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VIA E-MAIL
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California Energy Commission
Docket No. 13-RPS-01
Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814-5504

Re: 33% Renewables Portfolio Standard; Comments of Pacific Gas and Electric Company on the Proposed Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities

Pacific Gas and Electric Company ("PG&E") appreciates the opportunity to provide comments on the Proposed Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard ("RPS)" for Local Publicly Owned Utilities ("POU") (the "Proposed Regulation") issued by the California Energy Commission ("Commission") on March 1, 2013.

PG&E has participated actively in this proceeding and previously submitted Scoping Comments on the Commission's Implementation of SB 2 (1x) on July 8, 2011, Comments on the Commission's 33% RPS POU Concept Paper on September 12, 2011, and Comments on the 33% POU Pre-Rulemaking Draft Regulation on March 6, 2012. The present comments are more focused than these prior comments in recognition of the changes that the Commission has made to the Proposed Regulation as it has evolved.

I. INTRODUCTION

The Commission recognizes that the fundamental problem the Proposed Regulation seeks to address is "the inconsistent application and enforcement of the state's RPS to POUs."[1/] The Commission also recognizes that under Senate Bill ("SB") 2 (1x),[2/] "POUs are now subject to many of the same or similar RPS requirements as retail sellers."[3/] Accordingly, the Commission

1/ Notice of Proposed Action ("NOPA"), March 1, 2013, Docket No. 13-RPS-01, at 5-6.
2/ Senate Bill 2 (2011-12 First Extraordinary Session, Stats. 2011, Ch 1).
3/ NOPA at 6.

"worked with the [California Public Utilities Commission ("CPUC")] to ensure the proposed regulations were consistent with the rules developed by the CPUC for the retail sellers."[4/]

Despite these statements, the Proposed Regulation would adopt a significantly different approach to interpreting SB 2 (1x) as that taken by the CPUC. The result of this different interpretation would be that the RPS obligation of the POUs would be substantially less in the 2014-2020 period than the obligations of CPUC-regulated retail sellers, including PG&E. This proposed interpretation of the statute cannot stand as a matter of law, is inconsistent with the intent of the legislature, and is poor public policy.

These comments note two additional deficiencies in the Proposed Regulation: (1) the need for explicit notice provisions to ensure that the public has a full opportunity to review POU procurement plans, enforcement plans, and claims of RPS deferrals or waivers; and (2) the inconsistency with statute of the Commission's proposed exemption for the City and County of San Francisco ("CCSF").

PG&E appreciates the efforts that the Commission has made to use a transparent and public process to develop the Proposed Regulation and acknowledges the changes the Commission has already made to improve the rules. Other than the three significant issues addressed in these comments, PG&E believes the Proposed Regulation is a reasonable interpretation of SB 2 (1x) that significantly advances the State's renewable energy goals.

II. THE COMMISSION SHOULD REVISE THE PROPOSED REGULATION TO BE CONSISTENT WITH THE CPUC'S APPROACH TO REASONABLE PROGRESS TARGETS AND ENFORCEABLE PROCUREMENT QUANTITY REQUIREMENTS.

Consistent with the Commission's goal of statewide consistency in the implementation of the RPS[5/] and ensuring a fair competitive landscape for all LSEs, the Commission should adopt the same formulas for calculating the RPS procurement requirements for POUs that the CPUC has adopted for retail sellers. PG&E finds no reasoned basis for departing from the CPUC's approach and submits that the two agencies should not interpret the same statutory language differently where there is no compelling reason to distinguish POUs from other load-serving entities ("LSEs").

It is an accepted rule of statutory interpretation that "identical words used in different parts of the same act are intended to have the same meaning."[6/] In the case of SB 2 (1x), the legislature could not have been more clear that it intended the same RPS obligations to apply to

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4/ *Id.* at 9.

5/ *See* NOPA at 5, 6, 9.

6/ *People v. Roberge*, 29 Cal. 4th 979, 987 (2003) (quoting *Department of Revenue of Ore. v. ACF Industries, Inc.*, 510 U.S. 332, 342 (1994) and *People v. Nguyen*, 21 Cal.4th 197, 205 (1999)). *See also FCC v. AT&T Inc.,* 131 S. Ct. 1177, 1185 (2011) (holding that "identical words and phrases within the same statute should normally be given the same meaning").

all LSEs in California, including POUs. It did so by repeating the *same language* regarding RPS procurement quantity requirements that it applied to retail sellers in the separate section of the same statute addressing POUs.[7/] Specifically, both retail sellers and POUs are subject to the same statutory obligation during the 2014-2020 period: The procurement quantities shall "reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."[8/]

In December 2011, the CPUC adopted a reasonable methodology to interpret this statutory language for the purpose of calculating compliance period requirements for retail sellers.[9/] Specifically, the CPUC ordered that retail sellers retire RPS-eligible products at the end of the 2014-2016 and 2017-2020 RPS compliance periods that are equal to the sum of interim reasonable progress target for each year in those periods based on straight-line trajectories.[10/]

Even though the Commission was fully aware of this approach and consulted with the CPUC prior to issuing the Proposed Regulation, the Commission nonetheless takes the fundamentally different and more lenient approach of calculating POU procurement requirements in the same periods using "stair-step" trajectories. Thus, for example, the CPUC interpretation requires retail sellers to multiply their 2019 retail sales by 31% in calculating their total 2017-2020 procurement requirement, while under the Proposed Regulation, a POU would only need to multiply its 2019 retail sales by the 2016 statutory goal of 25%.[11/] Similar discrepancies exist for the years 2014, 2015, 2017, and 2018, resulting in a cumulatively substantial difference in the overall procurement requirement for POUs and retail sellers in the 2014-2020 periods. Stated another way, a POU and retail seller with exactly the same retail sales would have significantly different RPS procurement obligations in that period – an outcome certainly not intended by the Legislature. Figure 1, below, illustrates this cumulative difference in procurement obligations.

Not only does the different interpretation of the same statutory language violate basic principles of statutory construction, but the Commission's interpretation also defies a plain reading of the statute. As noted above, SB 2 (1x) requires that each of the "soft" targets set for intervening years in the multi-year compliance periods "reflect reasonable progress" toward the statutory goals of 25% in 2016 and 33% in 2020.[12/] Yet, the Proposed Regulation would not reflect any progress at all in the intervening years, much less "reasonable progress." Instead, the Proposed Regulation would assume that the POUs make *no additional progress whatsoever* toward the statutory goals in 2014, 2015, 2017, 2018, and 2019. In contrast, the CPUC's

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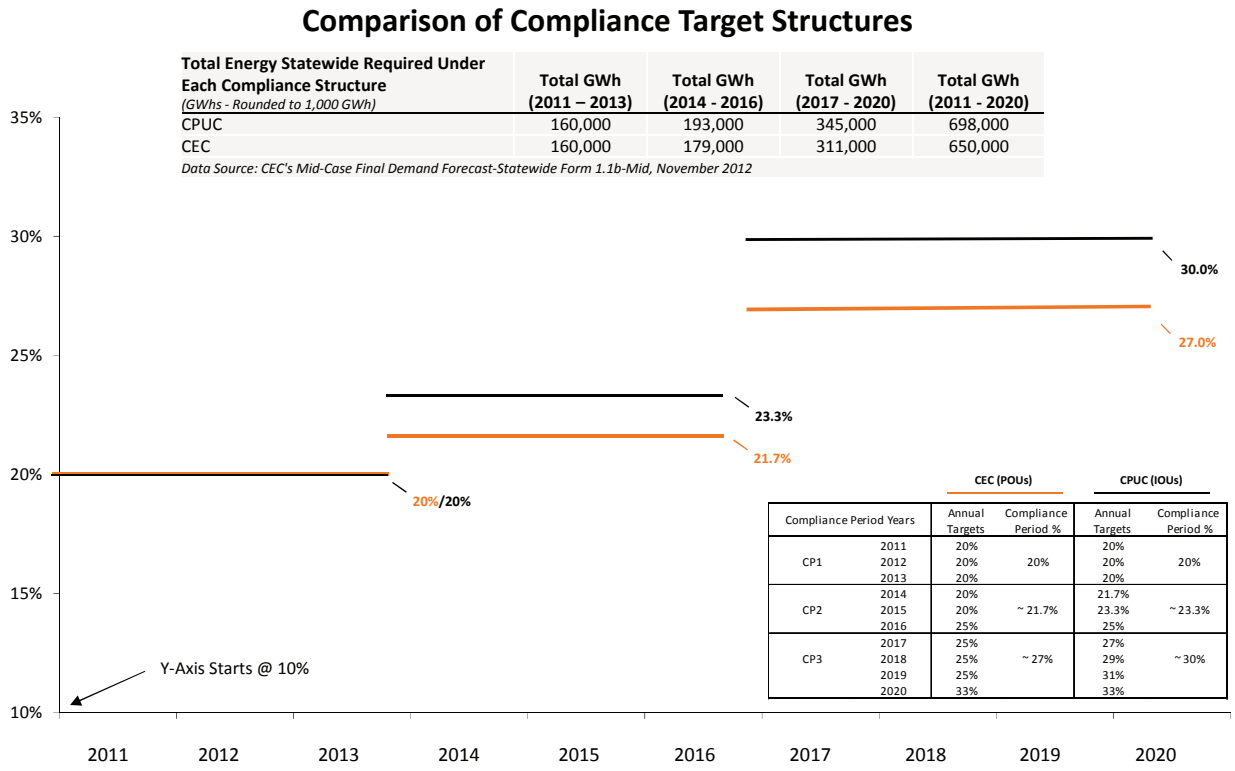
7/ *Compare* Cal. Pub. Util. Code § 399.30(b)-(c) (RPS procurement quantity requirements for POUs) *with id.* at § 399.15(b)(1)-(2) (RPS procurement quantity requirements for retail sellers).
8/ *Id.* at §§ 399.30(c)(2), 399.15(b)(2)(B).
9/ *See generally* Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program, CPUC Decision ("D.") 11-12-020 (Dec. 1, 2011).
10/ *Id.* at pp. 23-25 (Ordering Paragraphs 1-3).
11/ *Compare* D.11-12-020 at p. 24 (Ordering Paragraph 3) *with* Proposed Regulation at § 3204(a)(3).
12/ Cal. Pub. Util. Code § 399.30(c)(2).

interpretation assumes that retail sellers make actual progress on a linear trajectory in each of those years. The Commission's stair-step approach should be revised because it is not a reasonable interpretation of the statute.

Fig. 1: Illustration of Difference in Compliance Trajectories and Total Compliance Obligations Adopted by the CEC and the CPUC



Finally, public policy demands that all LSEs be required to meet the same, more stringent targets set by the CPUC. Requiring, as the Proposed Regulation would, different reasonable procurement targets for POUs will place retail sellers' customers at a disadvantage by requiring them to absorb a higher renewable energy premium to meet the State's RPS goals. Additionally, the Commission's more lenient requirements for POUs will mean that the RPS statute is less effective in achieving the legislature's RPS goals, including increasing resource diversity and reducing environmental impacts, than if all LSEs had to meet the more ambitious targets set for retail sellers. Finally, the Proposed Regulation provides no compelling reason why POUs are sufficiently distinct from other retail sellers such that applying the same compliance requirements adopted by the CPUC would not be feasible. In light of the statutory and policy flaws in the Proposed Regulation, the Commission should revise the regulation and adopt the same RPS compliance requirements and reasonable progress targets established by the CPUC.

III. THE COMMISSION SHOULD PROVIDE PUBLIC NOTICE OF POU PROCEEDINGS TO IMPLEMENT THE PROPOSED REGULATION.

The Proposed Regulation would require the POUs to notify the Commission of the adoption of procurement and enforcement plans.[13/] Additionally, the Proposed Regulation requires that the POUs provide public notice of meetings to take action on RPS enforcement programs or RPS procurement plans.[14/] Finally, a POU must submit any rule or rule revision that allows for compliance deferral or excuse to the Commission after such adoption, and may also seek the Commission's advance review of such a rule.[15/]

While PG&E generally supports these provisions to facilitate oversight by the Commission and public participation at the local level, nothing in the Proposed Regulation specifically requires that the Commission provide public notice of any of its or the POUs' actions. As PG&E stated at the Commission's hearing on the Proposed Regulation, the Proposed Regulation should be revised to provide that the Commission will send electronic notices to the Commission's RPS-related distribution lists regarding any submission that the Commission receives from a POU in connection with the Proposed Regulation.[16/] This notice should contain the information submitted by the POU or provide a link to such information and should set forth the process for submitting comments. None of the representatives of the POUs speaking at the hearing on the Proposed Regulation raised an objection to the Commission acting as an information clearinghouse for POU actions to implement the RPS statute. The Commission should adopt these procedures to reduce the burden on interested members of the public who would otherwise have to actively monitor dozens of separate POU proceedings.

IV. CCSF SHOULD BE SUBJECT TO THE PORTFOLIO BALANCE REQUIREMENTS AND MUST PROCURE RPS-ELIGIBLE RESOURCES EQUAL TO THE DIFFERENCE BETWEEN ITS DEMAND AND QUALIFYING HYDROELECTRIC GENERATION IN ANY GIVEN YEAR.

Section 3204(a)(7)(D) of the Proposed Regulation provides that CCSF[17/] must procure "electricity products" equal to the lesser of either: (1) the portion of CCSF's electricity demand unsatisfied by its qualifying hydroelectric generation; or (2) the soft target listed in section 3204(a)(1)-(4) for that year. Because "electricity products" is defined to include either bundled

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13/ Section 3205(a)(3)(B)-(C); 3205(b)(3)-(4).
14/ Sections 3205(a)(3)(A); 3205(b)(2).
15/ Section 3206(c)-(d).
16/ PG&E notes that the ISOR suggests that the Commission intends to provide notices of certain POU actions and submissions on the Commission's website. ISOR at 28-29. This practice should be formalized in the Proposed Regulation and expanded to include actual notice to the distribution lists maintained by the Commission, rather than simple posting on the website.
17/ The RPS statute refers generally to a POU "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." Cal. Pub. Util. Code §399.30(j). The Commission's ISOR recognizes that the CCSF is the only entity that appears to meet these criteria. ISOR at 42.

electricity products or unbundled Renewable Energy Credits ("RECs"),[18/] the effect of the Proposed Regulation is to exempt the CCSF from the portfolio balance requirements and thereby allow the CCSF to meet its RPS requirement with only unbundled RECs and large hydroelectric generation.

The Commission's interpretation of the CCSF exemption in the RPS statute is inconsistent with the legislation in two ways. First, nothing in the statute exempts the CCSF from the portfolio balance requirements. Section 399.30(j) states simply that CCSF's procurement must be from "eligible renewable energy resources, including renewable energy credits." This language is identical to that used in Section 399.30(a), which applies to all POUs, and merely indicates that CCSF's procurement to meet unsatisfied demand must be RPS-eligible. To interpret that language instead as exempting the CCSF from the portfolio balance requirements would require the Commission to impermissibly ignore the use of the same language as it applies to all other POUs. Further, Section 399.30(c)(3) states without any vagueness or ambiguity that "[a] local publicly owned electric utility shall adopt procurement requirements consistent with [the portfolio balance requirements]." If the Legislature had intended to exempt the CCSF from the portfolio balance requirements, it would have made that exemption clear and specific given the otherwise broad application of Section 399.30(c)(3) to all POUs.

The ISOR states that Commission staff determined that the portfolio balance requirements do not apply to CCSF because: (1) "section 399.30(j) can be viewed as a stand-alone requirement;" (2) "because section 399.30(j) does not include an express provision to meet the PCC allocation requirements;" and (3) because CCSF would be unable to appropriately plan to meet the portfolio balance requirements given uncertainty about hydroelectric generation and demand.[19/] None of these rationales justifies ignoring the plain reading of the statute.

First, the Legislature is capable of making a specific provision independent from, and controlling over, other provisions in the statute. It could have done so by beginning Section 399.30(j) with the formulation: "Notwithstanding subdivision (c) and Section 399.16." In fact, the legislature used exactly such a formulation in the exemption for certain irrigation districts found at Section 399.30(i) in order to make clear that provision was an exception to the general rule. However, the legislature did not include such language in Section 399.30(j), and the Commission is not permitted to read such language into the statute.

The Commission's second justification must also be rejected since the lack of an express application of the portfolio balance requirements to the CCSF is unnecessary in Section 399.30(j) given that Section 399.30(c)(3) already makes them applicable to CCSF without ambiguity. The Commission may not ignore a plain reading of a statute merely because the Legislature did not repeat itself.

18/ *See* Section 3201(j).
19/ ISOR at 22.

Third, the Commission cannot ignore the plain statutory requirement in Section 399.30(c)(3) because the Commission believes it would be difficult for the CCSF to plan for compliance. In fact, PG&E and all other LSEs face very similar difficulties in planning to comply with the RPS requirements given the difficulty of predicting operational variability, including hydroelectric production and changes in load. In order to ensure a level playing field, or at least a more level playing field given the statutory ability of CCSF to count hydroelectric resources that other LSEs cannot, the CCSF should be required to manage such variability in the same manner required of others LSEs.

The second way in which the Commission's interpretation violates the statute is by allowing the CCSF to procure RPS-eligible resources in any given year to meet only the difference between a "soft target" and CCSF's hydroelectric generation, if that amount is less than the portion of CCSF's electricity demand unsatisfied by its hydroelectric generation.[20/] This interpretation has no basis in the statute, which unambiguously requires that CCSF procure RPS-eligible resources "to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year."[21/] Nothing in the language of the statute allows the Commission to set a lower target based on a "soft target" or any other factor. The Legislature's intent was clear: In exchange for a major exemption from the RPS requirements that allows it to use large hydroelectric generation facilities that no other LSE can count, CCSF must procure RPS-eligible resources for all of its remaining, unmet load in each year.

Because the Proposed Regulation's broad exemption for CCSF is unsupported, and is in fact contradicted, by the plain language of the RPS statute, the provision should be revised to require the CCSF to procure RPS-eligible resources, consistent with the product balance requirements, to meet all demand unsatisfied by its qualifying hydroelectric generation in any given year.

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20/ Section 3204(a)(7)(D).
21/ Cal. Pub. Util. Code §399.30(j).

V. CONCLUSION

PG&E appreciates the opportunity to provide comments on the Proposed Regulation. In these comments, PG&E urges the Commission to: (1) adopt POU procurement requirements consistent with those promulgated by the CPUC for retail sellers; (2) provide explicitly for notice to the public of all POU actions implementing the Proposed Regulation; and (3) revise the exemption for CCSF to reflect the plain language of the statute.

Best regards,

/s/

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