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33 PERCENT RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT REGULATIONS



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ABSTRACT

Public Utility Code Section 399.30 (n) directs the California Energy Commission to adopt regulations specifying procedures for the enforcement of the Renewables Portfolio Standard on local publicly owned electric utilities under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part I of Public Utilities Code. Section 399.30 (n) also states that these “regulations shall include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and for referral of violations to the State Air Resources Board for penalties...”

This draft staff report on *33 Percent Renewable Portfolio Standard Pre-Rulemaking Draft Regulations* provides information on the procedures for enforcement and the public process under which the Energy Commission may issue a notice of violation and correction as required by Public Utility Code Section 399.30 for the enforcement of Article 16 for local publicly owned electric utilities.

Keywords: California Energy Commission, Renewables Portfolio Standard, regulations, rulemaking, Renewables Committee, local publicly owned electric utility (POU)

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CHAPTER 1: Introduction

Legislative Background

The enactment of Senate Bill (SB) 1078¹ in September 2002 created California's Renewables Portfolio Standard (RPS) for retail sellers of electricity such as investor-owned utilities. SB 1078 required retail sellers to increase their procurement of eligible renewable energy resources by at least 1 percent per year so that 20 percent of their retail sales are procured from eligible renewable energy resources by 2017.

In September 2006, SB 107² codified an accelerated RPS goal for retail sellers of 20 percent renewables by 2010. SB 107 also required each local publicly owned electric utility (POU) in California to report to the California Energy Commission (~~Energy Commission~~) on its status of implementing an RPS program and the progress made toward achieving its RPS goals.

SB X1-2³ adjusted the RPS goal of 20 percent by 2010 to 20 percent by 2013, increased the long-term RPS goal to 33 percent by the end of 2020, and expanded these requirements to include POUs as well as retail sellers. SB X1-2 gives the Energy Commission new oversight responsibilities with respect to POUs. These new responsibilities include establishing RPS eligibility of new and existing renewable energy resources needed for compliance, monitoring RPS compliance and reasonable progress, and adopting regulations for enforcement of RPS procurement requirements. SB X1-2 authorizes the Energy Commission to issue a notice of violation and correction for potential penalties to the California Air Resources Board (ARB) for a POU's failure to comply with RPS requirements. Under SB X1-2, POUs must adopt new RPS procurement targets that average 20 percent of retail sales from eligible renewable energy resources for the compliance period beginning January 1, 2011, and ending December 31, 2013. Subsequent RPS procurement targets are 25 percent of retail sales for the compliance period ending December 31, 2016, 33 percent for the compliance period ending December 31, 2020, and 33 percent for each calendar year thereafter.

The Energy Commission and the California Public Utilities Commission (CPUC) work collaboratively to implement the RPS; however, the Energy Commission and the CPUC maintain separate roles in administering their respective responsibilities under the law. Under the RPS, the Energy Commission is charged with certifying eligible renewable energy resources

1 SB 1078 (Sher, Chapter 516, Statutes of 2002).

2 SB 107 (Simitian, Chapter 464, Statutes of 2006).

3 SBX1-2 (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session.) SB X1-2 is effective December 10, 2011; the 91st day following the adjournment of first extraordinary session of 2011-2012 legislative session pursuant to Government Code section 9600 (a). SBX1-2 amends pertinent provisions in Public Resources Code ~~Sections~~sections 25740 through 25751; and amends and/or adds Public Utilities Code Sections 399.11 through 399.31.

that may be used to satisfy RPS procurement requirements, and with developing an accounting system to verify the RPS compliance of retail sellers of electricity and POUs. Under SB X1-2 these Energy Commission responsibilities will continue for retail sellers of electricity and be expanded to include the POUs. The CPUC is primarily responsible for establishing the quantity of electricity products each retail seller must procure from eligible renewable energy resources for each compliance period, determining compliance for retail sellers, and ~~enforcement imposing penalties~~ for noncompliance for retail sellers.

The Energy Commission implements the RPS through guidelines that were originally adopted in April 2004, with subsequent revisions adopted in May 2004, August 2004, May 2005, April 2006, March 2007, December 2007, ~~and~~ December ~~2010, and May 2012.~~~~2010~~. These guidelines are set forth in the following Energy Commission guidebooks:

The *Renewables Portfolio Standard Eligibility Guidebook*⁴ explains the requirements and process for certifying eligible renewable energy resources for California's RPS. The *Renewables Portfolio Standard Eligibility Guidebook* also describes how the Energy Commission tracks and verifies RPS-eligible generation for the RPS.

The *Overall Program Guidebook for the Renewable Energy Program*⁵ governs the Energy Commission's Renewable Energy Program, describes how this program is administered, and includes information on requirements that apply to all Renewable Energy Program elements, including elements related to the RPS. The *Overall Program Guidebook* provides general information on applying for RPS certification and appealing the Energy Commission's decisions regarding RPS certification, as well as a glossary of terms that are used by the RPS and other Renewable Energy Program elements.

The Energy Commission recognizes the need to revise the guidebooks periodically to reflect changes in the law and market and regulatory developments, and to incorporate the lessons learned from experience implementing the RPS. Additionally, these guidebooks will work in tandem with the regulations outlined below. The Energy Commission intends to update these guidebooks in 2012.

Related Proceedings

Under SBX1-2, the CPUC continues its role in the administration and oversight of the RPS program for retail sellers of electricity. The CPUC issued an Order Instituting Rulemaking to

4 California Energy Commission, ~~CEC-300-2012-002-CMF, CEC-300-2010-007-CMF, May 2012, January 2011.~~ <http://www.energy.ca.gov/2012publications/CEC-300-2012-002/CEC-300-2012-002-CMF.pdf>~~http://www.energy.ca.gov/2010publications/CEC-300-2010-007/CEC-300-2010-007-CMF.PDF.~~

5 California Energy Commission, CEC-300-2010-008-CDT, December 2010.
[http://www.energy.ca.gov/2010publications/CEC-300-2010-008/CEC-300-2010-008-CMF.PDF.](http://www.energy.ca.gov/2010publications/CEC-300-2010-008/CEC-300-2010-008-CMF.PDF)

Continue Implementation and Administration of California Renewables Portfolio Standard Program on May 5, 2011 (Rulemaking 11-05-005).⁶

On December 1, 2011, the CPUC adopted a decision setting procurement quantity requirements for retail sellers for the RPS, and on December 15, 2011, the CPUC adopted a decision implementing Portfolio Content Categories for the RPS. [On June 21, 2012, the CPUC adopted a decision setting compliance rules for the RPS.](#)^{7 8}

Entities Subject to These Regulations

These regulations apply to “local publicly owned electric utilities” as defined in Public Utilities Code Section 224.3 and include the following entities:

- Municipalities or municipal corporations operating as public utilities furnishing electric service as provided in Public Utilities Code Section 10001.
- Municipal utility districts furnishing electric service formed pursuant to Public Utilities Code Section 11501, et. seq.
- Public utility districts furnishing electric service formed pursuant to Public Utilities Code Section 15501, et seq.
- Irrigation districts furnishing electric service formed pursuant to Water Code Section 20500, et seq.
- Joint powers authorities that include one or more of the above agencies, and furnish electric service over their own electric distribution system or over that of one of their members.

Attached as Appendix A is a list of all California local publicly owned electric utilities subject to these regulations.

Entities Considered to Be in Compliance With This Law

SB X1-2 states that “a public utility district that 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) shall be in compliance with the renewable energy procurement requirements of this article.”⁹ This provision applies to

⁶ [A copy of the CPUC’s Order Instituting Rulemaking for the RPS program is available here:](#)
http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/134980.htm.

⁷ [Copies of decisions \(D.\) 11-12-020, 11-12-052, and 12-06-038 are available here:](#)
<http://docs.cpuc.ca.gov/published/proceedings/R1105005.htm>.

⁸ <http://docs.cpuc.ca.gov/published/proceedings/R1105005.htm>.

⁹ Public Utilities Code Section 399.30 (h).

the Trinity Public Utility District. Therefore, the Trinity Public Utility District is considered to be in compliance with California's RPS procurement requirements.

Additionally, SB X1-2 states, "A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to Section 25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements."¹⁰ This provision applies to the City and County of San Francisco and its hydroelectric generation from the Hetch Hetchy reservoir. If the provision is satisfied, the City and County of San Francisco must meet the RPS procurement ~~targets~~ requirements only for its electricity demand that is not satisfied by hydroelectric generation from the Hetch Hetchy reservoir in any given year.

Overview of Application of Regulation

These regulations establish the rules and procedures by which the Energy Commission will assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. The Energy Commission must determine what POU action is required by the law, at a minimum, so when it evaluates a POU's actions it may determine whether the POU complied with the law. These regulations strive to strike a balance between a POU's discretion under the law to develop and implement procurement rules, plans, and policies that meet its particular needs with the Energy Commission's obligations to ensure RPS compliance under the law.

¹⁰ Public Utilities Code Section 399.30 (k)

CHAPTER 2: Proposed Text for 33 Percent RPS Pre-Rulemaking Draft Regulations

Chapter 13. Implementation of Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

Section 3200 – Scope

The regulations in this Chapter implement enforcement procedures for the Renewables Portfolio Standard ~~requirements~~ for local publicly owned electric utilities established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

Section 3201 – Definitions

(a) “Annual procurement target” means the amount of procurement that a POU must meet for a particular year for the purposes of calculating historic carry-over.

~~(a)~~(b) “Balancing authority” means a balancing authority as defined in Public Utilities Code Section 399.12 (b).

~~(b)~~(c) “Balancing authority area” means a balancing authority area as defined in Public Utilities Code Section 399.12 (c).

(d) “Baseline” means the initial RPS procurement of a POU that will form the basis of that POU’s annual procurement targets.

~~(e)~~(e) “Bundled” means the procurement of an electricity product that includes both the electricity and the associated renewable energy credits from an RPS-certified facility as part of the same contract or ownership agreement.

~~(d)~~(f) “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 AuthorityArea of Northern California, ~~(formerly SMUD)~~, Imperial Irrigation District, and Turlock Irrigation District.

- (e)(g) **“Commission”** means the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.
- (f)(h) **“Compliance period”** means the compliance periods as defined in Public Utilities Code Section 399.30 (c).
- (g)(i) **“Compliance report”** means the reports that each POU files 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)(j) **“Electricity product”** means either:
- (1) The procurement of electricity and the associated renewable energy credit generated by an RPS-certified facility.
 - (2) The procurement of an unbundled renewable energy credit.
- (i)(k) **“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 ~~399.12 (e)25741~~ of the Public ~~UtilitiesResources~~ Code and has certified as an RPS-certified facility.
- (l) **“Historic carry-over”** means a POU’s procurement that satisfies the following criteria: 1) the procurement is for electricity and the associated renewable energy credit generated by a facility that met the Commission’s RPS eligibility requirements in effect when the original procurement contract or ownership agreement was executed by the POU, 2) the original contract or ownership agreement was entered into by the POU prior to June 1, 2010, and 3) the procurement was not applied to or otherwise claimed by the POU for purposes of satisfying the Renewables Portfolio Standard program established by the POU pursuant to former Public Utilities Code Section 387, or any other compliance or voluntary claim.
- (j)(m) **“Megawatt-hour” or “MWh”** means a unit of energy equivalent to one megawatt of electricity supplied for one hour.
- (k)(n) **“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.
- (o) **“Ownership agreement”** includes:
- a. An agreement between a POU and a third party to acquire or develop an electrical generation facility; or
 - b. If the POU built and owns the electrical 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.
- (p) **“Portfolio balance requirement”** refers to the portfolio content category minimum and maximum requirements defined in Public Utilities Code Section 399.16.

~~(h)(q)~~ **“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.~~

~~(m)(r)~~ **“POU”** or **“Local publicly owned electric utility”** means a local publicly owned electric utility as defined by Public Utilities Code Section 224.3.

~~(n)(s)~~ **“Procure”** means to acquire electricity products from RPS-certified facilities through executed contracts or ownership agreements.

~~(o)~~ **“Procurement”** means to procure electricity products from RPS-certified facilities.

~~(p)~~ **“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 portion of retail sales not met by the POU’s qualifying hydroelectric generation that must be procured from RPS-certified facilities.

~~(q)(t)~~ **“Renewable electrical generation facility”** means a facility as defined in Public Resources Code Section 25741(a).

~~(r)(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 RPS-certified facility.

~~(v)~~ **“Renewables Portfolio Standard”** or **“RPS”** has the same meaning as defined in Public Utilities Code Section 399.12 (i).

~~(s)(w)~~ **“RPS-certified facility”** means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission’s RPS Guidelines, or that has limited RPS certification in place for the duration of that facility’s contract or ownership agreement term. 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. To become a facility with limited RPS certification, the facility must demonstrate to the Commission that it satisfied the requirements of the RPS Guidelines that were in place at the time of the contract or ownership agreement approval.

~~(t)(x)~~ **“RPS Guidelines”** means the guidelines adopted by the Commission pursuant to Public Resources Code Section 25747 (a) to implement the RPS.

~~(y)~~ **“RPS procurement requirement”** refers to both the portfolio balance requirement and the RPS procurement target with which a POU must comply.

~~(z)~~ **“RPS 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 portion of retail sales not met by the POU’s qualifying hydroelectric

generation, or the soft target for that year, whichever is less, that must be procured from RPS-certified facilities.

~~(u)~~(aa) **“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.

(b) “Soft target” means an amount equivalent to the percentage of retail sales for a single year within a compliance period that is used to calculate the RPS procurement target for that compliance period. For example, the soft target for 2014 is equal to 20 percent of retail sales for that year.

(cc) “Unbundled REC” means a REC from an RPS-certified facility that is not procured as part of the same contract or ownership agreement with the underlying energy from that facility; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.

~~(v)~~(dd) **“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).

~~(w)~~(ee) **“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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 25741 and 25747, Public Resources Code; and Section 399.30, Public Utilities Code.

Section 3202 – Qualifying Electricity Products

(a) ~~For In order for~~ an electricity product to be used ~~for compliance toward the to meet an~~ RPS procurement ~~requirements specified in Section 3204, 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 executed on or after June 1, ~~2010.2010, and is associated with generation from an RPS-certified facility.~~

A. Procurement must be classified into a portfolio content category in accordance with Section 3203.

B. Procurement will be included in the calculation of the portfolio balance requirements as defined in Section 3204 (c).

~~(2) The electricity product is was procured pursuant to a contract or ownership agreement executed 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 electricity product is definition of a “renewable electrical generation facility” and is RPS certified.~~

~~(3) The electricity products that were procured pursuant to a contract or ownership agreement before June 1, 2010, shall count in full towards procurement targets if they meet the following criteria:~~

~~(2) (A) — The electricity products are associated with generation from a facility that met 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. POU, and the facility is RPS certified.~~

~~(A) Except as provided in paragraphs (B) and (C), the procurement shall count in full toward the RPS procurement requirements, subject to the following:~~

~~1. Procurement will count toward the RPS procurement targets as defined in Section 3204 (a).~~

~~2. Procurement will not be classified within a portfolio content category and will not count toward the requirements of Section 3204 (c).~~

~~3. Procurement from contracts of less than 10 years will not be subtracted when calculating excess procurement in accordance with Section 3206 (a).~~

~~(B) (B) — Any contract modifications or amendments occurring after June 1, 2010, do not increase the nameplate capacity, 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, or substitute a different renewable energy resource, only the amounts or resources agreed to prior to June 1, 2010, shall count in full toward the RPS procurement targets.~~

~~(C) 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.~~

~~(3) The electricity product is procured pursuant to a contract or ownership agreement executed before June 1, 2010, but the facility did not meet the Commission’s RPS eligibility requirements when the original procurement contract or ownership agreement was executed by the POU.~~

A. ~~(b)~~ Procurement must be classified into a qualifying under Section 3202 (a)(3) of these regulations may be counted for compliance with the RPS without regard to the quantitative requirements for the use of any portfolio content category in accordance with Section 3203.

B. Procurement will not be included in the calculation of portfolio balance requirements in Section 3204 (c).

(b) - If any electricity products procured pursuant to ~~RECs from~~ a contract or ownership agreement executed ~~signed~~ prior to June 1, 2010, are ~~resold on or~~ unbundled and sold separately after June 1, 2010, and the resale is not explicitly included in the original contract or ownership agreement terms, the electricity products ~~the underlying energy may not be counted for compliance with the RPS, and the unbundled RECs must be classified~~ counted in a portfolio content category and follow the portfolio balance requirements of ~~Portfolio Content Category 3, as defined in~~ Section ~~3204~~ 3203 (c).

(c) A POU may not use a REC associated with 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. ~~se regulations.~~

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16, 399.21, and 399.30, Public Utilities Code.

Section 3203 – Portfolio Content Categories

(a) Portfolio Content Category 1

~~(1)~~ Portfolio Content Category 1 electricity products must be procured as and remain bundled in order to be classified in Portfolio Content Category 1. The facility generating the electricity and associated RECS ~~1,~~ must be interconnected to a transmission network ~~located~~ within the WECC service territory ~~transmission grid,~~ and must meet at least one of the following criteria:

~~(A)(1)~~ 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. Portfolio Content Category 1 electricity products must also meet at least one of the following criteria:

(A) Electricity products must be generated by a facility that has its first point of interconnection within the metered boundaries of a California balancing authority area.

(B) ~~Electricity products must be generated by an RPS-certified~~ 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 ~~from themust be generated by an RPS-certified~~ facility must beand 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 ~~or other authority, as delegated by the POU 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 ~~shall~~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.

(2) Electricity products originally qualifying in Portfolio Content Category 1 and resold 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 and associated RECs must be transferred by the resale contract is transferred to the ultimate buyer, and the electricity must be transferred 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.

(b) Portfolio Content Category 2

- (1) Portfolio Content Category 2 electricity products must be generated by an RPS-certified facility ~~that is interconnected to a transmission network, must be located~~ within the WECC ~~service territory, transmission grid,~~ and the electricity must be firm 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 portfolio of the POU claiming the transaction for RPS compliance prior to the firm and shaped transaction(s).
 - (C) The procurement of the substitute resource is adopted by the governing board or other authority, as delegated by the POU governing board,~~of the POU~~ at the same time or after the procurement for the electricity from the RPS-certified facility is adopted.
 - (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 the electricity from the RPS-certified facility is generated.
 - (E) The electricity from the RPS-certified facility may not be sold back to that facility.
- (3) Electricity products originally qualifying in Portfolio Content Category 2 and resold 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) – ~~(E),(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.
 - ~~(E),(F)~~ (F) The transaction 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.

(c) Portfolio Content Category 3

- (1) All unbundled renewable energy credits and other electricity products procured from RPS-certified facilities 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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.16 and 399.30, Public Utilities Code.

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 over the~~for all~~ three calendar years in the compliance period. The numerical expression of this requirement is:-

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

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

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(5) toward its RPS procurement target for this period.

- (2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 20 percent of its 2014 retail sales, 20 percent of its 2015 retail sales, and 25 percent of its 2016 retail sales. The numerical expression in the last calendar year of this requirement is:the compliance period.-

$$EP_{2014} + EP_{2015} + EP_{2016} \geq 0.20(RS_{2014}) + 0.20(RS_{2015}) + 0.25(RS_{2016})$$

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(6) toward its RPS procurement target for this period.

- (3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products within that period sufficient

to meet or exceed the sum of 25 percent of its 2017 retail sales, 25 percent of its 2018 retail sales, 25 percent of its 2019 retail sales, and 33 percent of its 2020 retail sales. The numerical expression in the last calendar year of this requirement is: the compliance period.

$$(EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020})$$

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

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(7) toward its RPS procurement target for this period.

(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. No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(8) toward its RPS procurement target for the calendar year ending December 31, 2021, or for any calendar year thereafter.

(5) For a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnish electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with Section 20500] of the Water Code), the percentage of total retail sales, upon which the RPS procurement targets in Section 3204 (a)(1)-(4) are calculated, shall be based on that POU's average annual retail sales over the seven years preceding the end of each compliance period. (For example, for the compliance period ending December 31, 2013, the retail sales for each year within that compliance period should equal the average annual retail sales for January 1, 2007 – December 31, 2013.) If the POU has not furnished electric service for the seven years preceding the end of a compliance period, then the calculation shall be based on average annual retail sales over the number of completed years during which the authority has provided electric service.

~~(5)(6)~~ Notwithstanding Section 3204 (a)(1) – (4) or Section 3204 (c)(1)-(9), 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.

a. ~~(6)~~ 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). The documentation shall include a copy of any written notice filed with the United States Secretary of the Interior or the Western Area Power Administration declaring the POU's intent to exercise its

preference rights under the Trinity River Diversion Act and any integrated resource plan filed with the Western Area Power Administration confirming the POU's election to receive all of its electricity pursuant to its preference rights, and any updates or amendments to those written notices and integrated resource plans. The POU shall initially submit documentation to the Commission within 30 calendar days of the adoption of these regulations. Thereafter, the POU shall submit to the Commission a copy of any new or updated written notices or integrated resource plans filed with the United States Secretary of the Interior or the Western Area Power Administration. Copies of such notices and plans shall be submitted to the Commission within 30 days of the date the notices and plans are filed with the United States Secretary of the Interior or the Western Area Power Administration. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (h).

(7) Notwithstanding Section 3204 (a)(1) – (4) ~~or Section 3204 (c)(1)-(9), 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 retail sale electricity demand in any given calendar year is satisfied with its qualifying hydroelectric generation.

(A) _____ For purposes of this Section 3204, “qualifying hydroelectric generation” is generation from one or more facilities that meets the following criteria:

~~(A)1.~~ _____ The facility is located within the state.

~~(B)2.~~ _____ The facility is owned and operated by the POU.

~~(C)3.~~ _____ The facility is a hydroelectric facility, but does not meet the definition of a “Renewable Electrical Generation Facility” and is not RPS-certified.

~~(D)4.~~ _____ The facility, in conjunction with other facilities meeting the requirements of this Section 3204 (a)(7), provides greater than an average of 67 percent of the POU's retail sales for the five years preceding the beginning of each compliance period. ~~electricity supply on an annual basis.~~

~~(B)~~ A POU shall demonstrate that it meets the criteria listed in Section 399.30 (k) by providing the Commission documentation showing the POU received at least an average of 67 percent of its retail sales in the five years preceding each compliance period from hydroelectric sources that the POU owns and operates. The POU shall initially submit documentation for the five years preceding January 1, 2011, within 30 calendar days of the adoption of these regulations. New documentation must be submitted within 90 calendar days of the end of each compliance period.

~~(C)~~ _____ ~~(8)~~ If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has retail sale 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)1. The portion of the POU's retail sales electricity demands~~ unsatisfied by the POU's qualifying hydroelectric generation.

~~(B)2. The soft target 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 retail sales electricity demand.

~~(b) RPS procurement requirement deficits incurred in~~ — 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.

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

~~(1) 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 shall 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.~~

~~(2) 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).~~

~~(3) 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 portfolio balance requirements:

(1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, not less than 50 percent of the electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in Section 3203 (a).

The numerical expression of this used to meet the RPS procurement requirement is:

$$PCC1_{2011-2013} \geq 0.50 \times (POST_{2011-2013})$$

~~(4) $PCC1_x$ = Electricity products applied to for the compliance period X that ending December 31, 2013, must meet the criteria of Section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in Section 3203 (a).~~

~~$POST_x$ = Portion No less than 65 percent of the electricity products procured pursuant used to a contract or ownership agreement on or after June 1, 2010, that is credited toward the meet the RPS procurement target requirement for the compliance period X~~

(2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, not less than 65 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall must meet the definition of Portfolio Product Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2014-2016} \geq 0.65 \times (POST_{2014-2016})$$

(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, not No less than 75 percent of the electricity products that used to meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2017-2020} \geq 0.75 \times (POST_{2017-2020})$$

~~(3)~~(4) For the calendar year compliance period ending December 31, 2021, and each calendar year 2020, or any compliance period thereafter, not less than 75 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall ~~must~~ meet the definition of Portfolio Product Content Category 1 specified in Section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2021} \geq 0.75 \times (POST_{2021})$$

~~(4)~~(5) For the compliance period beginning January 1, 2011, and ending December 31, 2013, no-Not more than 25 percent of ~~the~~ electricity products that used to meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall ~~requirement for the compliance period ending December 31, 2013, can~~ meet the definition of Portfolio Product Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2011-2013} \leq 0.25 \times (POST_{2011-2013})$$

PCC3_x = Electricity products applied to compliance period X that must meet the criteria of Section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in Section 3203 (c)

~~(5)~~(6) For the compliance period beginning January 1, 2014, and ending December 31, 2016, no-Not more than 15 percent of ~~the~~ electricity products that used to meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall ~~requirement for the compliance period beginning ending December 31, 2016, can~~ meet the definition of Portfolio Product Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2014-2016} \leq 0.15 \times (POST_{2014-2016})$$

~~(7)~~ For the compliance period beginning January 1, 2017, and ending December 31, 2020, ~~no Not~~ more than 10 percent of ~~the~~ electricity products ~~that used to~~ meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$B_{2017-2020} \leq 0.10 \times (POST_{2017-2020})$$

~~(6)(8)~~ For the calendar year compliance period ending December 31, 2021, and each calendar year 2020, or any compliance period thereafter, no more than 10 percent of electricity products that meet the criteria of Section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Product Content Category 3 specified in Section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2021} \leq 0.10 \times (POST_{2021})$$

~~(7)(9)~~ Except as otherwise required by Section 3204 ~~(c),(e) of these regulations,~~ electricity products meeting the definition of Product Content Category 2 specified in Section 3203 (b) may be used to meet an RPS procurement requirement.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16 and 399.30, Public Utilities Code.

Section 3205 – Procurement Plans and Enforcement Programs

~~(a)~~ (a) Renewable Energy Resources Procurement Plan

~~(1)~~ By January 1, 2013, each POU shall adopt submit to the Commission a renewable energy resources procurement plan detailing how the POU will achieve that includes, at a minimum, the following information for the forthcoming calendar year and the current compliance period:

~~(A)~~ (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 for. The description shall identify the type of electricity product by product content category and the quantity of each compliance period. The renewable energy resource type of electricity product in MWh.~~

~~(D)(1) A description and quantity of excess procurement plan, and, if any revisions or updates, the POU intends to the plan, shall be submitted to the Commission within 30 use in the calendar days of adoption, 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.~~

~~(2)(G) A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS targets annually. The renewable energy resources procurement plan shall additionally provide a forecast of the 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 to meet the POU's forecasted annual electricity demand. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 days of adoption.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. ~~Alternatively, 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) By January 1, 2012, each POU shall adopt an enforcement program detailing 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)(1) 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. The enforcement program, and any revisions or updates to the program, shall be submitted to the Commission within 30 calendar days of adoption. of these regulations.~~

~~(3)(2) Each POU shall provide notice regarding new or updated enforcement programs. The enforcement program plan must be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 calendar days notice shall be given to the public of any meeting held for purposes of adopting the enforcement program plan.~~

~~(4)(3) If the enforcement program plan is modified or amended, no less than 10 calendar days notice shall be given to the public before any meeting is held to make a substantive change to the enforcement program plan.~~

(c) If a POU distributes information to its governing board related to its renewable energy resources procurement status or future procurement ~~or enforcement~~ plans, for the governing board's consideration at a public meeting, the POU shall make all that information available to the public and shall provide an electronic copy of that 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. ~~Alternatively, 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 procurement plans or enforcement programs.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.30, Public Utilities Code.

Section 3206 – Optional RPS Compliance MeasuresOptions

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

(1) Excess procurement

(A) A POU may adopt rules permitting the POU ~~to~~ apply excess procurement in one compliance period to a subsequent compliance period, as specified in paragraphs (B) – (D) and subject to the following limitations:

(A) Electricity products ~~except that exceed the maximum limit for :~~

1. ~~Excess procurement of electricity products from~~ Portfolio Content Category 3, as specified in Section 3204 (c), must be subtracted from ~~may not be applied toward a future compliance period and shall not be included in~~ the calculation of excess procurement.
2. Electricity products ~~Generation~~ procured under contracts of less than 10 years in duration shall be subtracted from the ~~may not be applied toward a future compliance period and shall not be included in the~~ calculation of excess

procurement, unless the electricity product counts in full in accordance with Section 3202 (a)(2). procurement.

(B) A POU~~These POU~~s that opts to allow the application of excess procurement as part of its~~their~~ renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.

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

(D) Excess procurement shall be calculated as follows:

~~(D)~~ The numerical expression of the POU~~s may accrue~~ excess procurement permitted in a given compliance period only if the POU satisfies the following criteria.

1. ~~Excess procurement~~ for the first compliance period is:

Excess Procurement

$$= (EP_{2011-2013}) - (RPS_{2011-2013} + SB_{2011-2013} + STC_{2011-2013})$$

EP_x = Electricity Products procured and retired for the compliance period X

RPS_x = The RPS ~~Excess~~ procurement target calculated in Section 3204 (a) for compliance period X

SB_x = Retired FCC 3 RECs in excess of the maximum calculated in Section 3204 (c) for compliance period X

STC_x = All generation that meets the criteria of 3202 (a) (1) or 3202 (a) (3) is associated with contracts less than 10 years in duration procured and retired for compliance period X

2. The numerical expression of the excess procurement permitted for the second compliance period is:

Excess Procurement =

$$= (EP_{2014-2016}) - (RPS_{2014-2016} + SB_{2014-2016} + STC_{2014-2016})$$

3. The numerical expression of the excess ~~Excess~~ procurement permitted for the third compliance period is:

~~ess Procurement =~~

$$\blacksquare \text{ (EP}_{2017-2020}) - \text{(RPS}_{2017-2020} + \text{SB}_{2017-2020} + \text{STC}_{2017-2020})$$

4. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, and each calendar year thereafter is:

~~ess Procurement =~~

$$\text{(EP}_{2021}) - \text{(RPS}_{2021} + \text{SB}_{2021} + \text{STC}_{2021})$$

(2) Delay of timely compliance

(A) ~~The governing board of a~~ POU may adopt rules permitting ~~thea~~ POU to make a finding that reasonable cause exists to delay the timely compliance with RPS procurement requirements, as defined in Section 3204.~~requirements.~~ 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 delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. The POU must also find that:
 - i. The POU prudently managed portfolio risks, including but not limited to, holding solicitations for RPS eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.
 - 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.

(3) Cost limitations

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

(B) Such cost limitation rules 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 renewables 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.

(D) When applying procurement expenditures under an adopted cost limitation rule, the POU shall only apply those types of procurement expenditures that are permitted under the adopted cost limitation rule.

(4) Portfolio ~~balance~~Category Content requirement reduction

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

(B) The need to reduce the portfolio balance~~procurement~~ requirements for Portfolio Content Category 1 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 ~~portfolio balance procurement~~ requirement for Portfolio Content Category 1 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 ~~portfolio balance procurement~~ requirements for Portfolio Content Category 1 must adopt these changes at a publicly noticed meeting, ~~providing including~~ at least 10 calendar days advance notice to the Commission, and ~~must to subsequently~~ include this information in an updated renewable energy resources procurement plan submitted to the Commission. The notice to consider the portfolio balance requirement reduction and the procurement plan must include the following information:
1. The compliance period for which the reduction may be adopted.
 2. The level to which the POU has reduced the requirement.
 3. The reason or reasons the POU has proposed for adopting the reduction.
 4. An explanation of how the needed reduction 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 was needed as a result of cost limitations adopted by the POU as provided in Section 3206 (a)(3) ~~of these regulations~~.

(5) Historic Carry-over

- (A) A POU may adopt rules that allow for procurement generated before January 1, 2011, that meets the criteria of Section 3202 (a)(2), and that was not applied to the RPS program established by the POU pursuant to former Public Utilities Code Section 387, or any other compliance or voluntary claim, to be applied to the POU's RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period.
- (B) Both the historic carry-over and the procurement applied to the POU's RPS compliance obligation pursuant to the former Public Utilities Code Section 387 must be from facilities that were RPS-eligible under the rules in place for retail sellers at the time of procurement, except that the generation from such facilities need not be tracked in the Western Renewable Energy Generation Information System.
- (C) Historic carry-over shall be calculated by subtracting procurement generated between January 1, 2004, and December 31, 2010, that was applied to a POU's RPS compliance obligation, or that was sold, retired, or otherwise claimed, from the total procurement generated during that same period. If a POU was not in existence as of January 1, 2004, historic carry-over shall be calculated based on procurement generated between the date on which the POU became operational and December 31, 2010.

(D) The RPS compliance obligation used to calculate a POU's historic carryover shall be based on the following:

1. A baseline of an amount no less than 2001 procurement multiplied by 2003 total retail sales, divided by 2001 total retail sales, plus one percent of 2001 total retail sales (or, if the POU was not in existence in 2001, "2001" in this calculation shall be replaced by the first full calendar year in which the POU was operational, and "2003" in this calculation shall be replaced by the year that is two years after the first full calendar year in which the POU was operational). The numerical expression of the baseline is:

$$\text{Baseline} = (EP_{2001} + RS_{2001}) \times RS_{2003} + (0.01 \times RS_{2001})$$

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. Annual procurement targets for the years 2004-2010 that are no less than 1 percent of the previous year's retail sales greater than the annual procurement target for the previous year. The POU's annual procurement target for 2004 shall be no less than the baseline plus 1 percent of 2003 total retail sales, and the annual procurement target for 2010 shall be an amount no less than 20 percent of 2010 total retail sales.

(E) Any REC qualifying as historic carry-over shall be retired within 36 months of the month in which the REC was generated.

(F) A POU that adopts rules allowing for the use of historic carry-over shall submit all applicable procurement claims for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations, annual procurement target calculations, and any other pertinent documentation to the Energy Commission by June 1, 2013.

(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 compliance period ~~calendar year~~ if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements. The Commission may, when hearing a complaint against a POU under Section 1240, consider the date of adoption of any rules adopted pursuant to this section for that the POU relied upon to satisfy or delay its RPS procurement requirements. ~~year.~~

(c) Any rule or rule revision adopted under this Section 3206 shall be submitted to the Commission within 30 calendar days after adoption. The rule or rule revision shall be submitted along with all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision. ~~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) In determining a POU's compliance with the RPS procurement requirements, the Commission will not consider the application of any rule or rule revision adopted by a POU under this Section 3206 that the Commission determines does not comply with Public Utilities Code Section 399.30, these regulations, or any applicable order or decision adopted by the Commission pertaining to the RPS.~~

~~NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.15, 399.16 and 399.30, Public Utilities Code.~~

~~(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

- (a) Each POU shall submit the following reports to the Commission as required by this section. The information provided by a POU in these reports will be verified using the verification process specified in the RPS Guidelines to determine a POU's compliance with the RPS.
- (b) By June 1, 2013, and by June 1 of each year thereafter, each POU shall submit an annual report to the Commission that includes the information in paragraphs (1) and (2) below for the prior calendar year. The format for the annual report shall be specified by the Commission, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Commission. If the annual report refers to information provided to the Commission through existing reports, the annual report shall reference the information by identifying the name, submittal date, and page number of the existing report.~~following information for the prior calendar year:~~
- (1) POU identifying information, including:
 - (A) POU name, contact name, mailing address, phone number, and e-mail address.
 - (B) Year the POU was established.
 - (C) Number of retail customer accounts in California.
 - (2) RPS annual progress information, including:

- (A) Amount of total retail sales to end-use customers for the reporting year, and projected retail sales for the forthcoming calendar year and current compliance period.
- (B) Percentage of RPS-eligible procurement, based on total retail sales, for the reporting year.
- (C) 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.
- ~~(D) The amount and description of other procurement, including excess procurement, the POU is claiming for the reporting year.~~
- ~~(E)~~(D) A description of each of the RPS-certified facilities from which the POU is procuring electricity products, including the facility fuel type, the start and end dates of the procurement contract or ownership agreement, the status of the facility, the ~~on-line~~ date ~~of~~ the facility came on-line using a renewable fuel or technology, RPS certification information, and the county and state in which each facility is located.
- ~~(F)~~(E) 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.
- ~~(G)~~(F) An explanation of any public goods funds collected for eligible renewable energy resource development, including a description of programs, expenditures, and expected or actual results.
- (G) A description of any identified issues that occurred during the reporting year that have the potential to delay the POU's timely compliance with the RPS procurement requirements defined in Section 3204. Such issues may include, but are not limited to, inadequate transmission and higher-than-expected costs.
- ~~(H) The resource mix used to serve customers by energy source, including the quantity of each resource.~~
- ~~(I)~~(H) An attestation, signed by an authorized agent of the POU, affirming that the information provided in the report is true and correct.

(c) By June 1, 2014; June 1, 2017; June 1, 2021; and by June 1 of each year thereafter, each POU shall submit to the Commission a compliance report that includes the following information for the preceding compliance period:

- (1) Classification per RPS-certified facility of the amount of procurement 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.

- (2) Documentation demonstrating the portfolio content category classification claimed. This documentation may be demonstrated by any of the following: WREGIS compliance reports, include interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and contract information.
- (3) The POU's RPS procurement target for the compliance period.
- (4) The amount of excess procurement from previous compliance periods, if any, and historic carry-over, if any, that the POU is applying to the compliance period.
- (5) The procurement that the POU wishes to claim toward the RPS procurement target for the purposes of calculating the portfolio balance requirements.
- ~~(4)(6)~~ _____ The amount of excess procurement for the compliance period, if any, that may be applied toward future compliance periods, as determined by applying the calculation in Section 3206 (a)(1)(D), excluding any procurement from Portfolio Content Category 3 and any procurement from a contract that is less than 10 years in length.
- ~~(5)(7)~~ _____ If a POU's compliance report indicates that the POU's RPS procurement requirements were not met, the POU shall provide documentation to justify the application of any optional compliance measures adopted by the POU in accordance with Section 3206. The documentation shall include all reports, analyses, proposed findings, and any other information upon which the POU relied in applying the measure. The POU shall also submit an updated enforcement ~~program plan~~ that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU's shortfall.
- a. If a POU applies adopted cost limitation rules, the POU shall report that cost limitation to the Commission in dollars spent during the compliance period. The POU shall also provide the Commission with an estimate of the total cost for the POU to procure sufficient electricity products to meet its RPS procurement requirements for the preceding compliance period.
- (d) Notwithstanding Section 3207 (a) – (c), ~~of these regulations,~~ a POU that meets the criteria listed in Public Utilities Code Section 399.30 (h) shall submit to the Commission ~~by no later than January 1, 2013,~~ documentation ~~demonstrating that it meets those criteria~~ as specified in Section 3204 ~~(a)(6), (a)(7) of these regulations.~~ ~~The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (h).~~
- (e) Notwithstanding Section 3207 (a) – (c), ~~of these regulations,~~ a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall annually submit to the Commission, by the deadline for annual reports specified in Section 3207 (b), documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state, ~~and~~ that the POU receives greater than 67 percent of its electricity sources to meet its electricity demands supply on an annual basis from qualified hydroelectric facilities as defined in facility that meets the criteria of Section 3204 (a)(7), ~~of these regulations.~~ The Commission may request additional documentation if necessary to

determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k). A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) must additionally submit its total retail sales and documentation of its annual qualifying hydroelectric generation, and provide evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with the procurement from eligible renewable energy resources, including renewable energy credits of electricity products in accordance with Section 3204 (e) of these regulations.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 25747, Public Resources Code; and Sections 399.13, 399.15, 399.16 and 399.30, Public Utilities Code.

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 POUs shall be filed in accordance with Title 20, Section 1240 of the California Code of Regulations.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

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 requirement, renewables portfolio standard, or any regulation, order or decision adopted by the Commission pertaining to the Renewables Portfolio Standard, 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 a Renewables Portfolio Standard, renewables portfolio standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard, renewables portfolio standard, 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 Renewables Portfolio Standard, renewables portfolio standard, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables

Portfolio Standard, ~~renewables portfolio standard~~, for local publicly owned electric utilities shall include, but not be limited to, 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 1240.

(c) Any person or entity may participate in a proceeding filed under this Section, but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer with the Chief Counsel within 45 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. The answer may include a discussion of factors deemed relevant by the local publicly owned utility in mitigating any penalties that may be imposed by the Air Resources Board pursuant to Public Utilities Code Section 399.30, subdivisions (n) and (o), because of the utility's failure to meet a requirement of the Renewables Portfolio Standard, these regulations, or any order or decision adopted by the Commission pertaining to the Renewables Portfolio Standard.

(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 10 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 calendar 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 calendar 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 calendar 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 calendar 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 five 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.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

CHAPTER 3: Next Steps

Stakeholder input is encouraged on any issues presented in this staff paper, or any other issues not discussed, to develop and adopt prudent and effective regulations. The issues and discussion presented in this paper reflect staff views and do not obligate the Energy Commission to adopt regulations that manifest these views.

The comment period for these proposed draft *33 Percent RPS Pre-rulemaking Regulations* will end ~~August 13~~, ~~March 15~~, 2012. After comments are received, staff will incorporate any appropriate and necessary changes into the draft regulations. A set of proposed regulations will then be submitted to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register. Publication begins OAL's 45-day public comment period. All comments received during ~~that~~~~this~~ period will be docketed and included in the rulemaking record, along with responses to comments by the Energy Commission.

The public comment period will be followed by a public hearing, where stakeholders may address any outstanding concerns. At least one month after that public hearing, final proposed regulations may be adopted at a scheduled and publicly noticed business meeting of the Energy Commission.

APPENDIX A: POUs Subject to These Regulations

Alameda Municipal Power
Anaheim, City of
Azusa Light and Water
Banning, City of
Biggs Municipal Utilities
Burbank Water and Power (BWP)
Cerritos, City of
City and County of San Francisco (CCSF)
Colton Public Utilities
Corona, City of
Eastside Power Authority
Glendale Water and Power (GWP)
Gridley Electric Utility
Healdsburg, City of
Hercules Municipal Utility
Imperial Irrigation District (IID)
Industry, City of
Kirkwood Meadows Public Utility District
Lassen Municipal Utility District
Lodi Electric Utility
Lompoc, City of
Los Angeles Department of Water & Power (LADWP)
Merced Irrigation District
Modesto Irrigation District (MID)
Moreno Valley Electric Utility
Needles, City of
Palo Alto, City of
Pasadena Water and Power
Pittsburg, City of (doing business as Island Energy)
Port of Oakland
Port of Stockton
Power and Water Resources Pooling Authority (PWRPA)
Rancho Cucamonga Municipal Utility
Redding Electric Utility (REU)
Riverside, City of
Roseville Electric
Sacramento Municipal Utility District (SMUD)
Shasta Lake, City of

Silicon Valley Power (City of Santa Clara)
Trinity Public Utility District (TPUD)
Truckee Donner Public Utilities District
Turlock Irrigation District (TID)
Ukiah, City of
Vernon, City of
Victorville Municipal Utilities Services