

# California Municipal Utilities Association

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California Energy Commission

**DOCKETED**  
**02-REN-1038**

TN # 67601

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## **Re: CMUA Comments on the Staff Workshop on 2008-2010 RPS Procurement Verification and SB X 1-2 RPS Procurement Verification**

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Staff Workshop on 2008-2010 RPS Procurement Verification and SB X 1-2 RPS Procurement Verification (workshop), held on September 21, 2012.

### **I. COMMENTS ON THE WORKSHOP**

#### **A. The Annual Verification Process must operate consistently and in Conjunction with the CEC's 33 Percent RPS Regulations.**

During the workshop, CEC staff proposed a verification process for SB X 1-2 where data would be "reported, processed, and presented annually." Staff proposed that the verification report for the last year of each compliance period would include the data from all the years in the compliance period.

This verification process must be consistent with the reporting requirements for the POU's. The current draft of the CEC's 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations (Draft RPS Regulations) proposes that POU's must submit an "annual report" by June 1 of each year and a "compliance report" by June 1 of the year after the end of a compliance period. The Draft RPS Regulations propose that in the annual report, POU's must provide:

An initial, nonbinding classification per RPS-certified facility of the amount of electricity products in each portfolio content category, from a procurement contract or ownership agreement approved by a POU governing board or other authority, as delegated by the POU governing board, after June 1, 2010, for the reporting year.

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Documentation demonstrating the portfolio content category classification claimed. This documentation may include interconnection agreements,

NERC e-Tag data, scheduling agreements, firming and shaping agreements, and contract information.

The Draft RPS Regulations propose that in the compliance period report, POUs must provide the final portfolio content category classification of all RPS procurement retired during that compliance period, along with the requisite documentation.

The CEC's RPS verification requirements must clearly identify the purpose of the annual verification reports. The classifications in these annual reports should not serve as a final determination of an electricity product's portfolio content category (PCC) because they will be based on a POU's "initial, nonbinding classification" and the associated initial documentation. The CEC should also specify the process for contesting and correcting erroneous categorizations in the annual verification process.

The CEC should expect that utilities will retire RECs each year, rather than only in the final year of a compliance period, because of the ability to reflect such retirements in the calculation of the utilities' greenhouse gas (GHG) emissions, for the RPS adjustment calculation. The CEC should recognize that the assignment of renewable energy to portfolio content categories may be "initial" and "nonbinding" for the purposes of compliance with the PCC requirements while at the same time qualifying in-full for the GHG RPS adjustment.

## **B. Reliance on the E-Tag Schedule**

For PCC 1 electricity products where hourly scheduling into a California balancing authority (CBA) without substitution of electricity is being used, the proposed verification process requires annual hourly analysis of meter and schedule data. Several parties at the workshop recommended that the schedule be based on "the final schedule as reflected in the E-Tag."

The E-Tag serves as the final record of energy scheduled between entities for purposes of energy accounting and financial settlement. The final scheduled quantities as reflected on the E-Tags should be combined with the RECs actually created by the facility during the month and reported to WREGIS, in order to determine the eligibility for PCC1. Obviously, this requirement is inapplicable to electricity products that are categorized as PCC1 based on a first point of interconnection with the transmission system of, or a distribution system, within a CBA or an electricity product that is dynamically transferred to a CBA. These types of electricity products are generally not subject to tagging requirements, because the generation does not move between balancing areas. For example, renewable energy may be "sourced" and "sunk" inside a single balancing area. In the case of such generation, metered data showing actual renewable energy generated and delivered in California is sufficient.

During the workshop, CEC staff proposed a requirement that the RPS\_ID be listed in the Miscellaneous Filed of the E-Tag. CMUA requests that the CEC consider whether this requirement is necessary considering that the facility name will already be designated on the E-Tag. If the CEC does require this information to be designated on the E-Tag, the CEC should provide sufficient time for POUs to adjust practices to come into compliance.

## C. Supporting Documents for PCC1

At the workshop, CEC staff discussed the types of documents that could be provided to support a claim of PCC1. CMUA provides the following list of potential supporting documents:

### 1. First Point of Interconnection

For interconnection with a CBA, including interconnection with distribution facilities, the purchaser should provide contracts that specify such interconnection. Relevant contracts would include, but not be limited to: (A) a redacted Power Purchase Agreement (“PPA”) that specifies the Point of Interconnection; (B) a redacted interconnection agreement between a distribution utility and a producer of renewable energy that identifies the Point of Interconnection to the distribution system; (C) a redacted interconnection agreement between a balancing authority and a renewable energy developer that specifies the Point of Interconnection; and (D) a rate schedule supporting the purchase and sale of renewable energy, such as a feed-in tariff, which also would identify the Point of Interconnection. The CEC should clarify that E-Tags are not required for this type of PCC1 product. RPS-eligibility for this generation would be determined through the monthly reporting to WREGIS of the facility’s generation. CMUA appreciates the CEC staff’s statements that “static” information such as the above, most of which will not change from year-to-year, would not have to be continually re-submitted, but only updated as necessary to reflect significant contract changes or expirations.

### 2. Scheduling Without Substitution

For renewable resources that are physically located outside a CBA, the purchaser should provide contracts that demonstrate the nature of the scheduling arrangements. These would include, but not be limited to: (A) a PPA that specifies scheduling procedures and processes among the various counterparties; (B) a PPA that specifies responsibility for transmission to a Point of Delivery (POD) that is clearly at, with or in a CBA area; and (C) an ownership agreement combined with the demonstration of the purchase of transmission rights (firm, contingent firm, or nonfirm) that support delivery of the renewable energy to a CBA area. To demonstrate the annual hourly schedules the purchaser should provide hourly data on the following quantities for each renewable resource: (A) metered output of renewable energy as reported to WREGIS; (B) scheduled amounts of renewable energy as recorded on E-Tags; and (C) delivered amounts of renewable energy as recorded on E-Tags. While the CEC staff’s presentation suggested that copies of firm transmission arrangements could support claims of this type of PCC1, firm transmission is not relevant to this categorization. There is no requirement in the statute that the transmission service associated with scheduling and delivering renewable energy be firm, nonfirm, contingent firm, owned, leased, or exchanged. Transmission service is not discussed in Public Utilities Code section 399.16. This interpretation is supported by the California Public Utility Commission’s (CPUC) decision implementing the portfolio content categories.<sup>1</sup>

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<sup>1</sup> Decision 11-12-052 at 25-26. The CPUC did note, however, that the use of firm transmission “may simplify the retail seller’s task in showing that procurement claimed to meet this criterion actually did so.”

### 3. Dynamic Transfer

For renewable resources that are dynamically scheduled into a CBA area, the purchaser should identify all balancing areas in the scheduling “chain,” and provide copies of agreements that demonstrate that all links in the scheduling chain have agreed to dynamic scheduling, such that the renewable energy generated is delivered in real-time to a CBA area during the same time-period that it is produced.

In situations where contracts are provided to the CEC, redactions may be necessary to protect commercially sensitive information.

#### **D. Consolidation of Verification Requirements**

The CEC should consider consolidation of reporting and verification requirements for RPS and GHGs, so that a single independent verifier could examine all supporting generation data and make appropriate reports and findings to both the CEC and the ARB.

#### **E. Hourly Schedules and Portfolio Content Categories**

During workshop, the CEC staff described the process for verifying and classifying electricity products from a resource that is scheduled into a CBA without substituting electricity from another source. As described in the presentation, only renewable generation up to the amount of the hourly schedule would be classified as PCC1. CEC staff proposed that any renewable generation that exceeds the scheduled quantity would be classified as either PCC2 or PCC3 (but did not propose documentation or verification requirements for the subdivision of generation). CEC staff has based this proposal on an interpretation of California Public Utilities Code section 399.16(b)(1)(A), which provides in part:

The use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.

The proposal to subdivide hourly import schedules into two or three portfolio content categories is an unreasonable, unworkable, and needlessly expensive approach to implementing the “real-time ancillary services” language in section 399.16. Documentation of such a subdivision would be fraught with error, and could cause endless arguments during the verification process. In addition, this proposal would create an incentive to bias schedules of imported renewable energy upward (i.e., “overschedule”), which would be wasteful, imprudent, uneconomic, and ultimately harmful to the environment. Considering the intermittent nature of many renewable generation technologies, this limitation would also act as a severe penalty on generation that is located outside of a CBA, even where that resource has committed to incur the costs and challenges associated with scheduling that energy into the state. Additionally, it would be exceedingly complicated and costly to structure contracts such

that excess generation could be converted to PCC2, meaning that this generation would most likely be converted to PCC3.

CMUA believes that this issue needs significant additional discussion and recommends that the CEC hold an additional meeting devoted to this topic. The focus of this meeting should be on: (A) the administrative burdens of this requirement; (B) the likelihood for errors and disputes during documentation and verification; (C) the inconsistency between this proposed treatment of imported renewable energy and the operation of actual markets for electricity in the Western Electricity Coordinating Council service area; (D) the additional and unnecessary costs to California consumers; (E) the possible negative environmental consequences; (F) the negative impacts on reliability; and (G) the contractual and operational restrictions that limit the ability of purchasers to implement this option. It would also be useful to discuss real world examples of these types of arrangements. CMUA and its members will work to provide the CEC with additional information on this topic.

## **F. Biomethane**

During the portion of the workshop discussing the 2008-2010 RPS Procurement Verification Data Review, staff provided an overview of the verification requirements for biomethane. Of particular concern for CMUA is the proposed Contractual Verification Requirement for “Monthly evidence that the RPS Certified Facility purchased and is the sole possessor of the biomethane.” Such a requirement is inconsistent with the existing biomethane contracts entered by several POUs. In the case of the Magnolia Power Project, several POUs act as the “sole possessor” for biomethane delivered to the facility. This practice conforms with existing statutory and regulatory restrictions on the use of biomethane. The CEC’s regulations should be modified to permit this type of transaction to qualify for purposes of RPS verification. CMUA recommends that the CEC also allow monthly evidence that the “RPS obligated utility purchased and is the sole possessor of the biomethane combusted in the Certified Facility” to meet this verification requirement.

CMUA recognizes that the current CEC proposal is only applicable to the 2008-2010 Verification Report for the CPUC-jurisdictional entities, and would therefore not apply to POUs. However, the verification practices used in this process will likely influence the verification process going forward. These verification requirements should be consistent with existing statutory and regulatory requirements.

## **G. Consistency with the 33 Percent RPS Regulations**

Verification of the portfolio content category classification is directly linked to the CEC’s 33 Percent RPS Regulations. If the RPS Regulations impose a documentation requirement, then that should be clearly spelled out as part of the verification process. The CEC should not create a dual process where an electricity product could be verified as meeting the requirements of one portfolio content category, but then be subsequently reclassified due to additional documentation requirements. The retroactive nature of the requirements poses a large financial risk for POUs. The following two examples present areas where the verification process must be harmonized with the 33 Percent RPS Regulations.

## 1. Scheduling Agreement Requirement

The Draft RPS Regulations currently propose that for an electricity product to be classified as a PCC1 based on scheduling into a California balancing authority without substitution of electricity:

the POU's governing board or other authority, as delegated by the POU governing board, must have approved an **agreement**, before the electricity is generated, to schedule the electricity from the facility into the California balancing authority during the hour in which the electricity is generated.<sup>2</sup>

The CEC must clarify what types of agreements would meet this requirement and what verification would be required. CMUA recommends that the CEC harmonize the verification requirements with the RPS Regulations by amending the Draft Regulations to clarify that POU governing boards must ensure that procedures have been established to schedule and/or deliver the energy into a CBA.<sup>3</sup> CMUA believes that this is the intent behind the language of the current Draft RPS Regulations. These procedures could be verified by providing the following documents as part of the annual report and compliance report process: (1) any relevant agreements adopted by the POU governing board, including a delegation of this responsibility to the POU staff; (2) Power Purchase Agreements ("PPAs"); (3) transmission service agreements; (4) bilateral agreements; (5) broker agreements; (6) E-Tags; and (7) evidence from on-line trading platforms. As markets evolve, additional forms of documentation should be added to this list.

## 2. Substitute Resource Adoption

The Draft Regulations currently propose that a POU governing board must "adopt" procurement from a substitute resource for an electricity product to qualify for PCC2:

The procurement of the substitute resource is **adopted** by the governing board or other authority, as delegated by the POU governing board, at the same time or after the procurement for the electricity from the RPS-certified facility is adopted.

The CEC must clarify what is meant by "adopt" as used in this context and what documentation would satisfy this requirement as part of the verification process. Under

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<sup>2</sup> Draft RPS Regulations Section 3202(a)(1)(C).

<sup>3</sup> CMUA proposes the following change to the current language of Section 3203(a)(1)(C) in the Draft Regulations:

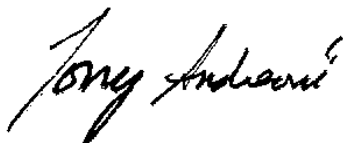
For purposes of this Section 3203, electricity generated by the facility must be scheduled into a California balancing authority within the hour in which the electricity is generated, and the POU's governing board or other authority, as delegated by the POU governing board, must have **established procedures** ~~approved an agreement~~, before the electricity is generated, to **schedule and/or deliver** ~~schedule~~ the electricity from the facility into the California balancing authority during the hour in which the electricity is generated.

current market conditions, the standard approach for “procuring substitute resources” is the negotiation of separate firming/shaping (a.k.a., “exchange”) contracts, under which the service provider takes delivery of the renewable energy as it is generated, and then delivers the renewable energy in specified quantities and at specified times. Submission of such contracts should be sufficient for documentation purposes.

## **II. CONCLUSION**

CMUA appreciates the efforts by the CEC staff in engaging the POUs on the verification process related to the RPS Enforcement Rule being developed under SB X 1-2. CMUA staff and members look forward to additional discussions on our concerns raised in this comment letter, and to additional dialog on the next version of CEC’s draft RPS Enforcement Rule.

Sincerely,

A handwritten signature in black ink, reading "Tony Andreoni". The signature is written in a cursive, flowing style.

Tony Andreoni, P.E.  
Director of Regulatory Affairs