from IOUs, as they are consolidated within the POU and costs are recovered from the POU's customer-owners. It is paramount that POU's maintain discretion over costs and delays incurred while procuring eligible renewable resources.

As such, the POU governing boards would have the authority to adopt rules suitable for their specific POU structure. As stated above, the CEC's authority under PUC Section 399.30(n) is therefore limited to determining whether POU's abide by their procurement plan.

ii. **Unanticipated Curtailments**

It is important to expand the list of reasons for unanticipated curtailments of eligible renewable energy resources text into Section 3206 (a)(2)(A)(3), as these reasons are usually beyond the control of the needs of a California Balancing Authority.

For example, the Bonneville Power Administration's (BPA's) developed and implemented an Environmental Redispatch and Negative Pricing Policy which allows them to reduce Total Dissolved Gas (TDG) levels in the Columbia –Snake River System. These policies prevent excessive dam spillover which can create TDG levels that can lead to gas bubble trauma in aquatic organisms. On May 17, 2011, BPA was required to put water through turbines and generate electricity to prevent excessive TDG levels. Thus, BPA had to temporarily curtail the output of wind generation and replace this energy output with free Federal hydro generation, in order to maximize the amount of water put through the turbines.¹⁵ In total, BPA curtailed approximately 200 to

¹⁵ "BPA's Proposed Oversupply Management Protocol" presentation, dated February 14, 2012. Available at: <http://www.bpa.gov/corporate/AgencyTopics/ColumbiaRiverHighWaterMgmt/20120207-proposed-protocol/Feb14WorkshopPresentation.pdf>

350 MW of generation for five hours, totaling about 1,400 MWh of power. Such a curtailment was driven by an environmental concern.

Unanticipated curtailments due to overgeneration, intermittency eligible renewable energy resource, or other causes may also occur to a California Balancing Authority. Therefore, the LADWP recommends that the CEC consider adding the language “including, but not limited to, needs of a balancing authority, regulatory order, or environmental concern.” to Section 3206 (a)(2)(A)(3).

H. Section 3207 – Compliance Reporting for POUs

The LADWP contends that PUC Section 399.30 (g) requirements are generally met by the Integrated Energy Policy Report (IEPR) data collection efforts, Power Source Disclosure Forms, Power Content Label, and the Application for Certification. These existing forms and processes are already efficient and transparent. For example, the Table 1 illustrates existing data submittals the CEC already collects, which are consistent with SB 2 (1X) requirements:

Table 1: Existing Data Submittals consistent with SB 2 (1X)

Data Collection - Existing Submittals				
SB 2 (1X)	IEPR Data Collection	Power Source Disclosure Forms	Power Content Label	Application for Certification
§399.30 (g)(1)	S1, S2, S4, S5	Schedule 1	-	Applicable
§399.30 (g)(2)	S2, S5	Schedule 1	-	Applicable
§399.30 (g)(3)	S2, S5	Schedule 1	-	-
§399.30 (l)(1)	-	-	-	-
§399.30 (l)(2)	S1, S2,	Schedule 1,	Annual Report	Applicable
§399.30 (l)(3)	S1, S2, S4, S5	Schedule 1, Schedule 5	Annual Report	Applicable

The LADWP asks the CEC to use its existing forms for compliance and to only create reporting requirements for elements that are not captured through existing submittals.

I. Section 3208 – Renewables Portfolio Standard Enforcement

Beyond the Redlines provided, LADWP does not have any comments on this section at this time.

J. Outstanding Guidebook Comments

As stated above, the LADWP is deeply concerned that the CEC did not issue the RPS Eligibility Guidebook (Guidebook) in parallel with the Proposed Regulations. As such, all pending concerns raised by LADWP in its November 2, 2011¹⁶ filing are yet to be addressed. As such, LADWP reiterates its Guidebook comments below:

i. Eligibility of Biomethane under the RPS Eligibility Guidebook

The SB 2 (1X) has not changed the definition for digester gas and landfill gas (collectively, “biomethane”) from the prior version of the Public Resources Code Section 25741.¹⁷ Yet, the Energy Commission appears to be prepared to modify the eligibility of pipeline biomethane under the new version of the Eligibility Guidebook. Its motivation is not clear, and it is unknown what the ultimate changes will be to eligibility criteria for this resource. LADWP urges the Energy Commission to affirm the continued eligibility of existing contracts and in-state biomethane, including its transmission, as a renewable energy resource.

ii. Eligibility of Small Hydroelectric Resources

For this zero-GHG-emitting source of energy, it is imperative that the Energy Commission make no artificial interpretations. The plain text of PUC Section 399.12

¹⁶ Comments from the Los Angeles Department of Water and Power to the California Energy Commission’s Staff Workshop on the Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook and the Overall Program Guidebook for the Renewable Energy Program, dated November 2, 2011. Comments are available at: www.energy.ca.gov/portfolio/documents/2011-10-21_workshop/comments/Los_Angeles_Department_of_Water_and_Power_2011-11-02_TN-627742.pdf

¹⁷ Compare the current version of the Public Resources Code Section 25741 (a) with the prior version of 25741 (b)(1).

(e)(1)(A) should control, which is the governing provision for a small hydroelectric resource under SB 2 (1X). This subsection has three separate and distinct categories, each with its own sentence, which are as follows:

- Category 1– “An existing small hydroelectric generation facility” (1st sentence in (e)(1)(A));
- Category 2– “A small hydroelectric generation unit” (2nd sentence in (e)(1)(A)); and
- Category 3 – “A new hydroelectric facility” (3rd sentence in (e)(1)(A)).

Furthermore, each sentence has its own set of conditions. For example, for “[a] small hydroelectric generation unit” to qualify as an “eligible renewable energy resource” it must:

- (i) be “operated as part of a water supply or conveyance system,”
- (ii) the unit’s “nameplate capacity” cannot “exceed 40 megawatts,” and
- (iii) the POU “procured the electricity from the facility as of December 31, 2005.”

Though the last condition has the word “facility” in it, it is meant to apply to the Commercial Operation Date, which is obtained for a facility not a unit. Therefore, under Category 2, the small hydroelectric generating unit, not the facility, qualifies for an eligible renewable energy resource under RPS certification.

iii. Treatment of Contracts Approved by POU Governing Boards prior to June 1, 2010.

The PUC Section 399.12 (e)(1)(C) states that “a facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010... shall be certified as an eligible renewable energy resource by the Energy Commission... if the

facility is a 'renewable electrical generation facility' as defined in Section 25741 of the Public Resources Code." The Energy Commission's interpretation of this provision would retroactively apply certification requirements that are yet to be adopted upon renewable resources previously adopted by the governing boards of POU's prior to June 1, 2010. This is clearly counter to the intent of this provision of the statute. The Energy Commission's Eligibility Guidelines should clearly reflect the Legislative intent of SB 2 (1X) and preserve those resources adopted by POU governing boards as part of its RPS program prior to June 1, 2010.

iv. **Distributed Energy Considerations in the Eligibility Guidebook**

The Eligibility Guidebook requires POU's to use the Western Renewable Energy Generation Information System (WREGIS) to track and report, on a monthly basis, the energy generated by RPS-eligible facilities for Renewable Energy Credit (REC) purposes. While it is a good way to track and verify compliance with the RPS, this requirement will be burdensome, costly, and time-consuming for Distributed Generators -- in particular, for small-scale solar photovoltaic projects, such as those in LADWP's Solar Incentive Program (SIP). Installing revenue-quality meters in existing SIP installed projects would take away critical dollars and resources from future projects just to meet WREGIS compliance requirements.

The LADWP requests that the Energy Commission exempt small-scale solar photovoltaic projects from the use of WREGIS to track and report monthly generation for RECs. These requirements are counterproductive to the program goal to promote distributed generation, may put an economic damper on future solar photovoltaic

development, and will add a significant and unnecessary expense to the ratepayer-funded program.

The LADWP recommends that the Energy Commission should allow utilities to report for these projects with expected performance data, which is based on the characteristics of the photovoltaic system (e.g., size, location, orientation, tilt, tracking, shading, etc.). LADWP and other utilities with customer solar incentive programs have based incentive rebates on expected performance data for smaller systems for many years, and have found that these estimates are very close to actual energy output.

v. Treatment of Test Energy under the RPS

The LADWP is concerned with the Commission's treatment of "Test Energy" under the RPS. The Eligibility Guidebook states that "[t]he WREGIS system will only create RECs for generation associated with the earliest active certificate issuance cycle at the time the facility is approved in the WREGIS system. For new facilities with a recent commercial on-line date, this could include 'test energy.'" According to this statement, the energy produced by a project prior to the commencement of commercial operation would not count towards a retail seller's or POU's RPS procurement obligations. This statement can have several negative implications in the implementation of large-scale renewable energy projects.

The LADWP requests that renewable electrical generation projects should be eligible once the projects begin to supply "test energy" to the grid, which can be years prior to the formal commencement of commercial operations. There needs to be a mechanism in WREGIS to account for this type of energy, as this supply meets the requirements of SB 2 (1X). We cannot determine the Energy Commission's motivation

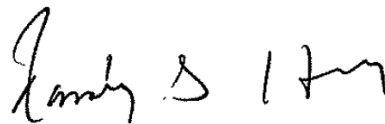
to disqualify the use of test energy towards RPS compliance. The use of test energy was not modified by the implementation of SB 2 (1X).

III. CONCLUSION

The LADWP remains committed to transitioning to a greater usage of a renewable energy resource mix in a cost effective manner while maintaining grid reliability. The LADWP recommends that the CEC take into consideration the proposed Redlines and consider delaying adoption of the RPS Regulations until industry has fully vetted the Guidebook. LADWP appreciates the opportunity to comment in this important issue and looks forward to cooperating with the Energy Commission in this proceeding.

Dated: March 30, 2012

Respectfully submitted,

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LADWP's Redline to the California Energy Commission's Draft Regulations

Section 3201 – Definitions

- (a) “Balancing authority” means a balancing authority as defined in Public Utilities Code Section 399.12 (b).
- (b) “Balancing authority area” means a balancing authority area as defined in Public Utilities Code Section 399.12 (c).
- (c) “Bundled” means an electricity product that, when initially procured, the procurement of an electricity product that includes both the electricity and renewable energy credits from an RPS-certified facility as part of the same contract or ownership agreement.
- (d) “California balancing authority” means a balancing authority primarily located in California with more than 50 percent of its end-use electric load physically located within the political boundaries of California. This includes balancing authority areas operated by the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California ~~(formerly SMUD)~~, Imperial Irrigation District, and Turlock Irrigation District.
- (e) “Commission” means the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.
- (f) “Compliance period” means the compliance periods as defined in Public Utilities Code Section 399.30 (c).
- (g) “Compliance report” means the reports that POUs file with the Commission by June 1 of the calendar year following the end of a compliance period as specified in Section 3207 of these regulations.
- (h) “Distributed Generation” means any electric generation facility as defined in Public Utilities Code Section 387.6(b) and any renewable electrical generation facility used by an eligible customer-generator as defined in Public Utilities Code Section 2827(b)(5).
- (i) “Electricity product” means either:
- (1) ~~The procurement of e~~Electricity and the associated renewable energy credit from an eligible renewable energy resource generated by an RPS-certified facility; or
 - (2) ~~The procurement of an unbundled~~A renewable energy credit, without the associated electricity, from an eligible renewable energy resource.
- (j) “Eligible renewable energy resource” means an electrical generating facility that meets the requirements of Public Utilities Code Sections 399.12(e) or 399.12.5~~the Commission has determined meets the definition of a "renewable electrical generation facility" in Section 25741 of the Public Resources Code and has certified as an RPS-certified facility.~~

- (k) **“Megawatt-hour” or “MWh”** means a unit of energy equivalent to one megawatt of electricity supplied for one hour.
- (l) **“Metered boundaries”**, in relation to a California balancing authority area, means either:
- (1) The point at which metering equipment monitors the flow of electric energy between balancing authorities; or
 - (2) If metering equipment is not available, the point on the transmission grid where a balancing authority assumes from another balancing authority the responsibility for the operation of the transmission grid.
- (m) **“NERC e-Tag”** means an electronic record that contains the details of a transaction to transfer energy from a seller to a buyer where the energy is scheduled for transmission across one or more balancing authority area boundaries.
- (n) **“Ownership agreement”** includes:
- (1) An agreement between a POU and a third party to acquire or develop a generation facility; or
 - (2) If the POU built and owns the generation facility and therefore has no such agreement with a third party, the arrangement by which the POU built the facility, in which case the date of the arrangement for the purposes of Section 3202(a) is the commercial operation date of the facility.
- (o) **“Portfolio content category”** refers to one of three categories of electricity products ~~procured from an RPS-certified facility, as~~ specified in Section 3203 of these regulations.
- (p) **“POU” or “Local publicly owned electric utility”** means a local publicly owned electric utility as defined by Public Utilities Code Section 224.3.
- (q) **“Procure”** means to acquire through ownership or contract~~to acquire electricity products from RPS-certified facilities through executed contracts or ownership agreements.~~
- ~~(r) **“Procurement”** means to procure electricity products from RPS-certified facilities.~~
- (s) **“Procurement target”** means the specified percentage of retail sales that a POU must procure of electricity products ~~from RPS-certified facilities~~ for each compliance period as defined in Public Utilities Code Section 399.30 (c). For POU’s that meet the criteria listed in Public Utilities Code Section 399.30 (k), the procurement target is the ~~annual~~-specified percentage of the POU’s electricity demands portion of retail sales not met by the POU’s qualifying hydroelectric generation that must be procured from renewable energy or renewable energy credits during a calendar year~~RPS-certified facilities.~~
- (t) **“Renewable electrical generation facility”** means a facility as defined in Public Resources Code Section 25741(a).
- (u) **“Renewable energy credit” or “REC”** means a certificate of proof as defined in Public Utilities Code Section 399.12 (h), associated with the generation of electricity from an eligible renewable energy resource.

- (v) **“RPS-certified facility”** means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission’s RPS Guidelines. ~~To become an RPS-certified facility, the facility must demonstrate to the Commission that it satisfies the requirements of RPS Guidelines in place at the time the facility applies for RPS certification.~~
- (w) **“Renewable Portfolio Standard” or “RPS”** means the law that require retail sellers of electricity and local publicly owned electric utilities to increase the amount of renewable energy the procure each year until 33 percent of their retail sales are served with eligible renewable energy resource by December 31, 2020.
- (x) **“RPS Guidelines”** means the guidelines adopted by the Commission pursuant to Public Resources Code Section 25747 (a) to implement the California Renewables Portfolio Standard (?) Program (RPS) found in Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code..
- (y) **“Retire”** means to claim a renewable energy credit in the tracking system established by the ~~Energy~~ Commission pursuant to Public Utilities Code Section 399.25 (c) and thereby commit the renewable energy credit to be used for compliance with the RPS.
- (z) **“Western Electricity Coordinating Council” or “WECC”** means the electricity coordinating council as defined in Public Utilities Code Section 399.12 (k). WECC is part of the North American Electric Reliability Corporation and the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection serving all or part of the 14 western states and portions of Mexico (in northern Baja California) and Canada (in British Columbia and Alberta).
- (aa) **“Western Renewable Energy Generation Information System” or “WREGIS”** refers to the independent, renewable energy tracking system implemented for the region covered by the Western Electricity Coordinating Council.

Section 3202 – Qualifying Electricity Products

- (a) In order for an electricity product to be used to meet the RPS procurement targets as defined in Section 3204 (a) of these regulations, and the portfolio content category procurement requirements set forth in Section 3204 (e) of these regulations an RPS procurement target, the electricity product must meet at least one of the following requirements:
 - (1) The electricity product is procured pursuant to a contract or ownership agreement on or after June 1, 2010, and is associated with generation from an RPS-certified facility.
 - (2) The electricity product was procured pursuant to a contract or ownership agreement before June 1, 2010, and meets the following criteria:
 - (A) The electricity product was approved by the governing board of a POU for procurement to satisfy renewable energy procurement obligations pursuant to former Public Utilities Code Section 387.

- (B) The electricity product is associated with generation from a facility that meets the definition of a “renewable electrical generation facility” ~~and is RPS-certified.~~
- (3) The electricity products ~~that were~~ was procured pursuant to a contract or ownership agreement before June 1, 2010, ~~shall count in full towards procurement targets if they~~ and meets the following criteria:
- (A) The electricity products are associated with generation from a facility that does not meet the definition of a “renewable electric generation facility” but does meet the Commission’s RPS eligibility requirements that were in effect prior to June 1, 2010, when the original procurement contract or ownership agreement was executed by the POU, ~~and the facility is RPS-certified.~~
- (B) Any contract modifications or amendments occurring after June 1, 2010, do not either increase the nameplate capacity or expected quantities of annual generation from the facility, or substitute a different renewable energy resource for the facility. If contract amendments or modifications after June 1, 2010 increase nameplate capacity or expected quantities of annual generation, only the amounts agreed to prior to June 1, 2010, shall count in full toward procurement targets. The initial term of such procurement contract may be extended if the initial term of the contract specified a procurement commitment of 15 years or more.
- (b) Procurement qualifying under Section 3202 (a)(2) or (a)(3) of these regulations will “count in full” ~~may be counted~~ for compliance with the RPS, either without regard to the quantitative requirements for the use of any portfolio content category, or for meeting the quantitative requirements for the applicable portfolio content category in Section 3203 at the POU’s election.
- (c) If any RECs from a contract signed prior to June 1, 2010, are unbundled and sold separately after June 1, 2010, the underlying energy may not be counted for compliance with the RPS, and the unbundled RECs and associated energy continues to count in full as described in 3202 (b), must be counted in Portfolio Content Category 3, as defined in Section 3203 (c) of these regulations, unless the underlying electricity would qualify for Portfolio Content Category 1, as defined in Section 3203 (a) of these regulations, or Portfolio Content Category 2, as defined in Section 3203 (b) of these regulations, but for the unbundling.
- (d) Procurement qualifying under Section 3202 (a)(2)) of these regulations will continue to count in full for compliance with the RPS as described in Section 3202(b) if the contract is sold to another POU and is not modified in a manner disallowed by 3202 (a)(2)(B).
- (e) Any unused historical procurement from a contract meeting the requirements of Section 3202 (a) that was not retired to satisfy renewable energy procurement obligations pursuant to

former Public Utilities Code Section 387 shall be allowed to count in full as described in Section 3202 (b), subject to the following:

(1) criteria to be developed

(f) A POU may not use a REC associated with RPS-eligible electricity products to meet its RPS procurement requirements unless it is retired in WREGIS within 36 months from the initial month of the generation of the associated electricity.

Section 3203 – Portfolio Content Categories

(a) Portfolio Content Category 1

(1) Portfolio Content Category 1 electricity products must be initially procured as ~~and remain~~ bundled in order to be classified in Portfolio Content Category 1 (other than electricity products from distributed electric generation facilities), must be located within the WECC transmission grid, and must meet at least one of the following criteria:

(A) Electricity products must be generated by an RPS-certified facility that has its first point of interconnection to the WECC transmission grid within the metered boundaries of a California balancing authority area. For purposes of this Section 3203, the first point of interconnection to the WECC transmission grid is the substation or other facility where generation tie lines from the RPS-certified facility interconnect to the network transmission grid.

(B) Electricity products must be generated by an RPS-certified facility or a distributed renewable energy generation facility that has its first point of interconnection to an electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area. For purposes of this Section 3203, the first point of interconnection to an electricity distribution system is within the service area boundaries of a utility distribution company (UDC).

(C) Electricity products must be generated by an RPS-certified facility and scheduled into a California balancing authority without substituting electricity from another source. For purposes of this Section 3203, electricity generated by the RPS-certified facility must be scheduled into a California balancing authority within the hour in which the electricity is generated, ~~and the POU's governing board must have approved an agreement, before the electricity product is generated, to schedule the electricity from the RPS-certified facility into the California balancing authority during the hour in which the electricity product is generated. If there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered into a California balancing authority, only the lesser of the two amounts may be classified as Portfolio Content Category 1.~~

(D) Electricity products must be generated by an RPS-certified facility and subject to an agreement between a California balancing authority and the balancing authority in which the RPS-certified facility is located, executed before the product is generated,

to dynamically transfer electricity from the RPS-certified facility into the California balancing authority area during the hour in which the product is generated.

- (E) Renewable energy generated by the facility where the utility owns the REC counts towards Bucket 1.

[JCB. Here is a suggestion :

Electricity products obtained by a POU as part of its Solar Incentive Program under SB1 and where the POU has obtained Renewable Energy Credits from its customer shall qualify as a renewable energy resource electricity product that meets the portfolio content category under 399.16(b)(1)(A).]

- (2) Electricity products originally qualifying in Portfolio Content Category 1 and subsequently resold or transferred continue to qualify as Portfolio Content Category 1. must meet the following criteria to remain in Portfolio Content Category 1:
- ~~(A) The original contract for procurement of the electricity products meets at least one of the criteria in Section 3203 (a)(1)(A)–(D) of these regulations.~~
- ~~(B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.~~
- ~~(C) The electricity transferred by the resale contract is transferred to the ultimate buyer in real time.~~
- ~~(D) For those electricity products that satisfy Section 3203 (a)(1)(C) of these regulations, the original hourly or subhourly schedule is maintained and the criteria of Section 3203 (a)(2)(A)–(C) of these regulations are met.~~
- (3) ~~Electricity products originally qualifying in Portfolio Content Category 1 and resold that do not meet the criteria of Section 3203 (a)(2)(A)–(D) of these regulations shall not be counted in Portfolio Content Category 1.~~
- (4) For electricity products classified as Portfolio Content Category 1, the quantity of electricity counted for compliance with Section 3204 (a)(1) – (3) of these regulations is the quantity of electricity procured by the POU as measured at the busbar of the RPS-certified facility.

(b) Portfolio Content Category 2

- (1) Portfolio Content Category 2 electricity products must be generated by an RPS-certified facility, must be located within the WECC transmission grid, and must be firmed and shaped with substitute electricity to provide incremental electricity that is scheduled into a California balancing authority.
- (2) Portfolio Content Category 2 electricity products must be initially procured as bundled and must meet all of the following criteria:

- (A) The first point of interconnection to the WECC transmission grid for both the RPS-certified facility and the resource providing the substitute electricity must be located outside the metered-boundaries of a California balancing authority area.
- (B) The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be incremental to the POU. For purposes of this Section 3203, “incremental” means electricity that is not in the native load portfolio of the POU claiming the transaction for RPS compliance prior to the firmed and shaped transaction(s).
- (C) ~~The procurement of the substitute resource is adopted by the governing board of the POU. The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be delivered to a California balancing authority at the same time or after the procurement for the electricity from the RPS-certified facility is adopted is generated.~~
- (D) The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be scheduled into the California balancing authority within ~~the same calendar year as~~ 12-months from the date that the electricity from the RPS-certified facility is generated.
- (3) Electricity products originally qualifying in Portfolio Content Category 2 and subsequently resold or transferred continue to qualify as Portfolio Content Category 2. ~~must meet the following criteria to remain in Portfolio Content Category 2:~~
- (A) ~~The original contract for procurement of the electricity products meets the criteria of Section 3203 (b)(2)(A) – (D) of these regulations.~~
- (B) ~~The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.~~
- (C) ~~The resale contract transfers the original arrangement for substitute electricity, including the source and quantity for the substitute electricity.~~
- (D) ~~The resale contract retains the scheduling of the substitute electricity into the California balancing authority as set out in the original firming and shaping transaction.~~
- (E) ~~The transaction continues to provide incremental electricity for the POU claiming the transaction for RPS compliance and is scheduled into the California balancing authority.~~
- (4) ~~Electricity products originally qualifying in Portfolio Content Category 2 and resold that do not meet the criteria above must be counted in Portfolio Content Category 3.~~
- (5) For electricity products classified as Portfolio Content Category 2, the quantity of electricity counted for compliance with Section 3204 (a)(1) – (3) of these regulations is the quantity of electricity procured by the POU as measured at the busbar for the renewable energy resource.

(c) Portfolio Content Category 3

- (1) ~~All Unbundled renewable energy credits and other~~ Electricity products located within the WECC transmission grid and generated by RPS-certified facilities that do not meet the requirements of either Portfolio Content Category 1 or Portfolio Content Category 2 fall within Portfolio Content Category 3.

(d) The Portfolio Content Category to which an electricity product belongs will be determined pursuant to the version of these regulations in effect on the date the electricity product was procured. For electricity products procured before the effective date of these regulations, the Portfolio Content Category to which the electricity product belongs will be determined as set forth in Public Utilities Code Section 399.30 (c)(3).

Section 3204 – RPS Procurement Requirements

(a) RPS procurement targets for each compliance period:

- (1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, a POU shall demonstrate it has procured electricity products sufficient to equal an average of 20 percent of its retail sales ~~for all over the~~ three calendar years in the compliance period.

$$\frac{(EP_{2011} + EP_{2012} + EP_{2013})}{(RS_{2011} + RS_{2012} + RS_{2013})} \geq 0.20$$

EP_X = Electricity Products procured and retired for the specified year X

RS_X = Total retail sales made by the POU for the specified year X

- (2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, a POU shall demonstrate it has procured electricity products sufficient to achieve 25 percent of retail sales by December 31, 2016. The numerical expression of this procurement requirement is: meet or exceed 25 percent of its retail sales in the last calendar year of the compliance period.

$$(0.20 \times RS_{2014} + 0.20 \times RS_{2015} + .25 \times RS_{2016})$$

$$\frac{(EP_{2016})}{(RS_{2016})} \geq 0.25$$

(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products sufficient to achieve 33 percent of retail sales by December 31, 2020. The numerical expression of this procurement requirement is: meet or exceed 33 percent of its retail sales in the last calendar year of the compliance period.

$$(0.25 \times RS_{2017} + 0.25 \times RS_{2018} + 0.25 \times RS_{2019} + 0.33 \times RS_{2020})$$

$$\frac{(EP_{2020})}{(RS_{2020})} \geq 0.33$$

(4) For the calendar year ending December 31, 2021, and each calendar year thereafter, a POU shall procure electricity products sufficient to equal to 33 percent of its retail sales by the end of that year.

(5) Notwithstanding Section 3204 (a)(2)-(3) of these regulations, a POU that meets the following requirements shall be deemed to be in compliance with this section.

(A) For the compliance period beginning January 1, 2014, and ending December 31, 2016, a POU shall demonstrate it has procured electricity products sufficient to meet or exceed 25 percent of its retail sales in the last calendar year of the compliance period.

$$\frac{(EP_{2016})}{(RS_{2016})} \geq 0.25$$

(B) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products sufficient to meet or exceed 33 percent of its retail sales in the last calendar year of the compliance period.

$$\frac{(EP_{2020})}{(RS_{2020})} \geq 0.33$$

(6) Notwithstanding Section 3204 (a)(1) – (4) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (h) shall be deemed to be in compliance with this section.

(67) A POU shall demonstrate that it meets the criteria listed in Section 399.30 (h) by providing the Commission documentation showing the POU receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress

pursuant to Section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386).

(8) Notwithstanding Section 3204 (a)(1) – (4) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30(i) shall be deemed to be in compliance with this Section 3204.

~~(79)~~ Notwithstanding Section 3204 (a)(1) – (4) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall be deemed to be in compliance with this Section 3204 if all of the POU’s electricity demand in any given calendar year is satisfied with its qualifying hydroelectric generation. For purposes of this Section 3204, “qualifying hydroelectric generation” is generation from one or more facilities that meets the following criteria:

(A) The facility is located within the state.

(B) The facility is owned and operated by the POU.

(C) The facility is a hydroelectric facility, but does not meet the definition of a “Renewable Electrical Generation Facility” and is not RPS-certified.

(D) The facility provides greater than 67 percent of the POU’s electricity supply on an annual basis.

(810) If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has electricity demands unsatisfied by its qualifying hydroelectric generation in any given year, then the POU shall procure electricity products in accordance with Section 3204 (e) of these regulations equal to the lesser of the following:

(A) The electricity demands unsatisfied by the POU’s qualifying hydroelectric generation.

(B) The RPS procurement requirement listed in Section 3204 (a)(1) – (4) of these regulations corresponding to the year during which the POU’s qualifying hydroelectric generation was insufficient to meet its annual electricity demand.

~~(b) A POU may not use a REC associated with RPS-eligible electricity products to meet its RPS procurement requirements unless it is retired within 36 months from the initial month of the generation of the associated electricity.~~

(c) Deficits associated with any one compliance period shall not be added to a future compliance period.

~~(d) Reasonable progress in intervening years of the compliance periods ending on December 31, 2016, and December 31, 2020.~~

~~(1) Reasonable progress in intervening years pursuant to Section 3204(a)(1) –(3) will be analyzed through Section 3207 – Compliance Reporting for POU’s.~~

~~(A.) A POU will be deemed in compliance with this Section 3204 if it is able to procure sufficient electricity products to meet or exceed the RPS Procurement targets.~~

~~(2) Each governing board of a POU is responsible for demonstrating reasonable progress toward meeting its RPS procurement requirements in Section 3204. (a) of these regulations and shall report such findings in its annual reports to the Commission. Reasonable progress may be a set of actions taken to procure additional electricity products or prospective electricity products, subject to the requirements of Section 3204 (e), including building and contracting for siting activity, and/or quantitative increases in the electricity products procured throughout the compliance period to reach the procurement target for the end of that compliance period. Reasonable progress may include, but is not limited to, acquiring and developing new renewable resources, transmission modeling, land acquisition, initiating environmental studies, securing permits, soliciting requests for offers, executing contracts, and signing interconnection agreements. The POU shall demonstrate in its annual reporting to the Commission its current level of RPS procurement, its procurement target at the end of the compliance period, and the steps it has taken in the past year to achieve the procurement target for the compliance period. If a POU has already attained the procurement target or has banked sufficient excess procurement to achieve its procurement target for the compliance period, it shall state this in its annual reporting.~~

(A.) The governing board of a POU can satisfy this requirement by providing the CEC with a copy of its new or updated renewable energy resource procurement plan, as specified in Section 3205(a)(3).

~~(3) Notwithstanding Section 3203 (d)(1) of these regulations, an increase in the procurement of electricity products of no less than 1.5 percent of 100 percent of a POU's retail sales in each year of the compliance period ending December 31, 2016, shall be deemed reasonable progress, provided the POU met their procurement target for 2013. The procurement of electricity products to satisfy the requirements of this paragraph must comply with Section 3204 (e).~~

~~(4) Notwithstanding Section 3203 (d)(1) of these regulations, an increase in the procurement of electricity products of no less than 2 percent of 100 percent of a POU's retail sales in each year of the compliance period ending December 31, 2020, shall be deemed reasonable progress, provided the POU met their procurement target for 2016. The procurement of electricity products to satisfy the requirements of this paragraph must comply with Section 3204 (e).~~

(e) In meeting the RPS procurement targets as defined in Section 3204 (a), each POU shall also be subject to the following:

- (1) No less than 50 percent of the electricity products used to meet the RPS procurement requirement for the compliance period ending December 31, 2013, must meet the definition of Portfolio~~product~~ Content Category 1.
- (2) No less than 65 percent of the electricity products used to meet the RPS procurement requirement for the compliance period ending December 31, 2016, must meet the definition of Portfolio~~product~~ Content Category 1.

- (3) No less than 75 percent of the electricity products used to meet the RPS procurement requirement for the compliance period ending December 31, 2020, or any compliance period thereafter, must meet the definition of ~~Portfolio~~ Content Category 1.
- (4) Not more than 25 percent of the electricity products used to meet the RPS procurement requirement for the compliance period ending December 31, 2013, can meet the definition of ~~Portfolio~~ Content Category 3.
- (5) Not more than 15 percent of the electricity products used to meet the RPS procurement requirement for the compliance period beginning ending December 31, 2016, can meet the definition of ~~Portfolio~~ Content Category 3.
- (6) Not more than 10 percent of the electricity products used to meet the RPS procurement requirement for the compliance period ending December 31, 2020, or any compliance period thereafter, can meet the definition of ~~Portfolio~~ Content Category 3.
- (7) Except as otherwise required by Section 3204 (e) of these regulations, electricity products meeting the definition of ~~Portfolio~~ Content Category 2 may be used to meet an RPS procurement requirement.

Section 3205 – Procurement Plans and Enforcement Plans Programs

(a) Renewable Energy Resources Procurement Plan

~~(1) By January 1, 2013, Each POU shall submit to the Commission an electronic copy of its renewable energy resources procurement plan, or a uniform resource locator (URL) that directly links to the plan on POU's Internet Web site, for posting on the Commission's Internet Web site, that includes, at a minimum, the following information for the forthcoming calendar year and the current compliance period:~~

- ~~(A) The POU's projected retail sales for the forthcoming calendar year and current compliance period in MWh.~~
- ~~(B) The POU's projected level of RPS procurement for the forthcoming calendar year and procurement target for the current compliance period in MWh.~~
- ~~(C) A description of the type and quantity of electricity products the POU intends to procure in the calendar year and compliance period to meet its RPS procurement requirements. The description shall identify the type of electricity product by product content category and the quantity of each type of electricity product in MWh.~~
- ~~(D) A description and quantity of excess procurement, if any, the POU intends to use in the calendar year and compliance period to meet its RPS procurement requirements.~~
- ~~(E) An annual review of reasonable progress made toward the RPS procurement targets for the prior calendar year and the compliance period.~~

~~(F) A description of any of the following rules adopted by the POU in accordance with Section 3206 (a)(1)–(4) of these regulations. These rules must be described in the POU’s procurement plan if the POU intends to rely on these rules to satisfy or delay compliance with its RPS procurement requirements.~~

- ~~1. Rules for carrying over excess procurement of electricity products from one compliance period to subsequent compliance period in accordance with Section 3206 (a)(1) of these regulations.~~
- ~~2. Rules under which the POU may delay timely compliance with its RPS procurement requirements and procurement targets in accordance with Section 3206 (a)(2) of these regulations.~~
- ~~3. Rules establishing cost limitations for procurement expenditures in accordance with Section 3206 (a)(3) of these regulations.~~
- ~~4. Rule permitting the reduction of the procurement requirement for electricity products in Portfolio Content Category 1 for a specific compliance period in accordance with Section 3206 (a)(4) of these regulations.~~

~~(G) A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall additionally provide a forecast of its annual electricity demand that will be satisfied with qualifying hydroelectric generation from a facility that meets the criteria specified in Section 3204 (a)(7) of these regulations. The forecast shall identify the POU’s annual electricity demand and the amount of qualifying hydroelectric generation expected for the calendar year in MWh.~~

~~(2) By January 1 of each year following 2013, each POU shall submit any revisions to the renewable energy resources procurement plan, including all requirements of Section 3205 (a)(1), if the procurement plan is updated.~~

(3) Each POU shall provide the following notice regarding new or updated renewable energy resources procurement plans:

(A) The POU shall ~~annually~~ post notice, in accordance with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, whenever its governing board will deliberate in public on its renewable energy resources procurement plan.

(B) Contemporaneous with the posting of the notice of a public meeting to consider the renewable energy resources procurement plan, the POU shall notify the Commission of the date, time, and location of the public meeting to consider the procurement plan. This requirement is satisfied if the POU provides the Commission with the uniform resource locator (URL) that directly links to the notice for the public meeting. An e-mail with information on the public meeting in Portable Document Format (pdf) may also be provided to the Commission.

(C) The POU must notify the Commission if any URL provided by the POU pursuant to this Section 3205 no longer contains the correct link, and the POU must

send the Commission a corrected URL that links to the information or a pdf containing the information as soon as it becomes available.

(b) Enforcement Program Plan

- (1) The governing board of each POU must adopt an enforcement ~~plan or~~ program for RPS enforcement on or before January 1, 2012. ~~A POU shall revise its enforcement plan or program, as needed, to comply with these regulations within 90 days of the effective date of these regulations.~~
 - ~~(2) The enforcement plan shall include actions the POU will take if the POU determines that it will not meet its RPS procurement requirements in accordance with Section 3204 of these regulations.~~
 - (3) The enforcement program plan must be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days' notice shall be given to the public of any meeting held for purposes of adopting the program plan.
 - (4) If the enforcement program plan is modified or amended, no less than 10 days' notice shall be given to the public before any meeting is held to make a substantive change to the program plan.
 - (5) A POU's enforcement program may include rules adopted as described in Section 3206, pursuant Public Utilities Code Sections 399.30 (c)(3) and (d)(1)-(3).
- (c) If a POU distributes information to its governing board related to its renewable energy resources procurement status or future procurement plans or enforcement programs plan, for the governing board's consideration at a public meeting, the POU shall make that information available to the public and shall provide an electronic copy of information to the Commission for posting on the Commission's website.
- (1) This requirement is satisfied if the POU provides to the Commission the URL that directly links to the documents or information regarding other manners of access to the documents. An e-mail with the information in pdf may also be provided to the Commission.
 - (2) The POU must notify the Commission if any URL provided by the POU pursuant to this Section 3205 no longer contains the correct link, and the POU must send the Commission a corrected URL that links to the information or a pdf containing the information as soon as it becomes available.
- (d) Notwithstanding Section 3205 (a) – (c) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (h) is not required to provide the Commission with a renewable energy resources procurement plan, an enforcement program plan, or public notice or information concerning any such program or plan.

Section 3206 – RPS Compliance Options

(a) In meeting its RPS procurement requirements, a POU may adopt at a noticed public meeting any of the following measures:

(1) Pursuant to Public Utilities Code Section 399.30 (d)(1), the governing board of a POU may adopt rules for eExcess procurement:

(A) POUs may adopt rules permitting the POU to apply excess procurement in one compliance period to a subsequent compliance period, except that:

1. Excess procurement of electricity products from Portfolio Content Category 3 may not be applied toward a future compliance period ~~and shall not be included in the calculation of excess procurement.~~
2. Generation procured under contracts of less than 10 years in duration may ~~may not be applied toward a future compliance period and shall~~ not be included as excess procurement.

(B) Those POUs that opt to allow the application of excess procurement as part of their renewable energy resources procurement plan or enforcement program may begin accruing excess procurement January 1, 2011. This requirement does not apply to unused historical procurement as described in Section 3202 (e).

(C) Electricity products qualifying as excess procurement may be applied toward future compliance periods, including compliance years following 2020, but must be retired within 36 months of the generation month of the associated electricity.

(D) POUs may accrue excess procurement in a given compliance period only if the POU satisfies the following criteria.

1. Excess procurement for the first compliance period is:

Excess Procurement

$$= (EP_{2011} + EP_{2012} + EP_{2013}) - (0.20 \times (RS_{2011} + RS_{2012} + RS_{2013}))$$

EP_X = Electricity Products procured and retired for the specified year X

RS_X = Total retail sales made by the POU for the specified year X

2. Excess procurement for the second compliance period is:

$$~~Excess Procurement = (EP_{2014} + EP_{2015} + EP_{2016}) - (0.20 \times RS_{2014} + 0.20 \times RS_{2015} + 0.25 \times RS_{2016})~~$$

3. Excess procurement for the third compliance period is:

$$~~Excess Procurement = (EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020}) - (0.25 \times RS_{2017} + 0.25 \times RS_{2018} + 0.25 \times RS_{2019} + 0.25 \times RS_{2020})~~$$

(2) Pursuant to Public Utilities Code Section 399.30 (d)(2), the governing board of a POU may adopt rules for dDelay of timely compliance:

(A) The governing board of a POU may adopt rules permitting a POU to make a finding that reasonable cause exists to delay the timely compliance with the RPS procurement requirements defined in Section 3204 of these regulations. Such a finding shall be limited to one or more of the following causes for delay:

1. There is inadequate transmission capacity to allow sufficient electricity to be delivered from a proposed eligible renewable energy resource project. ~~For example, using the current operational protocols of the California Independent System Operator, a~~ POU that owns transmission or has transmission rights, may find that:
 - i. The POU has undertaken all reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of its expectation for cost recovery.
 - ii. The POU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.
2. Permitting, interconnection, or other circumstances ~~have~~ that delayed procurement of or limit energy delivery from eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. POU must consider whether also find that:
 - i. The POU prudently managed portfolio risks, including relying on a sufficient number of viable projects.
 - ii. The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.
 - iii. The POU procured an appropriate minimum margin of procurement above the level necessary to comply with the RPS to compensate for foreseeable delays or insufficient supply.
 - iv. The POU had taken reasonable measures to procure cost-effective distributed generation and allowable unbundled RECs.
3. Unanticipated curtailment of eligible renewable energy resources was necessary ~~to address the needs of a balancing authority. including, but not limited to, the needs of a balancing authority, regulatory order, or environmental concerns to delay timely compliance~~

(3) Pursuant to Public Utilities Code Section 399.30 (d)(3), the governing board of a POU may adopt rules for cCost limitations:

(A) The governing board of a local POU may adopt rules permitting a POU to establish a cost limitation on the procurement expenditures used to comply with its RPS procurement requirements.

(B) Such cost limitations shall ensure that:

1. The limitation is set at a level that prevents disproportionate rate impacts.
2. The costs of all procurement credited toward achieving the RPS are counted toward the limitation.
3. Procurement expenditures do not include any indirect expenses including, without limitation, imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any POU-owned hydroelectric facilities.

(C) In adopting cost limitation rules, the POU shall rely on all of the following:

1. The most recent renewable energy resources procurement plan.
2. Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.
3. The potential that some planned resource additions may be delayed or canceled.

(4) Pursuant to Public Utilities Code Section 399.30 (c)(3), the governing board of a POU may adopt rules for Portfolio Category Content requirement reduction:

(A) POU may adopt rules that allow the reduction of the procurement requirement for Portfolio Content Category 1 or the increase of the maximum procurement for Portfolio Content Category 3 for a specific compliance period consistent with Public Utilities Code Section 399.16 (e).

(B) The need to reduce the procurement requirements for Portfolio Content Category 1 or the increase of the maximum procurement for Portfolio Content Category 3 must have resulted because of conditions beyond the control of the POU as provided in Section 3206 (a)(2) of these regulations or because of cost limitations as provided in Section 3206 (a)(3).

(C) ~~A reduction of the~~ The procurement requirement for Portfolio Content Category 1 shall not be reduced below 65 percent for any compliance period after December 31, 2016, ~~will not be considered consistent with Public Utilities Code Section 399.16 (e).~~

(D) A POU that reduces its procurement requirements for Portfolio Content Category 1 or increases the maximum procurement for Portfolio Content Category 3 must adopt these changes at a publicly noticed meeting, including at least 10 days advance notice to the Commission, and to subsequently include this information in updated renewable energy resources procurement plan submitted to the Commission. The notice and procurement plan must include the following information:

1. The compliance period for which the reduction or increase may be adopted.

2. The level to which the POU has reduced or increased the relevant requirement.
3. The reason or reasons the POU has proposed for adopting the reduction or increase.
4. An explanation of how the needed reduction or increase resulted from conditions beyond the control of the POU as provided in Section 3206 (a)(2) of these regulations.
5. If applicable, an explanation of why the reduction or increase was needed as a result of cost limitations adopted by the POU as provided in Section 3206 (a)(3) of these regulations.

(b) Rules adopted under this Section 3206 shall be in place and described in a POU’s renewable energy resources procurement plan or enforcement program ~~for a given calendar year~~ if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements ~~for that year~~.

~~(c) Any rule or rule revision adopted under this Section 3206 shall be submitted to the Commission within 30 days after adoption for a determination of consistency with the requirements of Public Utilities Code Section 399.30. The Commission shall make its determination within 120 days of receipt of such rule. Failure of the Commission to make such determination shall be deemed a determination that such rule is consistent with the requirements of Public Utilities Code Section 399.30.~~

~~(d) Any rule adopted pursuant to this Section 3206 shall provide that the Executive Director of the Commission be given notice no less than 30 days in advance of a proposed action to be taken under such rule. Such notice shall include all reports, analyses, proposed findings, and any other information upon which the POU may rely in taking the proposed action.~~

Section 3207 – Compliance Reporting for POU’s

NOTE: LADWP recommends that the CEC redraft this section to align with existing CEC data submittal requirements, such as the Power Content Label, the Integrated Energy Policy Report S-Forms, Power Source Disclosure forms, etc. The CEC should only develop supplemental forms if deemed necessary.

Section 3208 – Renewables Portfolio Standard Enforcement

Any complaint pertaining to the enforcement of a RPS requirement, ~~or any regulation, order or decision adopted by the Commission pertaining to the RPS,~~ for POU’s shall be filed in accordance with Section 1240.

Title 20, CCR, Section 1240 – Renewables Portfolio Standard Enforcement

- (a) Notwithstanding anything in this Article to the contrary, the following shall apply to any complaint pertaining to a renewables portfolio standard, or any regulation, order or decision adopted by the Commission pertaining to the renewables portfolio standard, for local publicly owned electric utilities.
- (b) Complaints
- (1) No complaint for the failure of a local publicly owned electric utility to meet the California Renewable Energy Resources Act (Renewable Energy Act), or any regulation, order, or decision adopted by the Commission pertaining to the Renewable Energy Act , for local publicly owned electric utilities may be filed by any person or entity listed in Section 1231, except Commission staff.
 - (2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewable Energy Act ~~, or any regulation, order, or decision adopted by the Commission pertaining to the renewables portfolio standard,~~ for local publicly owned electric utilities shall include the following:
 - (A) A statement of facts upon which the complaint is based.
 - (B) A statement indicating the statute, regulation, order or decision upon which the complaint is based.
 - (C) The action the Commission is requested to take.
 - (D) The authority for the Commission to take such action.
 - (3) A declaration under penalty of perjury shall not be required for the filing of a complaint under this Section.
- (c) Any person or entity may submit amicus briefs to the Energy Commission in a proceeding filed under this Section, but shall not be entitled to intervene or otherwise become a party to the proceeding.
- (d) Answer
- (1) The local publicly owned electric utility shall file an answer with the Chief Counsel within 90 calendar days after service of the complaint. In addition to those matters set out in Section 1233 (b), the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer.
 - (2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, respondent shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer.

The information shall be submitted to the Executive Director along with a complete request for confidential designation in accordance with Section 2505.

(e) Response

- (1) Commission staff may file with the Chief Counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.
- (2) In the event that Commission staff files a response under (e) above, the local publicly owned electric utility may file with the Chief Counsel a reply to such response no later than 20 calendar days from receipt of such response. The reply shall be served upon Commission staff upon filing.

(f) Hearing

- (1) A hearing on the complaint shall be scheduled to commence no sooner than 30 days after the filing of a staff response pursuant to subdivision (e) of this Section.
- (2) A notice of hearing on the complaint shall be provided in accordance with Section 1234 (b). Such notice shall be provided no later than 30 days after the last filing is made.
- (3) The hearing may be scheduled before the full Commission, a committee designated by the Commission, or a hearing officer assigned by the Chair at the request of the committee as provided in Section 1205.
- (4) If the hearing is not held before the full Commission, the proposed decision set out in Section 1235 shall be required to be forwarded to the full Commission no later than 45 days after the hearing has been concluded. If the hearing is held before the full Commission, to the extent reasonably possible, the Commission shall publish its decision within 45 days after the hearing has been concluded.

(g) The decision of the full Commission shall be a final decision. There is no right of reconsideration of a final decision issued under this Section 3208.

(h) Referral

(1) No sooner than 15 days after the time for filing a petition for writ of mandate in accordance with Public Resources Code Section 25901 has passed, Commission staff shall forward a notice of violation, based on the final decision of the full Commission, together with the record of proceedings, to the Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the Commission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, Commission staff shall not forward the notice of violation to the Air Resources Board until the matter is fully and

finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

The Los Angeles Department of Water and Power's Response to Attachment A: Questions to Stakeholders Concerning the 33 Percent Renewables Portfolio Standard Draft Regulations

Energy Commission staff seeks stakeholder input on the following topics to help inform decisions concerning these issues. The draft regulations will be available on the Energy Commission's Website at: www.energy.ca.gov/portfolio/documents/index.html

A.	Consistency
	<p>Public Utilities Code (PUC) Section 399.30 (c)(3) states that local publicly owned electric utilities (POUs) shall adopt procurement requirements consistent with Section 399.16 for retail sellers; PUC Section 399.30 (d)(2) states that POUs may adopt conditions that allow for delaying timely compliance, consistent with Section 399.15 (b) for retail sellers; PUC Section 399.30 (d)(3) states that POUs may adopt cost limitations for procurement expenditures, consistent with Section 399.15 (c) for retail sellers; and PUC Section 399.30 (d)(1) states that POUs may adopt rules permitting the application of excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers in Section 399.13.</p> <p>In both the Energy Commission's 33 Percent Renewable Portfolio Standard Proceeding and the California Public Utilities Commission's (CPUC) RPS Proceeding for Implementation and Administration of the California RPS, the Energy Commission and the CPUC have developed the same provisions for the POUs and retail sellers, as appropriate. Please provide responses to the following questions:</p>
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?
LADWP's Response	<p>The California Energy Commission (CEC or Energy Commission) should not determine regulations over the POUs based on the structure to be determined by the CPUC for retail sellers. While some level of coordination between the CEC and the CPUC in the CPUC's RPS proceeding is appropriate, the regulations adopted by the CPUC for the California Renewables Portfolio Standard Program¹ (RPS) will ultimately be developed specifically for IOUs; therefore the CPUC's regulations should not dictate the ultimate regulations adopted by the CEC.</p> <p>The POU governing boards need the discretion to adopt program elements that differ from those the CPUC adopts. This allows POUs to tailor their programs to the conditions and operating structure of their utility. LADWP's procurement plans are continuously being shaped as community engagement processes take place. Further, the POUs resource procurement and ratemaking process is different from the IOUs as they are consolidated within the POU and costs are recovered from the POUs customers-owners whereas the IOUs pursue their ratemaking process through the CPUC directly. As such, it is paramount that POUs maintain discretion over cost limitations.</p> <p>In order to demonstrate the need for a delay in timely compliance, the CEC would acquire sufficient information from the POUs through the Energy Commission's draft proposal of demonstration of "Reasonable Progress." As proposed, the quantitative and qualitative analysis of demonstrating "Reasonable progress" should provide the Energy Commission with the necessary information required for a POUs need for a delay in timely compliance. Again, SB 2 (1X) does not provide the CEC with any authority to evaluate the reasonableness of a POU's cost limitations or decisions to delay timely compliance.</p>

¹ PUC §399.11 (a)

	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 cost limitations and delay in timely compliance appropriate for its respective POU.
A2.	Should rules for excess procurement for POU's 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.
LADWP's Response	Section 399.30 (d)(1) states that the governing board of a local publicly-owned utility 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 pursuant to Section 399.13." Therefore, the CEC's role is limited to determining if the governing board of a POU has adopted rules for excess procurement is consistent with the statute.
B.	Timing/Seams Issues
	<p>Public Utilities Code Section 399.30 (b)(1) states that the first compliance period for procurement of eligible renewable energy resources begins January 1, 2011. The proposed staff draft regulations state that all procurement requirements and excess procurement accrual shall begin on January 1, 2011.</p> <p>Additionally, PUC Section 399.21 (a)(6) states that a Renewable Energy Credit (REC) shall not be eligible for compliance with the RPS procurement requirements unless it is retired by a retail seller or POU within 36 months from the initial date of the generation of the associated electricity.</p> <p>Additionally, PUC Section 399.16 (d) states that any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward procurement requirements, if the renewable energy resource was eligible under the rules in place as of the date when the contract was executed.</p> <p>The proposed staff draft regulations interpret "the rules in place" to mean the rules under the <i>Renewables Portfolio Standard Eligibility Guidebook</i> as of the date when the contract was executed. The staff draft regulations also interpret "count in full" to mean that the portfolio content category percentage requirements will not apply to generation procured before June 1, 2010, and meeting the requirements of 399.16(d).</p> <p>Please provide responses to the following questions:</p>
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?
LADWP's Response	Any REC that meets the criteria set forth in PUC Sections 399.21 (a)(4) and (a)(6) is eligible for RPS compliance. Neither of these provisions add any restrictions against the use of RECs generated before January 1, 2011.
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?
LADWP's Response	LADWP supports CMUAs comment being filed concurrently on this question.
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?
LADWP's Response	PUC Section 399.21(a)(6) states that "A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirements unless it is retired in the tracking system pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity." This is the only section in SB 2 (1X) that provides for restrictions in the use of RECs that were generated prior to the first compliance period.
B4.	Must electricity products be retired in the same compliance period as when they are procured to be used for compliance?
LADWP's Response	As stated above, PUC Section 399.21(a)(6) provides the only relevant restriction on the retirement of RECs. The CEC should not create any additional and artificial interpretations on top of what was intended by the Legislature.
C.	Exemptions
	<p>There are no provisions included in SB 2 (1X) that would exclude a POU from RPS requirements based on a POU's retail load or number of customers served. There are, however, provisions in the law that allow for the adoption of compliance measures, such as reasons for delay of timely compliance, cost limitations, and procurement category reductions. These measures may help reduce the impact of RPS compliance on POUs that would otherwise encounter significant impacts.</p> <p>Are there any additional alternatives that are available and that the Energy Commission should consider to limit the burden on very small POUs?</p>
LADWP's Response	The LADWP supports CMUAs comment being filed concurrently on this question.
D.	Non-Compliance
	<p>PUC Section 399.30 (n) requires the Energy Commission to adopt regulations specifying procedures for enforcement of the RPS statute, and for the regulations to include a process for issuing notices of violation and correction against POUs for failing to comply.</p> <p>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?</p>
LADWP's Response	<p>As stated in LADWP's comments to the CPUC (insert footnote), Sections 399.30 (n) and 399.30(0) give exclusive jurisdiction to the California Air Resources Board (CARB), "Which may impose penalties to enforce" the RPS. This does not say that any and all violations of the RPS must result in a financial penalty. The goal is to enforce the RPS.</p> <p>LADWP offers the following suggested guiding principles for penalty calculations under</p>

	<p>the RPS:</p> <ul style="list-style-type: none"> • Penalties should apply only to the end of the compliance periods. • A grace period for correcting technical violations should be established. • Alternative and flexible compliance mechanisms rather than direct financial penalties are appropriate. • Proposed penalties should be commensurate with the severity of the infraction. • Penalty formulations should be commensurate with the severity of the infraction. • Penalty formulations must be consistent, progressive, predictable and fair for the various types of violations (eg. Late reports, Section 399.16(b)(1) criteria, failure to achieve RPS compliance targets, etc.). • Violations and proposed penalties should not be retroactive prior to the adoption of the regulations developed pursuant to SB (2) 1X. • Penalty caps should be established for each type of violation. • A utility cannot be penalized for the same infraction under more than one provision of State Law. • A formal appeal process should be established. • Penalties should be waived when compliance is delayed in accordance with rules established pursuant to Section 399.15(b)(5). <p>The CEC needs to consider the fact that that California is the first State to undertake such an aggressive transformation of its energy resources, and leads the nation in clean energy. Enforcement by the CEC should concentrate on aiding POUs to comply with the mandates posed by SB 2 (1X), rather than on the enforcement policies and penalty provisions for failure to comply.</p>
E.	Adoption of Enforcement Plans
	<p>Public Utilities Code Section 399.30 (e) requires a POU to adopt a program for the enforcement of the RPS statute on or before January 1, 2012. The proposed staff draft regulations state that the enforcement plan shall be revised in order to comply with the provisions of the regulations, if necessary, within 90 days of the effective date of the regulations.</p>
E1.	<p>Is 90 days after the effective date of the 33 percent RPS regulations a reasonable amount of time for a POU to adjust an enforcement plan, to comply with the provisions of the regulations? If not, what is a reasonable timeframe and why?</p>
LADWP's Response	<p>The only code in statute that is relevant to the adoption of an enforcement plan is PUC Section 399.30 (e), which requires POUs to adopt an Enforcement Program by January 1, 2012. Since this requirement was fulfilled, the 90 day requirement should not be codified in the regulations.</p> <p>The CEC has also not considered the scenario of when a POUs governing board reject the modifications proposed in the revised RPS Enforcement Plan. Section 399.30 (e) provides the governing boards with the exclusive authority to adopt enforcement programs specifically applicable to its POU.</p>
	<p>The proposed staff draft regulations contemplate an enforcement process whereby Energy Commission staff would verify a POU's compliance with the RPS procurement requirements through a public process as specified in the Energy Commission's RPS Guidelines. If, as part of this verification, staff determined a POU had not procured sufficient renewable energy to comply with the POU's RPS procurement requirements, or the POU had otherwise failed to comply with the Energy Commission's regulations, staff would file a complaint against the POU, which would then be considered by the Energy</p>

	Commission in a public proceeding. The staff draft regulations allow only staff to file a complaint against a POU for failing to comply with the Energy Commission's regulations.
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?
LADWP's Response	Section 399.30(n) clearly states that "[t]he Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility..." Therefore, outside individuals should not be allowed to file a complaint against a POU for failing to comply with the CEC's Proposed Regulations.
E3.	If the Energy Commission initiates a public proceeding to consider a staff complaint against a POU, should other individuals or entities to 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?
LADWP's Response	Please see LADWP's response to Question E2.