



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

Re: 33% Renewables Portfolio Standard; Comments of Pacific Gas and Electric Company on the July 2012 Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities

Pacific Gas and Electric Company (“PG&E”) appreciates the opportunity to provide comments on the 33 Percent Renewables Portfolio Standard (“RPS”) Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities (the “Draft Regulation”) issued by the California Energy Commission (“Commission”) on July 25, 2012.

I. INTRODUCTION AND OVERVIEW

PG&E appreciates the improvements that the Commission has made to the March 6, 2012 Pre-Rulemaking Draft Regulation. In particular, PG&E supports the more explicit language clarifying that the portfolio content requirements in the RPS legislation apply only to Renewable Energy Credits (“RECs”) that are retired for use in a particular compliance period.

PG&E continues to believe that one of the Commission’s top priorities in this proceeding should be to ensure that its regulations implementing SB 2 (1x) are fully consistent with the decisions of the California Public Utilities Commission (“CPUC”) implementing the same legislation. The Commission should implement SB 2 (1x) in light of the legislature’s intent, expressed clearly in the new statute, to create a level playing field in which all but a very few California load-serving entities (“LSEs”) are subject to the same RPS requirements.

In that regard, PG&E is concerned that the Draft Regulation would calculate RPS compliance period procurement requirements for publicly-owned utilities (“POUs”) differently

than the methodology the CPUC will use to calculate requirements in the same compliance periods for retail sellers. The Commission should interpret the statute in the same way so that all California LSEs contribute equally toward achieving California's ambitious renewable energy goals and to avoid creating an unfair competitive market.

PG&E also provides comments regarding the need for public notice and comment and the need to make minor amendments to the Draft Regulation to ensure consistency with the RPS statute.

II. SPECIFIC COMMENTS

A. The Commission Should Revise the Draft Regulation to Be Consistent with the CPUC's Approach to Calculating Enforceable Procurement Quantity Requirements.

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

The CPUC has adopted a straight-line methodology to calculate multi-year compliance year requirements for retail sellers. Thus, the CPUC calculates the 2014-2016 total procurement requirement by multiplying 2014 retail sales by 21.7%, 2015 retail sales by 23.3%, and 2016 retail sales by 25%.^{1/} Similarly, the CPUC calculates third compliance period total procurement requirement by multiplying retail sales by 27%, 29%, 31%, and 33% for 2017, 2018, 2019, and 2020, respectively.^{2/}

In contrast, Section 3204(a)(2) of the Draft Regulation would set the 2014-2016 procurement requirement for POUs by multiplying 2014 retail sales by 20%, 2015 retail sales by 20%, and 2016 retail sales by 25%.^{3/} The Draft Regulation uses a similarly "stair step" trajectory for the third compliance period, multiplying 2016-2019 retail sales by a flat 25%.^{4/}

The stair-step trajectory proposed in the Draft Regulation would produce a much lower total procurement requirement in both the second and third compliance periods than would be faced by a retail seller with exactly the same retail sales. The CEC should not interpret the same statutory language in a way that diverges so significantly from the CPUC's interpretation, particularly given that the Draft Regulation does not, and cannot, provide any compelling reason why POUs are sufficiently distinct from other retail sellers such that applying the same

^{1/} Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program, CPUC Decision ("D.") 11-12-020 (Dec. 1, 2011) at 24 (Ordering Paragraph ("OP") 2).

^{2/} *Id.* at 24 (OP 3).

^{3/} *See* Draft Regulation §§ 3204(a)(2).

^{4/} *Id.* at § 3204(a)(3).

compliance requirements adopted by the CPUC would not be feasible. Accordingly, the Commission should adopt the same linear trajectory and resulting procurement requirements established by the CPUC for retail sellers.

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

All POU rules or revisions adopted under Section 3206 of the Draft Regulation should be subject to public notice and comment when submitted to the Commission. Given the need to ensure that all LSEs are competing in the retail electricity market on the same terms and by the same rules, any regulations adopted by POUs pursuant to Section 3206 that would reduce or eliminate their RPS obligations should be subject to full notice-and-comment rulemaking at the Commission. The comments provided by other LSEs that would remain subject to the RPS requirements will help the Commission to determine the most reasonable, equitable, and consistent application of the statutory requirements. Accordingly, PG&E recommends that Section 3206(c) of the Draft Regulation be revised to provide for such public notice and comment.

PG&E supports the new Section 3206(d) of the Draft Regulation, which is necessary to ensure that the Commission fulfills its core responsibility under the RPS statute to ensure the consistency of adopted POU regulations with the statute.

C. The Draft Regulation's Grandfathering Provision is Inconsistent with Statute and Must Be Amended.

Section 3202(a)(3) of the Draft Regulation appears to allow pre-June 1, 2010 procurement that did not meet RPS eligibility requirements in effect at the time of procurement to be treated as grandfathered as to the portfolio content category requirements in Section 3204(c). This provision must be amended or clarified since the current provision is contrary to law.

Section 399.30(c)(3) of the California Public Utilities Code specifies that POUs must adopt procurement requirements "consistent with Section 399.16" of the same article. Section 399.16(d)(1) provides, in turn, that procurement may only be considered grandfathered and count in full, without regard to the portfolio content category limitations, if it was transacted prior to June 1, 2010 and "the renewable energy resource was eligible under the rules in place as of the date when the contract was executed." Thus, the current Draft Regulation would improperly allow a POU to adopt grandfathering provisions that are inconsistent with Section 399.16, in contravention of the Section 399.30(c)(3). Section 3202(a)(3) of the Draft Regulation should be deleted.

D. The Compliance Delay Provisions Should Adhere to Statutory Language.

Section 3206(a)(2) of the Draft Regulation sets forth the grounds upon which a POU may make a finding that compliance with the RPS should be delayed. The authority for this provision comes from Section 399.30(d)(2) of the California Public Utilities Code, which allows POUs to adopt rules for delayed compliance “consistent with” Section 399.15(b) of the same article. Section 399.15(b)(5)(A) in turn requires that a finding of inadequate transmission capacity as a basis for compliance delay be made “using the current operational protocols of the California Independent System Operator.” The quoted language has been deleted from the Draft Regulation in its most current version without any explanation or demonstration that the use of such protocols would be infeasible or inapplicable to POUs. The regulation should be amended to re-insert the deleted language.

III. CONCLUSION

PG&E appreciates the opportunity to provide comments on the Draft Regulation. In these comments, PG&E urges the Commission to: (1) harmonize the Draft Regulation with the CPUC decision implementing the same statutory language; (2) follow public notice and comment rulemaking procedures when considering the statutory consistency of any rules or regulations adopted by POUs under Section 3206 of the Draft Regulation; (3) amend the grandfathering provision of the Draft Regulation to ensure it is consistent with the RPS statute; and (4) amend the compliance delay provision of the Draft Regulation to ensure consistency with the RPS statute.

Best regards,

/s/

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