BEFORE THE CALIFORNIA ENERGY COMMISSION

Rulemaking to Establish Enforcement Procedures for Renewables Portfolio Standard for Publicly Owned Electric Utilities	**Docket No. 13-RPS-01**

NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON THE PROPOSED REGULATIONS FOR ENFORCEMENT PROCEDURES FOR THE RENEWABLE PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to provide these comments on the February 2013 draft of the *Proposed Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*,[2] in this Rulemaking 13-RPS-01. Although the Rulemaking itself is new, the California Energy Commission's (Commission) implementation of Senate Bill X 1-2 (Statutes 2011) (SBX1-2), and specifically the procedures for enforcement of the renewable portfolio standard (RPS) for publicly owned utilities (POUs), has been ongoing. Many of the issues and matters addressed in the context of the Proposed Regulations have been the topic of discussion and comments by stakeholders during the pre-rulemaking process and as part of Docket No. 11-RPS-01 and Docket No. 02-REN-1038.[3]

[1] NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District. Plumas-Sierra Rural Electric Cooperative is an associate member of NCPA.

[2] The Notice of Proposed Rulemaking (NOPA), Initial Statement of Reasons (ISOR), the Supporting Materials for the Economic and Fiscal Impact Statement and Assessment, and the POU Cost Analysis were officially posted on March 1, 2013.

[3] In those dockets, NCPA filed comments on the February 2012 *Draft Staff Report: 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations* (March 30, 2012) and on the July 2013 *Revised Draft* (comments filed on August 13, 2012). Since the pre-rulemaking process led to the development of the current Proposed Regulations, rather than reiterate all of the points that NCPA raised during that process, NCPA asks that

NCPA appreciates the time and effort that the Commission has invested in preparing the first draft of the Proposed Regulations, and the time spent with stakeholders discussing this very important document. Overall, the Commission has proposed an enforcement procedure that provides a robust and comprehensive framework for the Commission to follow when verifying a POU's compliance with the RPS. However, the Proposed Regulations should be revised in a few material respects to address outstanding issues and areas where the proposed rules are not consistent with the authorizing legislation.

Specifically, the Proposed Regulations should be changed to:

1. Include specific references to the authority granted to POUs and their governing board in the enabling legislation;
2. Strike the references to the Commission's determination regarding the applicability of POU optional compliance mechanisms adopted pursuant to Public Utilities Code section 399.30(d);
3. Strike the provisions of Public Utilities Code section 399.15(d) from the requirements in section 3206(a)(5) regarding cost limitations for procurement expenditures;
4. Align and reconcile annual and compliance-period reports;
5. Allow the use of pre-June 1, 2010 resources that meet the current RPS eligibility requirements to be used for the RPS procurement target alone, or towards the procurement target and the balancing requirements.

I. INTRODUCTION

Adoption of enforcement rules for the RPS program and defining the Commission's role vis-à-vis the POU RPS programs is an important step in completing the process to fully implement the mandates of SBX1-2 . Since the adoption of SBX1-2, POUs, retail sellers, the California Public Utilities Commission (CPUC), and this Commission have all been working to implement the standard and their individual obligations under the statute. Despite the fact that California has established a single, statewide renewable energy mandate, SBX1-2 maintained the long-standing distinction between electrical corporations and POUs, and designated different roles and responsibilities to the various state and local agencies involved in implementation of

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the Commission incorporate those comments into the formal record for this proceeding.

the statute. In SBX1-2, the Legislature acknowledged the important role of local governance, with the final statute retaining the concept of two jurisdictional approaches for oversight; one for retail sellers, subject to CPUC jurisdiction, and one for POUs, subject to the jurisdiction of their respective governing boards, councils, or commissions. This was neither an oversight, nor a mistake on the part of the Legislature, but a very deliberate act done to recognize the two distinct utility ownership models that exist in California, and preserve the integrity of the local governance structure under which POUs operate. In developing procedures for enforcement of the RPS for POUs, it is absolutely imperative that these statutory distinctions be recognized and reflected in the final regulations.

In addition to setting forth the Commission's enforcement role, as defined in PUC section 399.30(l), the Proposed Regulations also propose a single, comprehensive framework for implementation of the RPS for POUs. While this comprehensive structure is helpful in many respects, it also presents conceptual issues in that it blurs the distinction between the role of the POUs and their governing boards, versus the role of this Commission. *Commission discretion to apply or reject the application of alternative compliance mechanisms adopted by a POU, for example, would usurp the regulatory authority that is vested in the local governing board of that POU.* The Proposed Regulations should be revised to expressly recognize these different roles.

The Proposed Regulations, and accompanying NOPA documents should also be revised to reflect the fact that the single, statewide RPS mandate was not intended to create a single, statewide regulatory structure, and indeed, the legislation specifically acknowledges the fact that retail sellers (including electrical corporations, as well as community choice aggregators, and energy service providers) are governed in a much different manner than POUs. As noted in the Legislative Counsel's Digest, SBX1-2 "*generally* make the requirements of the RPS program applicable to local publicly owned electric utilities, *except that the utility's governing board would be responsible for implementation of those requirements*, instead of the PUC, and *certain enforcement authority with respect to local publicly owned electric utilities would be given to the Energy Commission* and State Air Resources Board, instead of the PUC."[4] SBX1-2 **does not**

[4] SBX1-2, Legislative Counsel's Digest, section (1), emphasis added.

change the fundamental, underlying structure of the State's RPS program, wherein the local governing boards of POUs oversee the RPS programs of their respective POUs.

II. ABOUT NCPA

NCPA was established in 1968, and is a California Joint Powers Agency. NCPA's members are primarily publicly owned entities with interests in the purchase, aggregation, scheduling, and management of electrical energy. NCPA is a long-time supporter of a 33% statewide RPS target for all state utilities. NCPA was pleased to see the Legislature's recognition in SBX1-2 that the oversight of POU RPS programs would remain – as is now the practice – with the local governing boards and elected officials who are directly accountable to their residents and communities. NCPA supports federal, regional, and statewide efforts to reduce greenhouse gas emissions and combat global climate change, and believes that its members' RPS programs help to advance those efforts. NCPA and its members have a long history of environmental stewardship and have expended considerable resources to develop significant amounts of renewable electric generation assets, investments that are consistent with the fundamental objectives of climate change policy and a 33% RPS.[5]

The POUs are fully cognizant of their obligation to comply with the 33% RPS, and indeed have been taking steps since before passage of SBX1-2 to procure the renewable resources and related transmission rights necessary to deliver renewable energy to their service areas. This proceeding is not about challenging the statute or the intent of the Legislature to have 33% of statewide retail sales served by renewable energy resources. The key concerns raised in these comments address the unlawful expansion of Commission authority into matters that are reserved to the sole discretion of the POUs and their local governing boards. This important issue should not be obfuscated by unfounded claims that POUs are not complying with the Legislature's intent. Indeed, charges that POUs will claim they have the discretion to adopt a procurement plan that allows the use of an ineligible resource for portfolio content category (PCC) 1, for example are nothing more than red herrings. Such an action is obviously unlawful;

[5] All NCPA members, consistent with SBX1-2 and previously with Senate Bill 1078 (Sher), formally adopted RPS programs that are tailored to their individual communities. Collectively, NCPA members have greater than 20% RPS, and many individual NCPA member utilities already have California-eligible RPS levels that exceed a 33% threshold.

the types and quantities of resources that count towards the procurement targets and balancing requirements are defined and verifiable. Further, the Commission has statutorily defined criteria that can be applied and verified when making a determination of whether or not the resource at issue can be counted towards PCC 1. That is clearly distinguished from situations where the POUs adopt measures under 399.30(d), and most specifically, 399.30(d)(3) – cost limitations for renewable expenditures – where the statute has granted discretion to the POUs and their governing boards.

It is imperative that the Commission and stakeholders recognize that the concerns raised herein are **not** about redefining the procurement target or the PCCs, nor is this about using POU governing authority discretion to alter the statutorily mandated compliance periods. Rather, the concern raised herein is distinct in that it directly touches upon POU rate setting and local governance authority. It is unlawful for the Commission to have unbounded discretion to second-guess or ignore a POU governing board action. Failure to contain the scope of the CEC's discretionary review authority over the POU alternate compliance measures will directly impinge upon the ratemaking authority of the local governing board. To the extent that POUs are unable to meet the statutory mandates, and that non-compliance is not excused by an alternate compliance measure adopted by the POU, the Commission has proposed procedures in sections 3208 and 1240 that include a comprehensive public process under which the Commission may determine a POU's compliance with the RPS, and if necessary, issue a notice of violation and correction.

III. COMMENTS ON THE SCOPE OF COMMISSION AND LOCAL GOVERNING BOARD AUTHORITY

A. The Commission and Local Governing Boards Each Have a Role in SBX1-2 Implementation that Must be Recognized in the Final Regulations

NCPA is concerned that the lines between POU and Commission jurisdiction, which are clearly delineated in SBX1-2, have been blurred in the process of attempting to develop a comprehensive set of regulations applicable to the entire renewable portfolio program. Consistent with section 399.30(l), the Commission regulations should be strictly focused on verification of eligible resources and the compliance period review of POU procurement

activities for purposes of determining whether or not the POU has met the RPS mandates set forth in SBX1-2. The statute expressly grants the Commission enforcement authority. Public Utilities Code Section 399.30(l) provides that:

> *On or before July 1, 2011, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The 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 pursuant to subdivision (o).*[6]

In the Proposed Regulations, the Commission has generally taken the position that it is necessary for the agency to interpret and/or define all provisions in SBX1-2 in order to enable the Commission to enforce the RPS mandates set forth in Article 16.[7] Instead, the regulations should be strictly limited to *procedures for enforcement* of the RPS. For those areas where the statute grants discretion to the local governing boards, the final regulations must acknowledge that discretion, and not attempt to impose or otherwise mandate restrictions or provisions that are not authorized by the underlying legislation.

Throughout this proceeding, some have expressed a desire to have the POU RPS programs conform to the CPUC's implementation of the RPS for retail sellers.[8] While there may be instances where the two programs are identical – including in the processes for verification of compliance with the overall quantities of renewable procurement and the PCCs – the statute simply does not allow for a single program to be applied to both POUs and retail sellers. The desire to implement analogous provisions must be reconciled with the fact that the statute creates two separate renewable portfolio programs, albeit with consistent objectives. Indeed, all retail sellers *and* POUs must procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatt hours sold to the utility's retail end-use customers each compliance period.[9] Each

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[6] CARB's penalty authority is addressed in PUC section 399.30(m).

[7] ISOR, p. 49.

[8] CPUC Rulemaking (R.) 11-05-005.

[9] § 399.15(a) and § 399.30(a).

retail seller *and* POU must meet these renewable portfolio requirements by acquiring resources from one of three separate categories of renewable resources defined in Public Utilities Code (PUC) sections 399.30(c) and 399.16. These requirements are not discretionary. There are portions of PUC section 399.30 that require various aspects of the POU renewable energy resource procurement programs to be consistent with provisions of PUC sections 399.16 and 399.15, which generally apply to retail sellers. However, the very fact that the statute sets up separate and distinct sections to address electrical corporations versus POUs underscores the actuality that the programs are NOT intended to be one and the same.

B. The Commission has Improperly Characterized a Problem where None Exists

The Proposed Regulations appear to be crafted – at least in part – to address a problem that simply does not exist. The NOPA states that the "*problem the Energy Commission is attempting to address with the proposed regulation is the inconsistent application and enforcement of the state's RPS to POUs.*"[10] The statute does not direct the Commission to address this issue. Indeed, had the Legislature wanted the POU and retail seller programs to be administered and enforced in the same manner, the statute would not include so many distinctions between the two programs, all the way through to the agencies responsible for enforcement and the potential imposition of penalties. The NOPA correctly notes that "[u]nder SBX1-2, POUs are now subject to many of the same or similar RPS requirements as retail sellers."[11] However, this does not translate into having the Commission interpret all aspects of the statute to "determine whether those actions meet the RPS procurement requirements in the law."[12] The ISOR goes on to provide that the "proposed regulations determine what POU action is required by the law; so when the Energy Commission evaluates a POU's actions, it may determine whether the POU complied with the law."[13] However, the premise set forth in the ISOR is fundamentally flawed since it is the *statute* that determines what POU action is required by law, and not the Commission's enforcement regulations.

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[10] NOPA, pp. 5-6.

[11] *Id.*

[12] *Id.*

[13] *Id.*

This position appears to stem from an erroneous interpretation of the statute that likens the role of the Commission over the POUs to that of the CPUC over retail sellers (and the investor owned utilities (IOUs) in particular). There are several provisions in the Proposed Regulations where the Commission has taken on the role of interpreting the statute, as the CPUC would for retail sellers. This expanded interpretation of the Commission's authority is not consistent with the provisions of PUC sections 399.30, as the statute does not grant the CEC the same role over the POUs that the CPUC has over retail sellers. In order to properly draft and implement the regulations for enforcement of the RPS, it is imperative that the distinctions between the CPUC's role vis-à-vis the retail sellers and the CEC's role vis-à-vis POUs be recognized.

The Commission's enforcement role for POUs is the "next step" in the verification process. The Commission is charged with verifying the PCCs created by SBX1-2 that distinguishes between types of eligible renewable energy resources, as well as ensuring that the total amount of renewable energy is procured for each compliance period. This verification is done for both POUs and retail sellers. Once the verification process is complete, the CPUC takes on the enforcement role for the retail sellers, and this Commission for the POUs. That role involves a review of the verified information to determine if the requirements have been met, and if not, if they are excused by the optional compliance measures that may have been adopted by the POU. This review of the verified data is a ministerial act. Likewise with regard to reviewing whether or not annual and compliance period reports were timely submitted, and whether procurement plans and enforcement programs were timely forwarded to the Commission.

The Commission has noted that the Proposed Regulations will serve as a tool to assist the POUs "by providing direction and guidance on how the Energy Commission will interpret, apply and enforce the law."[14] This guidance, however, must be limited to the scope of matters that are within the Commission's purview, and not extend to imposing the Commission's interpretation in the place of the POU's interpretation for those matters that are left solely to the discretion of the local governing boards. To the extent that the POUs are required to follow specified procedures for submitting various information and reports so the Commission "may verify and

[14] ISOR, p. 4.

determine compliance with the RPS requirements,"[15] those procedures are necessarily limited to the verifiable matters defined in the statute.

C. The Proposed Regulations Fail to Recognize the Role of the Local Governing Boards of the POUs in Implementing the RPS

Throughout the NOPA and other Rulemaking materials, the Commission recognizes the role of the CPUC, as well as its own authority to implement the RPS, but fails to recognize the role that the Legislature expressly granted to the POUs and their governing boards. Indeed, the Commission's authority over the POUs is clearly not analogous to the CPUC's authority over the retail sellers (and most notably, the IOUs), yet this distinction is not recognized in the Proposed Regulations. For example, the ISOR states that "[i]n developing the proposed regulations, the Energy Commission worked with the CPUC to ensure the proposed regulations were consistent with the rules developed by the CPUC for retail sellers."[16] The Commission has taken the position that this role is necessary because the agency sees itself in the same role as the CPUC vis-à-vis the retail sellers. However, this is not the case, and indeed, the statute does not require consistency with the CPUC's rules, but rather consistency with the Public Utilities Code sections set out therein. The statute does not authorize, nor is it proper, for the CPUC to define the rules applicable to POUs, yet that is the practical outcome when the Proposed Regulations defer to the CPUC's interpretation of the statute. Nothing in the statute permits the Commission to have the same role over the POUs as the CPUC has over retail sellers for purposes of defining the RPS rules. The Legislature left the POU – not the CPUC or this Commission – with exclusive purview over various aspects of its program, most notably the optional compliance measures that may be adopted under PUC section 399.30(d). If a POU intends to apply excess procurement from one compliance period to the next, delay timely compliance due to operational constraints, or establish a limitation for procurement expenditures, it must adopt a measure to do so. The scope of these measures is defined in the applicable statutory provision, and is not subject to further interpretation or more extensive requirements in the enforcement regulations.

[15] ISOR, p. 49.

[16] ISOR, p. 6.

D. The Role of the CPUC is Very Different than the Role of this Commission

As the Commission has acknowledged, the Legislature granted implementation authority to various agencies, including this Commission and the CPUC. However, the scope of that authority is not the same. There are several instances in the RPS enabling legislation that clearly distinguish between the roles of the CEC and the CPUC, just as there are clear distinctions between some of the requirements for POUs versus retail sellers.

For example, PUC section 399.13(a)(1) provides that the CPUC "shall direct each electrical corporation to annually prepare a renewable energy procurement plan." Section 399.13(c) provides that the CPUC "shall review and accept, modify, or reject each electrical corporation's renewable energy resource procurement plan." The provisions in PUC section 399.30 relevant to development and adoption of POU RPS plans do not include corresponding language regarding the Commission's approval of the POU plans. Similarly, PUC sections 399.30(a) and 399.15(a) each pertain to establishing an RPS and grant analogous authority to the CPUC and the POUs.

PUC section 399.15(a) provides, in pertinent part, that the:

> "**[CPUC] shall establish a renewables portfolio standard** requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of total kilowatthours [sic] sold to their retail end-use customers each compliance period." (Emphasis added)

PUC section 399.30(a), which addressees the RPS requirements for POUs, provides that:

> "each **local publicly owned electric utility shall adopt and implement** a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatthours [sic] sold to the utility's retail end-use customers. . .:" (emphasis added)

Likewise, PUC section 399.15(b) notes that "the **[CPUC] shall implement renewable portfolio standard procurement requirements** only as follows . . ", while PUC section 399.30(b) provides that "**the governing board shall implement procurement targets** for a local publicly owned electric utility . . ." (emphasis added) In each instance, there is a clear correlation between the oversight and governing role of the CPUC and the local governing board

of the POU. In each of these sections, the CPUC and the POU have similar roles and responsibilities.[17]

IV. POU DISCRETION WITH REGARD TO ADOPTION OF OPTIONAL COMPLIANCE MEASURES MUST BE RECOGNIZED IN THE FINAL REGULATIONS

The statute gives local governing boards the discretion to adopt alternate compliance measures. Section 399.30(d) provides that:

> "The governing board of a local publicly owned electric utility may adopt the following measures:
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> (1) Rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers pursuant to Section 399.13.
>
> (2) Conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15.
>
> (3) Cost limitations for procurement expenditures consistent with subdivision (c) of Section 399.15."

A. The Commission Does Not Have the Authority to Reject POU Measures

1. The Statute Gives Broad Discretion to the POUs over Alternate Compliance Measures

Section 3206(e) states that the Commission will not apply an optional compliance mechanism that the Commission determines is not consistent with the law. While this provision is fairly innocuous on its face, the potential implications are significant. This is due to the fact that this language would allow the Commission staff reviewing the compliance filing of a POU to reject a POU's optional compliance measure without any defined criteria or processes. NCPA understands that the Commission is not asserting "approval" authority over the optional compliance measures. However, by refusing to apply a measure that a POU has adopted and has applied when making its internal compliance determination, that is essentially what the Commission *is* doing. The distinction between "failing to approve" versus "not applying" a

[17] Another example of the Legislature's recognition that POU and retail seller programs are not intended to be exactly the same is found in Section 399.31. In this section, the legislature expressly requires the CEC to approve sales of RECs to retail sellers from POUs, if certain conditions are met. The same requirements are not imposed on sales between POUs.

lawfully adopted measure is one without substance because the end result is the same. Section 3206(e) would allow, the Commission – in its sole discretion – to refuse to apply any of the optional compliance provisions, including a cost containment measure, if the agency deems the provisions to be unlawful. The Commission lacks the authority to make this assertion. The actions of the local governing boards are presumed to be valid. It is not lawful for the Commission to refuse to apply a lawfully adopted rule. Because it is the POU and not the Commission that has the authority to adopt regulations "in the same manner" (PUC section 399.30(d)(1)) or "consistent with" (PUC section 399.30(d)((2) and (3)) the provisions of PUC sections 399.13, and 399.15(b) and (c), respectively, section 3206(e) of the Proposed Regulations exceed the Commission's authority, and references to the Commission's determination should be stricken from the document. The Proposed Regulation should be revised to strike this determination.

This revision preserves the Commission's authority to enforce the statute, without impinging upon the authority solely vested in the local governing boards. While the statute requires the Commission to adopt regulations specifying procedures for enforcement of the RPS under PUC section 399.30(l), unlike the alternate compliance measures that are adopted by the CPUC for the retail sellers, this Commission does not have the authority to adopt the measures for the POUs. That power rests exclusively with the POUs. There is an evidentiary presumption that the local governing boards of the POUs are acting in a lawful manner in implementing the various optional compliance mechanisms,[18] which should be recognized in the final regulations.

2. Section 3206(e) is Contrary to the Assumption that the Local Governing Board is Acting Properly

In asserting that the Commission may elect not to apply a cost containment measure that the Commission determines is inconsistent with the statute or its enforcement regulations, the Commission unlawfully replaces its judgment in the place of the local officials charged with carrying out the mandates of the SBX1-2. A Commission determination that the discretionary action of the governing board was invalid is contrary to the presumption that an official duty is

[18] In order to overcome this presumption, there must be some evidence or information to indicate that the POU acted improperly in adopting the provisions at issue. California Evid. Code, § 664; [providing that "[i]t is presumed that official duty has been regularly performed].

regularly performed.[19] The POUs are expressly directed to implement the statute; that act is presumed to be valid. Any challenge to the governing board's action must overcome this presumption:

> "The same presumptions that favor the constitutionality of state legislative enactments apply also to ordinances. Every presumption is in favor of constitutionality and the invalidity of a legislative act must be clear before it can be declared unconstitutional. The action of the legislature will be upheld by the courts unless beyond its powers, or its judgment or discretion is being fraudulently or corruptly exercised."[20]

Furthermore, the Commission would make this "determination" in the absence of defined criteria or standards. It would substitute the judgment of the local governing officials with that of the Commission staff member initially reviewing the provision, and would make a unilateral determination that the local governing board acted unlawfully or somehow abused its discretion in adopting the measure at issue. This far exceeds the Commission's role to review the compliance filings submitted by the POUs. Indeed, as drafted, the Commission could even decline to apply an alternate compliance measure without engaging in a complaint proceeding.

There is a fundamental disconnect between this one provision and the rest of the Proposed Regulations as it pertains to enforcement and procedures. Section 3208 sets forth the grounds upon which the Commission may initiate a complaint proceeding. In the ISOR, the Commission sets forth a more comprehensive list of potential violations for which a complaint may be issued.[21] The ISOR goes on to explain that the assessment of a POU's compliance with the RPS procurement and reporting requirements will be conducted in conjunction with the Commission's annual RPS verification process, and that during this process the Commission will verify the RPS procurement claims. The same verification process is used for both POUs and retail sellers.[22] The distinction between the Commission's role in verifying compliance with the overall RPS mandate each compliance period and the various PCCs versus the optional

[19] Evidence Code § 664.

[20] Porter v. Riverside (1968) 261 Cal. App. 2d 832.

[21] ISOR, pp. 43-44.

[22] ISOR p. 44.

compliance measures lies in the ministerial nature of the verification. Determining if reports are timely submitted or if resources meet a certain content category is *quantitative and ministerial*. On the other hand, a "determination" on the validity of an optional compliance measure, such as whether the POU's cost limitation provisions for renewable expenditures is "valid," is a *discretionary* act. The Commission cannot insert its judgment for that of the local governing board of the POU.

B. It is Unlawful to Add Extra-Statutory Requirements to the Cost Limitation Provisions

The provisions regarding expenditure limitations set forth in the Proposed Regulations are not consistent with the sections of the statute that are applied to the POUs. PUC section 399.30(d) allows a POU to adopt a measure for cost limitations for renewable expenditures, consistent with PUC section 399.15(c). Section 399.15(c) provides that:

> "The commission shall establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard. In establishing this limitation, the commission shall rely on the following:
>
> (1) The most recent renewable energy 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."

POUs that adopt cost limitations for renewable expenditures must rely on each of these elements when establishing their limit. However, the Proposed Regulations would add elements that are *not* part of PUC section 399.15(c) and not referenced in PUC section 399.30(d). As drafted, the Proposed Regulations also includes the requirements set forth in PUC section 399.15(d). The ISOR states that:

> *"POU should be subject to the same requirements of [PUC] section 399.15(c) and (d) to apply [PUC] section 399.15(c) to the POUs consistently. Staff could*

find no reasons for holding POUs to a different standard than retail sellers regarding the rules for cost limitations."[23]

This statement fails to acknowledge or recognize the fact that POUs have a different rule because the statute expressly authorizes a different rule – SBX1-2 cites only to PUC section 399.15(c) and *not* PUC section 399.15(d). Had the Legislature wanted the POUs to apply *both* provisions, they would have so stated in the legislation.

Provisions from PUC section 399.15(d) are used by the CPUC to develop the cost limitations for IOUs, and are not required of the POUs. That is not to say that those factors may not be considered by the POUs as part of their regular deliberations if they so decide. However, it is not lawful for this Commission to require those elements. The POU programs must comply with the statutory provisions, and not additional requirements. As long as the POU relied on each of the three factors set forth in PUC section 399.15(c) when establishing its cost limitations for expenditures on renewable resources, the measure is valid. The myriad other considerations that will play into the calculation of this critical element are subject to the sole discretion of each POU. Indeed, the vast diversity between the various POUs and each POU and retail seller, underscores the importance of having separate and distinct cost limitation calculations for each utility.

For example, one of the most fundamental functions of a local governing board is establishing appropriate rates for electric service. Ratemaking is a complex process that takes into account myriad factors that impact the agency's provision of safe and reliable electricity to its customers. The POU governing board has sole discretion over setting rates for its utility. Those rates, in turn, must be fair, reasonable, just, uniform, and nondiscriminatory.[24] The rates are not subject to challenge unless it is demonstrated that the POU acted in an arbitrary and capricious manner. The establishment of cost limitations for renewable expenditures is essentially part of the ratemaking process. Just as the CPUC will establish cost limitations for each electrical corporation taking into account a number of factors *specific to that IOU*, the local governing boards of the POUs will do likewise for their individual utility.[25]

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[23] ISOR, p. 33.

[24] *American Microsystems, Inc. v. City of Santa Clara* (1982) 137 CA3d 1037, 1042.

[25] While ideally all retail sellers and POUs will be able to procure the necessary renewable products without

The statute authorizes the POU to adopt the measures, not the Commission. Attempting to define (and potentially reject) these provisions as part of the RPS enforcement regulations usurps an express grant of authority to the POUs and fails to recognize the discretion reserved to the local governing boards of the POUs under the statute. This section – more than any other – is entrenched in POU-specific facts and factors. It involves both economic and cost information; the manner in which that information is utilized to set expenditure limitations is different than the manner in which that information may be used for analytical purpose. For example, the Commission is required to compile economic information on the administrative cost of implementing the RPS regulations as part of the Office of Administrative Law process for submitting the final regulations for approval. The numbers and data that are utilized for that exercise are neither related to a POU's overall RPS compliance costs, nor to the numbers that are used for determining what a reasonable cost limitation should be for purposes of procuring renewable resources. Information relevant to the administrative cost of implementing the RPS is not the same as data relevant to expenditures on RPS eligible resources. This is especially significant in light of the fact that the POU has complete discretion over matters regarding "the mix of eligible renewable energy resources procured by the utility and those additional generation resources procured by the utility for purposes of ensuring resource adequacy and reliability" and "the reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility."[26] If the final regulations are to include language regarding the cost limitation provision referenced in PUC section 399.30(d)(3), it should be narrowly focused to include *only the statutorily required elements*.

Accordingly, section 3206(a)(3) should be revised to read:

> (3) Cost limitations
> (A) A POU may adopt rules for cost limitations on the procurement expenditures used to comply with its RPS procurement requirements.
> ~~(B) Such cost limitation rules shall ensure that:~~

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exceeding their cost limitation provisions, it is important to note that the legislature did not intend for the RPS mandate to adversely impact electricity rates. *See*, for example, PUC Section 399.11(e)(1) "Supplying electricity to California end-use customers that is generated by eligible renewable energy resources is necessary to improve California's air quality and public health, and the commission shall ensure rates are just and reasonable, and are not significantly affected by the procurement requirements of this article."

[26] § 399.30(k).

~~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~~B) 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.

C. Section 3206(d) Should be Revised to Add Certainty and Clarity

Despite the presumption that the POU governing board has regulatory authority to perform its duties, some POUs may elect to have the Commission review their alternative compliance mechanisms, utilizing the provisions set forth in section 3206(d). Section 3206(d) would allow a POU to seek Commission review of a POU's proposed measure(s). This provision, however, fails to provide certainty or specificity to the POU regarding the timing of the review, or the criteria that will be utilized. Indeed, that section would even allow the Commission to seek additional input from third parties. This is problematic in that it completely disregards the authority that the POU has to adopt a discretionary measure.

To the extent that the POU does seek such an opinion from the Commission, the provisions of section 3206(d) should be drafted in a manner that provides certainty. As proposed, there are no restrictions or parameters around the scope of the review, nor even what information may be reviewed. Neither do the provisions provide any certainty regarding the timing of the review, a factor that negates any assurances that would be gained by invoking this voluntary review. If the provisions are to provide any true guidance to the POU, it must be revised to include a date certain for the Commission's reply, and the scope of review used to make the determination must be contained.

The section should be revised to read:

> Section 3206(d): A POU may request the Executive Director of the Commission to review any rule or rule revision adopted under this section 3206 to determine whether the Commission believes it to be consistent ~~its consistency~~ with the requirements of Public Utilities Code section 399.30. The Executive Director shall make a determination~~, to the extent reasonably possible,~~ within 120 days of receipt of a complete request for review. A complete request for review shall include the rule or rule revision and all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision. The Executive Director may request additional information from the POU in order to make a determination. ~~Failure of the Executive Director to make such determination within 120 days of receipt of the complete request for review shall not be deemed a determination that such rule or rule revision is consistent with the requirements of Public Utilities Code section 399.30.~~

V. OTHER COMMENTS REGARDING SPECIFIC SECTIONS OF THE DRAFT REGULATIONS

A. Grandfathered Resources Should be Available for PCC Designation

Renewable resources from contracts entered into prior to June 1, 2010 that meet all of the current renewable resource eligibility requirements should be counted towards either the procurement requirement alone, as a count-in-full resource, or towards the balancing requirements. PUC Section 399.16(d) provides that resources from "any contract or ownership agreement originally executed prior to June 1, 2010 "*count in full* towards the procurement requirements" (emphasis added). The Proposed Regulations adopt the position that this means that all eligible resources from contracts executed prior to June 1, 2010 apply to the overall compliance obligation before determining the total amount of the portfolio that is used to calculate the balancing requirements.

While the position is technically correct, the final regulations should also include an option that allows POUs that made significant financial investments in renewable energy resources that meet *the current eligibility requirements for* PCC requirements to elect to use the product for PCC balancing requirements. The key issue here is recognition of early investments in eligible renewable energy products. Allowing POUs to make such an election is entirely consistent with the intent of the statute to allow POUs to count these resources "in full," without

negating the full value of the PCC resources that the POUs and their ratepayers invested in.[27] Disallowing the use of PCC-eligible resources from contracts that were entered into prior to June 1, 2010 has an adverse economic impact on POU ratepayers; requiring a POU to make additional costly investments in PCC products if the prior investments in these eligible resources is not recognized.

The provisions of section 3202(a)(2) should be revised to recognize that resources from agreements executed prior to June 1, 2010, "count in full" **either** by being deducted from the total RPS compliance obligation subject to the balancing requirements, **or** by allowing pre-June 1, 2010 resources that meet the current PCC-eligibility requirements to count towards the compliance period balancing requirements.

B. The Procurement Targets for Each Compliance Period are Properly Defined

The Proposed Regulations properly exclude a demonstration of quantitative requirements for RPS procurement during the intervening years of the first three compliance periods. They also properly adopt a compliance obligation for the second and third compliance periods that is consistent with the statute. The statute does not mandate a numerical calculation or require minimum procurement requirements during the intervening years of the second and third compliance periods.

The calculation for determining the RPS procurement targets for each compliance period set forth in the Proposed Regulations represents a reasonable interpretation of the statute. It also recognizes the very real limitations that are associated with developing renewable energy resources. It is undisputed that procurement of renewable resources varies over time for myriad reasons. Variations in the availability of renewable resources and the uncertainties in the contracting process make it difficult to set straight-line trajectories. Using a straight-line approach would undermine the flexibility and primary purpose of the multi-year compliance periods established by the statute, and as such, NCPA supports the provisions of section 3204(a), which establishes RPS procurement requirements for the second and third compliance periods.

[27] Because this section of the statute focuses on the contract execution date, and not the date the eligible facility began generation, the same result could be achieved by executing a new contract with the same terms. Thus, allowing the election to use the currently eligible resources to count towards the applicable PCC would avoid the absurd result of forcing an entity to enter into a new contract for essentially the same resource.

Specifically, this section would require the sum of 20% of a POU's 2014 retail sales, 20% of its 2015 retail sales, and 25% of its 2016 retail sales for the second compliance period, and for the third compliance period, the RPS procurement requirement equates to the sum of 25% of 2017 retail sales, 25% of 2018 retail sales, 25% of 2019 retail sales, and 33% of 2020 retail sales. This calculation reflects a total of at least 25% RPS by 2016 and 33% RPS by 2020, as required by Section 399.30(c). The need to reach 25% by 2016 and 33% by 2020 will require POUs to either procure increasing amounts of renewable energy during the intervening years, or rely on long term planning commitments that are intended to result in the necessary RPS procurement. Either way, POUs will be progressing towards the required amounts or risk failure in attaining their RPS mandate. The Commission will also be able to review the progress each POU is making as part of its annual report, which includes progress towards meeting the RPS (pursuant to PUC section 9507(b)(2)).

NCPA understands that other interests have taken the position that this Commission must use the intervening procurement targets adopted by the CPUC in Decision (D.) 11-12-020. This position is not supported by the law. The RPS procurement requirement set forth in section 3204 is not only reasonable, but it represents sound public policy and recognizes the variances associated with renewable energy procurement that led to the adoption of a multi-year compliance periods for the first nine years of the new program. The statute does not, as some have advocated, require the POUs to meet quantitative procurement targets during the intervening years of the second and third compliance periods. Neither does the statute require the POUs to adhere to a standard or interpretation adopted by the CPUC, nor for the Commission to endorse such an interpretation.

It is important to note that "consistent" programs are not necessarily going to be exactly the same. The POUs are required to adopt provisions "consistent with" the statutory provisions applied to the retail sellers in several instances, but this does not mean that the CPUC's interpretation of those provisions for the purposes of governing their jurisdictional entities is the same as how the statute is interpreted for POUs. There is no requirement in the statute for the POUs to adopt the CPUC's interpretation, nor to wait for the CPUC to take action on these issues prior to adopting their own RPS program measures. Furthermore, the CPUC's conclusion in D.11-12-020 is based on application of sections of the statute that are *not* applicable to the POUs,

including PUC section 399.15(b)(2)(C). Even the CPUC has acknowledged that the rules applicable to the IOUs do not automatically apply to other entities, including other CPUC-jurisdictional entities such as energy service providers and community choice aggregators. See, for example, D.10-03-021, where the Commission noted that it "has different responsibilities with respect to utilities, on the one hand, and ESPs and CCAs on the other. . . . [the CPUC] does not set the rates of ESPs or CCAs and has no responsibility to ensure that their charges to their customers are just and reasonable."[28] Accordingly, the provisions of section 3204, which set forth the procurement targets for each compliance period, are consistent with the provisions of SBX1-2.

C. Development of the POU Renewable Energy Resources Procurement Plan is Solely within the Control of the POU

The Proposed Regulations properly recognize that adoption and implementation of POU renewable energy resources procurement plans are within the exclusive purview of the local governing boards of the POU. The Legislature sent a clear message regarding the entity responsible for adopting and implementing the POU 33% RPS program in that the legislation speaks only to the responsibility of the POU and its local governing board and not of any other oversight authority.[29] Section 3205 of the Proposed Regulations requires the POU to adopt a renewable energy resources procurement plan within 60 days of the effective date of the final regulations, detailing how the POU will achieve its RPS procurement requirements for each compliance period. The Proposed Regulations would also require the POU to submit the plan, and any revisions or updates to the plan, to the Commission within 30 calendar days of adoption. As noted, there are no statutory provisions that mandate the POUs to provide their renewable energy resources procurement plan to the CEC, nor for the CEC to approve or disapprove any portions of those plans. The reason for this is simple – there are more than three dozen POUs, each with an individual approach to renewable energy resources procurement planning that best meet the needs of their jurisdictions and electricity customers. Mandating that every POU's renewable energy resources procurement plan look like the detailed plans that are mandated by

[28] *Id*. at 48.

[29] § 399.30(c).

the legislation for the retail sellers is impractical. Larger POUs may have processes and procedures in place for creating annual renewable energy resources procurement plans, and for including within those plans details regarding specific contracts and procurements that are anticipated each year. Other POUs, particularly smaller entities, may have renewable energy resources procurement plans that outline procurement targets and strategies consistent with the requirements set forth in section 399.30(a), but leave details and annual reporting outside of the plan itself. Either approach – and indeed any variation in between – is acceptable and consistent with the legislation.

Although there is no statutory requirement for the POU to provide the CEC with a copy of the plan or any changes to the plan, it is reasonable for the Commission to have access to a copy of the most recent POU procurement plan. While the Proposed Regulations require the POU to include information on how the POU will meet its RPS requirement in the plan, it properly leaves the extent and scope of that information to the sole discretion of the POU. Furthermore, the final regulations should clarify that to the extent that POU has already adopted a renewable energy resource procurement plan that details how it will achieve the RPS procurement requirements, the POU is not required to update or revise such plan within 60 days of the effective date of the final regulations.

D. The Proposed Regulations Properly Note that Overlapping Nature of POU Compliance Reporting

1. Stakeholders and the Commission Should Continue to Review the Form of Information Submitted

Each year, POUs provide the Commission with data regarding various aspects of their renewable programs and utility operations. The passage of SBX1-2 and implementation of the 33% RPS requires that additional information be provided each year. Both Commission staff and stakeholders have recognized that a significant amount of information may be provided to the Commission under more than one submission. While this may work in the nascent stages of program implementation, the Commission and stakeholders should continue to strive towards a framework that reduces the amount of paperwork submitted to the Commission each year.

NCPA appreciates the recognition in section 3207(c) that the data required by the CEC for RPS compliance purposes may be combined with existing reports that are already provided to the Commission. The Proposed Regulations would require POUs to submit a great deal of detailed information to the CEC each year, with additional information required at the end of each compliance period. As part of the ongoing development of streamlined reporting rules and requirements, it is appropriate for the Proposed Regulations to provide that:

> "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." [30]

At the same time, it is also appropriate for stakeholders and the agency to continue to work together to develop a single, comprehensive report that does not require the submission of the same information in multiple reports, or the need for extensive cross-referencing of specific data. Ideally, the reporting process will continue to evolve in a manner that meets the Governor's objective of eliminating the submission of unnecessary reports, and also reduces the administrative burden on the agency providing the information and the agency receiving the information.

2. Annual and Compliance Period Reports Should be Streamlined

NCPA urges the Commission to revise the current reporting requirements to so that annual reports are only submitted in the intervening years of a compliance period, and for each compliance period (and annually after 2021), a single report would be provided. The current wording in the Proposed Regulations creates a burdensome reporting structure where information is submitted under two different templates for each compliance period. In order to streamline the data provided, it would be more feasible to create annual compliance reports for the intervening years, and have a separate, single report for the end of each compliance period.

[30] Section 3207(c).

3. Additional Time Should be Allowed for 2011 and 2012 Reporting

Section 3207(c) requires the annual report to be submitted by September 1, 2013, or 30 calendar days after the effective date of the final regulations. The annual report due in 2013 would include data for all of 2011 and 2012. As such, and given the fact that this will be the first time that the POUs will be utilizing the Commission's new forms for compliance reporting, this deadline will likely not provide sufficient time to gather the necessary data. Additional time should be provided to submit the cumulative 2011 and 2012 data.

Alternatively, given the late nature of the pending approval of these regulations, for purposes of the first compliance period, the Commission should consider the elimination of the September 2013 annual report, and rather include all necessary information for the first compliance period in the filing to be submitted in June 2014.

E. The Proposed Regulations Includes a Thorough and Robust Enforcement Procedure

After identifying the various items that may lead to the filing of a complaint in section 3208, the Proposed Regulations outline the enforcement process that is to be undertaken by Commission staff in section 1240. Section 1240(b), properly concludes that only Commission staff may initiate a complaint proceeding against a POU for failure to meet the RPS. Since the Legislature tasked the Commission with enforcing the mandate as it relates to the POUs and since the Commission is in possession of all of the information that is used to determine compliance, it is proper that the agency be the sole entity that can file a complaint. It is important to note that this limitation in no way impairs the public's ability to participate in proceedings regarding the POU's RPS program. POUs' procurement plans and enforcement programs are all adopted at publicly noticed meetings and are subject to public review and scrutiny prior to approval. Furthermore, as the Commission noted, the public also has an opportunity to participate in the Commission's verification proceedings each year.[31]

Pursuant to the procedure set forth in the Proposed Regulations, once a complaint is filed and served, the POU has 45 calendar days to file an answer. Other entities may participate in the

[31] ISOR, p. 46.

proceeding by providing oral or written comments, and the Commission retains the ability to file a response, if necessary. Ultimately, the matter is set for a hearing and issuance of a decision, and then, if the POU is found to be noncompliant, there is a referral of a notice of violation to the California Air Resources Board (CARB) "based on the final decision of the full Commission."

This procedure outlines a deliberative process during which the Commission can present evidence of purported non-compliance, and the POU can present its position, third parties may participate, and then, there is a final Commission decision. It is not until the Commission has issued a final decision that a determination of non-compliance is confirmed. This process also preserves the checks and balances drafted into the statute, whereby the Commission – upon the determination of noncompliance – refers the matter to CARB, who has the sole jurisdiction over matters regarding the imposition of penalties. These provisions provide ample opportunity for the POU and the Commission to work together to review the file and address the purported noncompliance, and if appropriate, take corrective action.

F. Historic Carryover Provisions Should not Impose Retroactive Requirements on POUs.

Section 3206(a)(5) represents a reasonable recognition of past RPS procurement decisions and early actions of POUs that resulted in significant investments in renewable resources. It recognizes that these investments were made consistent with the State's renewable energy objectives and would allow the utility to carry-over historic RPS-eligible generation from before the adoption of the new 33% RPS mandate. As proposed, after netting the RPS procurement (inclusive of the annual procurement target increase) from the period 2004 to 2010, as long as the net of that calculation results in an annual procurement target for 2010 that is no less than 20%, that historic procurement can be carried over to the 33% program, into any compliance period. However, in order to be able to use the RECs for compliance beginning in the first compliance period, the Proposed Regulations would require the POUs to comply with rules that were not in place at the time the energy at issue was generated. The Proposed Regulations require the POU to demonstrate that RECs were retired through WREGIS or the Commission's Interim Tracking System (ITS). Unfortunately, this presents a significant impediment to POUs that would otherwise be able to utilize this provision, since many of the

resources at issue were not required to be registered in WREGIS, neither was there a requirement to retire RECs through the Commission's ITS. The retroactive imposition of the 36-month retirement requirement for RECs would essentially prohibit POUs from using this provision since POUs were not required to participate in either WREGIS or the ITS, so therefore would not have been required to submit documentation regarding the retirement of those RECs.

NCPA understands that the Commission is attempting to incorporate rules that would have general applicability and that would be consistent with the treatment of historic carryover for retail sellers. However, since there were different requirements imposed on POUs than IOUs during the period 2004-2010, it does not make sense to apply these rules to the POUs in this manner. Instead, the Proposed Regulations should be revised to either strike the provisions of section 3206(a)(5)(E), or revise this section to allow for a date certain for REC retirements that is contingent upon the date the effective date of the final regulations.

VI. INTERACTION WITH THE RPS ELIGIBILITY GUIDEBOOK

Implementation of SBX1-2 is an ongoing and complex process. Indeed, even before the Governor signed the bill into law, the POUs were reviewing their procurement strategies and seeking out resources that could be used to meet the RPS. Development and acquisition of renewable resources requires a great deal of planning, especially with regard to acquiring those most costly resources that will be needed to meet the ever increasing requirements of PCC 1. At the same time, this Commission was working on implementing the various aspects of the statute over which it has purview, including developing the verification procedures for the PCCs that must be done for the agency to verify retail seller and POU compliance with the RPS, and defining the eligibility requirements for pipeline biomethane as a fuel source for RPS compliance purposes.

The practical considerations and time required to implement new RPS-related matters and revise existing practices have brought us to the final months of the first compliance period. The overlapping nature of the pending Guidebook revisions and this Rulemaking process provide yet another layer of complexity to the situation. NCPA recognizes the challenges that this presents for the Commission, as well as the need to expeditiously adopt revisions to the Guidebook that clarify eligibility rules for biomethane resources, and outline the processes the

Commission plans to use to verify retail seller and POU resources eligibility, as well as clarify and revise other crucial elements found in the current RPS Guidebook. However, the Commission must address the Guidebook revisions in a manner that does not prejudice this Rulemaking process. To that end, should the Commission proceed with adoption of the Seventh Edition of the guidebook revisions prior to concluding this Rulemaking, any and all references to the pending rules for enforcement should be stricken, as to avoid the appearance that the Guidebook is presupposing the outcome of the Rulemaking process.

VI. CONCLUSION

The NOPA is correct in noting that "[u]nder SBX1-2, POUs are now subject to many of the same or similar RPS requirements as retail sellers." POUs, like retail sellers, must meet 33% RPS by 2020, must procure renewable resources sufficient to meet the RPS, including sufficient resources to meet each of the product content category requirements. However, the Legislature granted the POUs and their governing boards the responsibility to implement the RPS and the provisions of Article 16. It is imperative that the final regulations be focused on a final determination of compliance and the Commission's role in verifying the renewable resources and PCCs designations, and that the lines between POU and CEC jurisdiction, which are clearly delineated in SBX1-2, not be blurred; the role of the CEC may not lawfully usurp the authority expressly provided to the POU governing boards in the statute.

Accordingly, the Proposed Regulations should be revised to do all of the following:

1. Include specific references to the authority granted to POUs and their governing board in the enabling legislation;

2. Strike the references to the Commission's determination regarding the applicability of POU optional compliance mechanisms adopted pursuant to Public Utilities Code section 399.30(d);

3. Strike the provisions of Public Utilities Code section 399.15(d) from the requirements in section 3206(a)(5) regarding cost limitations for procurement expenditures;

4. Align and reconcile annual and compliance-period reports;

5. Allow the use of pre-June 1, 2010 resources that meet the current RPS eligibility requirements to be used for the RPS procurement target alone, or towards the procurement target and the balancing requirements.

NCPA appreciates the opportunity to provide these comments to the Commission regarding the *Proposed Regulations for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, and welcomes the opportunity to discuss any of the issued addressed herein directly with the Commission. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Dated this 16th day of April, 2013.

Respectfully submitted,

C. Susie Berlin, Esq.
LAW OFFICES OF SUSIE BERLIN
1346 The Alameda, Suite 7, #141
San Jose, CA 95126
Phone: 408-778-8478
E-mail: berlin@susieberlinlaw.com

Attorneys for the:
NORTHERN CALIFORNIA POWER AGENCY