

**BEFORE THE CALIFORNIA
ENERGY COMMISSION**

RENEWABLES PORTFOLIO STANDARD)

Docket No. 13-RPS-01

**COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE
ADOPTION OF REGULATIONS ESTABLISHING ENFORCEMENT
PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD
FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

I. Introduction

The City and County of San Francisco (CCSF or City) submits these comments in response to the California Energy Commission’s (CEC’s) Notice of Proposed Action (NOPA) to adopt enforcement procedures for the Renewable Portfolio Standards (RPS) for local publicly owned electric utilities (POUs). The City, through its Public Utilities Commission (SFPUC), owns and operates a publicly owned electric utility (POU), providing approximately 1 million megawatt-hours (MWh) of electricity annually for the City’s municipal requirements and other uses.

CCSF appreciates the time and effort that Commission staff has spent in developing the proposed regulations, as well as staff’s willingness to meet with CCSF and address many of CCSF’s concerns.

CCSF appreciates the CEC’s conclusion that CCSF is not subject to the Portfolio Balance Requirements (as noted in the ISOR, p. 22)¹ as well as the other requirements of Section 3204 of the draft regulations provided that CCSF meets its alternative compliance obligations under Public Utilities Code section 399.30(j). As described by the CEC:

A POU that meets the criteria of Public Utilities Code section 399.30(j) is excused from the RPS procurement requirements and portfolio balance requirements applicable to other POUs and required to procure only eligible renewable energy resources to

satisfy the POU’s electricity demands unsatisfied by the POUs “qualifying hydroelectric generation” in any given year.

¹ “Staff determined that the portfolio balance requirements of Public Utilities Code Section 399.16 do not apply to a

Our comments here are limited to six specific elements where the draft regulations are inconsistent with the requirements of SBX1-2, and in some instances, the CEC's own interpretation of SBX1-2 in its Initial Statement of Reasons (ISOR).² We discuss these elements below along with the changes recommended to conform to the statute. We have attached a redlined version of the regulations with these changes.³

II. Section 3204(a)(7) Needs to be Clarified to Reflect the Criteria that CCSF Needs to Meet to Qualify for its Alternative Compliance Obligation

CCSF, as noted above, is not subject to the multi-year compliance obligations and Portfolio Balance Requirements⁴ applicable to other POU's provided that CCSF meets its alternative compliance obligations under Public Utilities Code section 399.30(j).

However, as discussed with CEC staff, there is an ambiguity in the draft regulations that makes it appear that this exemption is only available when CCSF is 100% sourced from its qualifying hydroelectric generation, and not at least 67% as required in statute. As currently written, the draft regulations state that CCSF meets the "criteria listed in Public Utilities Code section 399.30(j)" and is "in compliance with Section 3204 for a given calendar year if **all** of the POU's electric demand in that calendar year is satisfied with its qualifying hydroelectric generation." (Section 3204(a)(7), emphasis added.) This could be interpreted that CCSF must be 100% sourced with its hydroelectric generation to be in compliance. This is inconsistent with Section 3204(a)(7)(C) and (D) of the draft regulations, which correctly state that CCSF meets the "criteria listed in Public Utilities Code section 399.30(j)" and is in compliance with Section 3204 by (1) meeting at least 67% of its electric demands from qualifying hydroelectric generation, and (2) procuring electricity products to meet any remaining needs up to the lesser of 100% of its needs or the "soft target" applicable to other POU's. CCSF recommends that the requirement that **all** electric demands be met with qualifying hydroelectric generation be stricken and replaced with a reference to the requirements of Section 3204(a)(7)(C) and (D) (see attached redline).

² California Energy Commission Initial Statement of Reasons for Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities (March, 2013, CEC-300-2013-004)

³ CCSF's comments use the CEC's approach of referring to the legislative requirements of SBX1-2 but using the current numbering of the Public Utilities Code. As noted in the ISOR (page 1, footnote 1), Assembly Bill 2227 repealed some of the reporting requirements in SBX1-2 and re-codified them elsewhere in the Public Utilities Code. As a result of this change, subdivisions (h) through (p) of Public Utilities Code Section 399.30 as enacted by SBX1-2 have now been renumbered subdivisions (g) through (n). Thus, the current Section 399.30(j) of the Public Utilities Code, which most specifically applies to CCSF, was originally Section 399.30(k) in SBX1-2.

⁴ Public Utilities Code section 399.16

III. The Proposed Definition of “Qualifying Hydroelectric Generation” Should Conform to Statute and the CEC’s ISOR

In determining whether CCSF meets more than 67% of its electric demands with “qualifying hydroelectric generation” and thereby qualifies for the provisions of section 399.30(j), SBX1-2 allows CCSF to count all of its hydroelectric generation towards this target, except for hydroelectric generation that qualifies as a “renewable electrical generation facility” under Public Resources Code 25741.⁵ The CEC’s ISOR reaches a similar conclusion (ISOR p. 9, 28, 42).⁶ However, the draft regulations exclude from the calculation any hydroelectric generation that “is not a renewable electrical generation facility **and is not RPS-certified.**” (Section 3204(a)(7)(A)(3), emphasis added.) The latter portion of this phrase “and is not RPS certified” could be interpreted as excluding any of CCSF’s owned and operated hydroelectric resources that are not renewable electrical generation facilities as defined in the regulations, but are RPS-certified under different sections of state law. Such resources could include, for example, an incremental hydroelectric upgrade or water conveyance facility that do not qualify as a renewable electrical generation facility but are RPS-certified under section 399.12.5 or section 399.12(e) of the Public Utilities Code.⁷ The phrase “and is not RPS-certified” significantly expands the list of hydroelectric resources excluded in determining the 67% threshold significantly beyond what is allowed under SBX1-2, and should be removed (see attached redline).

⁵ As summarized by the CEC at page 42 of the ISOR, “Public Utilities Code section 399.30(j) applies to a “local publicly owned electric utility in a city and county that receives greater than 67% of its electricity sources 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.”

⁶ For example, the ISOR at page 9 states that: “any POU...that receives greater than 67% of its hydroelectricity sources from hydroelectric generation...must prove to the Energy Commission that the generation does not come from a renewable electrical generation facility.” On page 28 of the ISOR it states that “These qualifying hydroelectric facilities do not meet the definition of a “renewable electrical generation facility” pursuant to Public Resources Code section 25741.” On page 42 of the ISOR it states that a “hydroelectric generation facility that meets this criteria is defined as “qualifying hydroelectric generation facilities in these regulations.”

⁷ Under SBX1-2, a “renewable electrical generation facility” (defined in both Public Resources Code Section 25741 and Section 3201(u) of the draft regulations) is a subset of the broader category of “eligible renewable energy resource” (defined in both Public Utilities Code Section 399.12(e) and Section 3201(k) of the draft regulations) that may become RPS-certified. Essentially, by adding “and is not RPS certified”, the draft regulations change the language of SBX1-2 from defining “qualifying hydroelectric generation” as excluding only a “renewable electrical generation facility” to now read that “qualifying hydroelectric generation” excludes any “eligible renewable energy resource.”

IV. CCSF's Eligibility for its Alternative Compliance Obligation Should be Determined on a Yearly Basis as Required under SBX1-2 and Not on a Compliance Period Basis

The draft regulations use a historical seven-year average to determine whether CCSF meets the 67% requirement of section 399.30(j) of SBX1-2. Although not required by SBX1-2, CCSF appreciates and supports the use of a multi-year historical average to provide certainty and to dampen the impact of a short-term decline in its hydroelectric generation (e.g. due to drought). Further, CCSF supports and appreciates the change from a five-year to a seven-year average, to better match cyclical variations in California's hydroelectric generation.

SBX1-2 requires that CCSF's eligibility for the 67% requirement should be determined every calendar year rather than at the start of every compliance period as proposed in the draft regulations.

Under the draft regulations, if CCSF were to fall below the 67% threshold at the start of a multi-year compliance period, CCSF would be unable to use its alternative compliance obligation for the entire multi-year compliance period even if CCSF exceeded the 67% requirement in all or any one of these years. Such a result is inconsistent with section 399.30(j), which requires that CCSF "shall procure renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year." In crafting SBX1-2, the Legislature established a multi-year compliance obligation for other POUs,⁸ but established a single-year compliance obligation for CCSF. Moreover, section 399.30(j) was designed to prevent CCSF from replacing its own greenhouse-gas free hydroelectric generation with procurement of renewable resources to meet its unmet demand. The compliance-period approach set forth in the draft regulations could result in CCSF being required to buy significant amounts of renewable resources, well in excess of its demands unmet by its hydroelectric generation, for an entire multi-year compliance period.

This violates the requirement of SBX1-2 that the SFPUC is subject to its alternative compliance obligation "in any given year" it exceeds 67%. CCSF recommends that the draft regulations retain the historical seven-year average, but measure the seven-year historical average at the start of each calendar year, rather than at start of each compliance period applicable to other POUs, in order to conform to the requirements of SBX1-2 (see attached redline).

⁸ Public Utilities Code Section 399.30(a)

V. The RECs Associated with Renewable Energy Resources that Originally Qualify as Portfolio Content Category 1 Resources Should Retain that Status When the RECs are Unbundled and Sold Separately from the Underlying Energy.

Under the draft regulations, renewable energy credits (RECs) associated with renewable energy resources that originally qualified as Portfolio Content Category 1 resources should retain that status when the REC is subsequently unbundled and sold separately from the underlying energy.

CCSF supports the comments of the California Municipal Utilities Association (CMUA) and the Sacramento Municipal Utilities District (SMUD) on this issue.

VI. RECs for Generation That Becomes RPS-Eligible After It Has Already Been Generated Should Qualify As PCC1.

In the CEC's proposed 7th Edition of the RPS Eligibility Guidebook,⁹ RPS eligibility for certain types of resources (such as hydroelectric facilities associated with water conveyance systems and AB920 resources) will be effective as of January 1, 2011.¹⁰ This ensures symmetry between SBX1-2's compliance obligations (which start on January 1, 2011) and the RPS-eligibility date of the resources.

The Guidebook does not address, however, the Portfolio Content Category (PCC) designation of these resources where the underlying RPS-eligible energy was transferred to others prior to the POU/retail seller receiving these RECs.¹¹ Many utilities may have transferred this RPS-eligible energy to others, but the entities acquiring or purchasing this energy may not be able to claim RPS credit for these resources because the associated RECs were not available at the time this sale or transfer took place.

Purchasers and sellers should not be penalized for this time lag. The draft regulations should allow a purchaser of RPS-eligible energy from these resources during this time period¹² to claim them as PCC1 (or Bucket 1) resources if it subsequently purchases the RECs associated with

⁹ CEC staff has stated that the CEC will consider adoption of this version of the Guidebook at a late April meeting. Therefore it is likely to be adopted prior to adoption of the draft regulations currently scheduled for May, 2013.

¹⁰ Water conveyance facilities are proposed to become eligible as of January 1, 2011. AB920 resources can become eligible when they come on line after January 1, 2011.

¹¹ Under the CEC's regulatory framework, RPS-eligibility and certification is determined through the RPS Eligibility Guidebook while the classification of RECs into their PCC categories for POU's is determined in this regulatory process.

¹² This time period would cover the January 1, 2011 effective date of SBX1-2 and the date the draft regulations are adopted

the underlying energy generated by these resources during the period. This matches the time when these resources became RPS-eligible under SBX1-2 and the time when a POU/retail seller would have had the option to either use the resource for its own use or to transfer these resources as a “bundled” PCC1 or PCC2 product.

This categorization is consistent with the “one very limited exception to the classification of unbundled RECs”¹³ adopted by the California Public Utilities Commission (CPUC) in establishing its Portfolio Content Categories for retail sellers in Decision(D.)11-12-052.¹⁴ In that decision, the CPUC allowed both Southern California Edison (Edison) and San Diego Gas & Electric (SDG&E) to “reunite” RECs associated with RPS-eligible electric generation that had previously occurred. In this instance, both utilities were assigned long-term contracts for energy from RPS-eligible resources entered into by the Department of Water Resources (DWR) during the California energy crisis, but the contracts did not include the RECs. In order to allow Edison and SDG&E to claim these resources as RPS-eligible, the CPUC allowed both Edison and SDG&E “to buy the RECs from these facilities and reunite the RECs with the underlying generation that their customers receive[d] from the DWR contracts.”

The same treatment that the CPUC applied to these contracts should be applied to RECs for generation that becomes RPS-eligible after it has been generated, and these RECs should qualify as PCC1. As the CPUC noted when approving its categorization, the inability to assign the RECs to the underlying RPS-eligible energy when it was generated was beyond the control of the utility, the treatment would have limited effect and operate for only a limited duration, and would not conflict with RPS rules on a going forward basis.¹⁵ These same factors are applicable to POUs in this situation.

VII. REPORTING REQUIREMENTS

CCSF’s reporting requirements when it meets the criteria of Public Utilities Code section 399.30(j) are specified in Section 3207(f). CCSF interprets the phrase “Notwithstanding the requirements of sections 3207(a)-(d)” at the beginning of this section as meaning that CCSF will submit the information required in Section 3207(f) in place of the information required of other POUs in Sections 3207(a)-(d). Almost all of the reporting requirements contained in these sections (such as portfolio balancing requirements, reasonable further progress, and multi-year

¹³ D.11-12-052, p. 56

¹⁴ D.11-12-052, p. 55-57 and Conclusion of Law #22 (p. 72)

¹⁵ D.11-12-052, p. 57

CCSF PROPOSED EDITS TO CONFORM THE DRAFT REGULATIONS TO SBX1-2

SECTION 3204(a)

- (7) Notwithstanding section 3204 (a)(1) – (4) or section 3204 (c)(1)-(9), a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall be deemed to be in compliance with this section 3204 for a given calendar year if **it meets the requirements of section 3204(a)(7)(C) and (D) all of the POU's electricity demand in that calendar year is satisfied with its qualifying hydroelectric generation.**
- (A) For purposes of this section 3204, “qualifying hydroelectric generation” is generation from a facility that meets the following criteria:
1. The facility is located within the state.
 2. The facility is owned and operated by the POU.
 3. The facility is a hydroelectric facility but does not meet the definition of a renewable electrical generation facility **and is not RPS-certified.**
- (B) For purposes of this section 3204 (a)(7), “electricity demand” means consumption of electricity by all end-use customers and their tenants, including but not limited to the POU itself, measured in MWh.
- (C) A POU shall demonstrate that it meets the criteria listed in Public Utilities Code section 399.30 (j) by providing the Commission documentation showing the POU received at least an average of 67 percent of its electricity demand in the seven years preceding each **compliance period calendar year** from qualifying hydroelectric generation. The POU shall initially submit documentation for the seven years immediately preceding January 1, 2011, **January 1, 2012, and January 1, 2013** within 30 calendar days of the effective date of these regulations. New documentation shall be submitted within 90 calendar days of the end of each **compliance period calendar year**.
- (D) If a POU meeting the criteria listed in Public Utilities Code section 399.30 (j) has electricity demand unsatisfied by its qualifying hydroelectric generation in any given year, the POU shall procure electricity products equal to the lesser of the following:
1. The portion of the POU's electricity demand unsatisfied by the POU's qualifying hydroelectric generation.
 2. The soft target listed in section 3204 (a)(1) – (4) corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual electricity demand.