BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of: Developing Regulations and Guidelines for the 33 Percent Renewables Portfolio Standard	))))	Docket No. 13-RPS-01

COMMENTS OF THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ON THE CALIFORNIA ENERGY COMMISSION'S PROPOSED REGULATIONS ESTABLISHING ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

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Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC) in the Notice of Proposed Action (NOPA) dated March 1, 2013, the Southern California Public Power Authority (SCPPA) respectfully submits the following comments on the CEC's proposed Regulations Establishing Enforcement Procedures (Regulations) for the Renewables Portfolio Standard (RPS) for Local Publicly Owned Utilities (POUs).

I. INTRODUCTION

SCPPA is a joint powers authority consisting of eleven municipal utilities and one irrigation district. SCPPA members deliver electricity to approximately 2 million customers over an area of 7,000 square miles, with a total population of 4.8 million. SCPPAs members include the municipal utilities of the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside and Vernon, and the Imperial Irrigation District.

SCPPA was formed in 1980 to finance the acquisition of generation and transmission resources for its members. Over the past several years, SCPPA has increasingly become a primary means by which its members procure renewable energy

resources. As such, it is important for SCPPA to ensure that its members' historical procurement decisions are preserved and that new renewable energy resources are both eligible for the RPS and fall into clear and well-defined Portfolio Content Categories (PCCs).

SCPPA would like to take this opportunity to thank CEC Commissioners and staff for their work on the proposed Regulations and for providing stakeholders with this opportunity to comment.[1] SCPPA would also like to thank the CEC for their preliminary interpretations on various sections of statute, including the compliance periods and "reasonable progress."

II. COMMENTS

As the CEC finalizes these proposed Regulations, it is important to keep in mind as a general observation that Senate Bill (SB) X1-2 has separate provisions for investor-owned utilities (IOUs) and the POUs because IOUs and POUs are governed and operate differently. The California Public Utilities Commission (CPUC) has jurisdiction over ratesetting and contract approval for the IOUs while the jurisdiction over ratesetting and contract approval for POUs lies with local legislative bodies (Boards and City Councils). The proper authority to establish and enforce an RPS standard for a POU is the POU's local governing body, which is in the best position to know what type of resources and cost limitations are appropriate for its own utility operations. Therefore, differences in interpretation of certain sections of SB X1-2 between CPUC Decisions and the proposed Regulations may be necessary and appropriate.

[1] SCPPA supports the comments submitted concurrently by the California Municipal Utilities Association, the Los Angeles Department of Water and Power, Riverside Public Utilities, and Azusa Light and Water.

a. Section 3201 – Definitions

i. Missing Definitions

To date, the CEC has not provided definitions for several key terms pertaining to PCC 2 electricity products. In order to prevent interpretation disputes during the verification of such electricity products, SCPPA recommends that the CEC define the terms Firmed and Shaped," "Incremental Electricity" and "Substitute Electricity" in these regulations..

The definition provided by the CPUC for "Firmed and Shaped" is acceptable:

> **"Firmed and Shaped"** means transactions that provide substitute energy in the same quantity as the contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation, which can be set in a manner that meets the timing and quantity requirements of the POU. The original RPS-eligible generation is consumed elsewhere, typically but not necessarily close to the generator.[2]

SCPPA recommends that the CEC define "Incremental Electricity" and "Substitute Electricity" in Section 3201 based on the descriptions provided in Section 3203(b)(2)(B):

> **"Incremental Electricity"** means electricity not in the portfolio of the POU claiming the transaction for RPS compliance prior to a Firmed and Shaped transaction.[3]

> **"Substitute Electricity"** means electricity used to firm and shape the electricity from an eligible renewable energy resource.

[2] Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, California Public Utilities Commission, Decision 11-12-052, December 15, 2011 Page 46. Available At: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf

[3] Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, California Public Utilities Commission, Decision 11-12-052 December 15, 2011 Page 49. Available At: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf

b. Section 3202 – Qualifying Electricity Products

i. POU Option to Bucket Grandfathered Resources

SCPPA's members are concerned about the CEC's current proposal in Section 3202(a)(2), which would essentially require POUs, by default, to place all pre-June 1, 2010 renewable resources into a "count in full" PCC. Although this interpretation may be accurate for the IOUs, SCPPA believes a similar interpretation for POUs will create harsh and unnecessary financial consequences for POU ratepayers.

POUs are required by law to procure renewable resources to "fulfill unmet long-term generation needs."[4] However, if a POU is fully resourced, the need for additional resources of any kind is nonexistent, but under the "count in full" interpretation the POU will have to comply with the PCC requirements by supplementing or displacing existing, cost effective, eligible pre-June 1, 2010 renewable energy generation with additional, expensive, and unneeded (from the energy standpoint) renewables. In the end, the resulting additional costs will have to be borne directly by the POU ratepayers.

The main difference between the pre and post-June 1 certification processes are the rules by which renewable contracts/resources are assessed against. For pre-June 1, 2010 contracts, the resource is assessed against the "rules in place" at the time of procurement, while a newer resource is assessed against the latest RPS Eligibility Guidebook. If utility POU is able to demonstrate to the CEC that a grandfathered resource meets the current "rules in place," then it is sensible for the CEC to allow the utility to "categorize" such resource under a PCC.

In addition to the above described consequences, Section 399.30(c)(3) of the PUC lends itself to an interpretation that a POUs' governing body can, or perhaps

[4] PUC Section 399.30(a)

should, be making PCC categorization decisions. Section 399.30(c)(3) of the PUC states:

> A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.

By using the adjective "consistent" in the above Section, the legislature clearly did not mean "the same" or "identical" requirements.

SCPPA requests that the CEC not preclude POUs from having the ***option*** to place their grandfathered renewable resources in the appropriate PCCs if the utility is able to demonstrate that a resource meets the current Eligibility Guidelines. This request does not conflict with statutory requirements given that POUs will still have to abide by the Guidebooks, while at the same time it would allow avoidance of the significant cost impacts to POU ratepayers from the unnecessary procurement of surplus renewables.

c. Section 3203 – Portfolio Content Categories

i. PCC 1 Scheduled Vs. Actual Generation

SCPPA is concerned with the language in the proposed Section 3203 (a)(1)(C), that precludes counting electricity products generated in excess of the scheduled and delivered amount as PCC 1:

> If there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered into a California Balancing Authority, only the lesser of the two amounts shall be classified as Portfolio Content Category 1.

SCPPA believes this limitation would encourage utilities to overschedule finite and valuable transmission capacity in order to capture all PCC 1 attributes associated with eligible renewable energy resources. This interpretation would also penalize utilities that have intermittent resources that cannot be matched with their schedule, which

surely was not the intent of the Legislature. Further, several SCPPA members have resources that require them to take all of the generation output from a resource: Taking only a portion of their output that is scheduled into a California BA is not an option for them.

Due to the concerns listed above, SCPPA requests that the CEC remove this unnecessary restriction for PCC 1 electricity products.

ii. PCC 2 Calendar Year Delivery Requirement

SCPPA is concerned with the CEC's current imposition of a "same calendar year" scheduling requirement for substitute electricity used for firming and shaping in Section 3203 (b)(2)(D):

> The substitute electricity used to firm and shape the electricity from the eligible renewable energy resource must be scheduled into the California balancing authority within the same calendar year as the electricity from the eligible renewable energy resource is generated.

SCPPA questions the justification for this requirement. Although the requirement may simplify accounting of electricity products, it would unnecessarily hinder generation for PCC 2 electricity products in the months of October-December, which are typically balanced at the beginning of the following year. This proposed language is not supported by SB X1-2. PUC Section 399.16 (b)(2) imposes no time limitation on scheduling substitute energy associated with a firmed and shaped resource:

> Firmed and Shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.

Moreover, it is important to note that POU compliance is analyzed through an entire compliance period, not just an individual year. If electricity is generated in

December 2011 and scheduled and delivered in March 2012 with substitute electricity, the entire firming and shaping process still occurs within the same compliance period.

SCPPA requests that the CEC conform to current industry practices and allow POUs to schedule the substitute electricity on a rolling 12-month basis.

iii. PCC 2 Substitute Electricity Requirement

For PCC 2 resources, Section 3203(b)(2)(A) of the proposed Regulations requires:

> The first point of interconnection to the WECC transmission grid for both the eligible renewable energy resource and the resource providing the substitute electricity must be located outside the metered boundaries of a California Balancing Authority.

The current market thrives on economic decisions: in order to reduce costs for PCC 2, the substitute electricity provider will typically procure the least-cost substitute electricity available. The economic decision to procure substitute electricity should be under the purview of the POU or the substitute electricity provider, not the CEC. In implementing this section, the CEC has inadvertently influenced market activity and impels substitute energy providers to purchase out-of-state substitute electricity as the PCC 2-compliant product, which could not have been the intent of the Legislature.

This proposed language is further not supported by SB X1-2. PUC Section 399.16 (b)(2) simply states:

> Firmed and Shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.

As such, SCPPA requests that the CEC remove this restriction from the proposed Regulations, as this restriction is neither supported by statute and inadvertently influences market decisions that are not under its purview.

iv. Consistency in the use of the term Substitute Electricity

As currently drafted, Section 3203(b)(1)(C) states:

> The contract or ownership agreement for the electricity from the ***substitute resource*** is executed by the governing board or other authority, as delegated by the POU governing board, at the same time or after the contract or ownership agreement for the electricity products from the eligible renewable energy resource is executed.

The term "substitute resource" has not been defined or used in statute. For consistency with prior sections and recommendations, SCPPA recommends that the CEC supplant the term "substitute resource" with "substitute electricity."

v. PCC Verification Process

SCPPA members are still concerned about the lack of certainty on the PCC designation of an electricity product. There is a need for a process to provide PCC certainty due to the large price differences between PCC 1 and a PCC 3 Renewable Energy Credits (RECs) and the potential cost impact to POU ratepayers inherent in such after-the-fact PCC determinations.

On September 21, 2012, CEC staff held a workshop on 2008-2010 RPS Procurement Verification and SB X1-2 RPS procurement verification.[5] In the workshop, Iberdrola proposed that the CEC develop a checklist to help utilities determine if their energy resources fall within PCC1, PCC2 or PCC3, and several POUs submitted comments supporting the idea of a checklist.

On March 14, 2013, the CEC held a staff workshop on the Proposed Changes to the Renewables Portfolio Standard Guidebook. At this workshop, it was further discussed whether the CEC could provide a PCC verification process that would assign

[5] Notice of Staff Workshop on 2008-2010 RPS Procurement Verification and SB X 1-2 RPS Procurement Verification, California Energy Commission, dated September 21, 2012. Available at: http://www.energy.ca.gov/portfolio/notices/2012-09-21_workshop/2012-09-21_procurement_Verification_Notice.pdf

each project to the appropriate PCC. This verification process would also provide the standard caveats to PCC REC classification, such as the limitations on resale, if any, and PCC re-classification if such RECs are unbundled.

SCPPA recommends that the CEC develop both a PCC checklist as part of the Guidebook and provide for a PCC verification process that provide greater certainty as to the PCC designation of RPS eligible generating facilities.

d. Section 3205 – Procurement Plans and Enforcement Programs

i. Procurement Plan Submittal Requirement

Section 3205(a)(1) requires:

> Within 60 calendar days of the effective date of these regulations, each POU shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption.

However, the 60-day requirement may be infeasible for several of SCPPA members. Notwithstanding the time necessary to thoroughly revise a renewable energy resource procurement plan in accordance with the new regulations, a POU's renewable energy resource procurement plan is subject to local governing body review and approval, often by multiple bodies. These reviews, which may involve numerous separate meetings for a given utility, are often consecutive, not under the scheduling control of the POUs, and can take from several months up to a year to complete. It is unreasonable to find a POU non-compliant based on unrealistically hasty approval requirements, especially given that those same POUs may already have the currently compliant procurement plans.

Rather than implementing a timeframe for the approval of procurement plans, SCPPA recommends that the CEC allow utilities to submit their procurement plans within 30 days from the date such plans are approved by their respective final approval

body. The CEC should also clarify that if a POU has already submitted a procurement plan consistent with SB X1-2, an additional submittal is not required.

e. Section 3206 – Optional Compliance Measures

i. Historical Carry-Over – REC Retirements

SCPPA would like to thank the CEC for addressing the issue of Historic Carryover as an optional compliance measure. However, SCPPA notes one impractical provision in the draft Regulations which will severely limit the applicability of the Historic Carryover provision to the POUs if left unchanged. Section 3206 (a)(5)(E) of the proposed Regulations states that in order for a POU to claim Historic Carryover:

> Any REC qualifying as historic carryover shall be retired within 36 months of the month in which the REC was generated.

Taken literally, the only RECs that would qualify under Historic Carryover are those which were procured and already retired in WREGIS, rendering any RECs that were generated between 2004 to April 2010 that were either not registered in WREGIS or yet to be retired in WREGIS ineligible for Historic Carryover. This is an unfair outcome to the POUs as there was no REC retirement requirement prior to SB X1-2 applicable to POUs: This literal interpretation would retroactively apply new rules to historic procurement and severely penalize those POUs that took early actions to meet voluntary RPS requirements as established by their respective local governing authorities. For SCPPA members, the financial impact of this retroactive application of new rules is estimated to exceed $20 million.

Prior to the enactment of SB X1-2, SCPPA's members were under voluntary RPS programs that commenced as early as 2003. Former law did not require POUs to participate in the CEC's Interim Tracking System (ITS) nor the Western Renewable

Energy Generation Information System (WREGIS). Further, retirement of RECs through WREGIS or the ITS within a specified timeframe was not a requirement for compliance purposes until the passage of SB X1-2. All renewable generation information was provided to the CEC via the Power Content Label and the Integrated Energy Policy Report (IEPR) reporting forms.

SCPPA urges the CEC to remove Section 3206 (a)(5)(E) from the Historic Carryover section and work cooperatively with the POUs to find a sensible and practical means to verify and account for RECs generated from POUs historical procurement that meets the intent of REC retirement for compliance purposes while preventing the concern of double-counting.

f. General Comments

i. Overlap Between the POU Regulations and the Proposed Guidebook should be Avoided

SCPPA is still concerned about overlap between the draft RPS Eligibility Guidebook (Guidebook), and the proposed Regulations. The Regulations solely deal with the implementation of Public Utilities Code (PUC) Section 399.30 (*l*) and are only applicable to the POUs. The Guidebook should exclusively address renewable energy resource certification and the administration of RECs. At the March 14, 2013 workshop, the CEC mentioned that any references to the Regulations and CPUC decisions in the Guidebook are provided as background information. These references, however, creates confusion as far as what the applicable rules are for POUs and IOUs.

In addition, there are various reporting requirements that are specified for both the RPS Guidebooks and the proposed Regulations that may be duplicative in nature.

These reporting requirements need to be integrated with other mandatory reports (AB 162, etc.), to minimize the various reporting requirements already in place.

As such, any section in the Guidebook that expands or reiterates code sections that are to be addressed in the Regulations or CPUC decisions and vice versa should be edited or removed. This would resolve potential overlap between the two documents and also simplify the process for managing updates on each document if future RPS legislation is enacted. Further, reporting requirements between the RPS Guidebooks and the proposed Regulations need to be harmonized with other reporting requirements already in place.

ii. "Rules in Place" language is still outstanding

SCPPA remains concerned with the CEC's interpretation of the 'rules in place' provision in PUC Section 399.16(d)(1) which states that:

> (d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:
>
> (1) The renewable energy resource was eligible under the rules in place as of the date the contract was executed.

The current CEC interpretation of the "rules in place" prior to June 1, 2010 for IOUs refers to the Guidebook in place at the time a contract was executed. To maintain consistency between the IOUs and POUs, the CEC has determined that the applicable "rules in place" for the POUs are also the Guidebooks. However, this interpretation is flawed as it retroactively applies previous Guidebook requirements to utilities that were not subject to them prior to SB X1-2. Also, PUC Section 399.16(d) solely deals with the PCCs, not the eligibility criteria. Applying the "rules in place" language to judge the eligibility criteria for grandfathered resources is a misapplication of the statute.

PUC Section 399.30(c)(3) states that:

> (3) A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.

This provision of the statute does not give the CEC the authority to adopt requirements for Section 399.16 on behalf of the POUs and apply them retroactively. The Legislature's clearly did not intend to abrogate or override historical procurement decisions made by POUs. This intent is evident in transcripts in the committee hearings for SB X1-2:

> This bill grandfathers all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010.[6]

> Under the bill, all existing renewable energy contracts signed by June 1, 2010 would be "grandfathered" into the program. Going forward, new renewable energy contracts must meet a "loading order" that categorizes renewable resources.[7]

> This bill grandfathers all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010.[8]

Note that these excerpts repeatedly refer to "all contracts", not "some contracts" or "contracts subject to regulations that did not apply at the time."

Therefore, SCPPA requests that the CEC change its interpretation of "rules in place" and acknowledge that the POU governing boards' RPS Policies were the governing policies for POU contracts executed prior to SB X1-2.

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[6] Third Reading of Bill No. SB X1-2, Senate Rules Committee, Dated February 23, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110223_155225_sen_floor.html

[7] Bill Analysis for SB X1 2, Senate Appropriations Committee Fiscal, dated February 23, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110223_101343_sen_comm.html

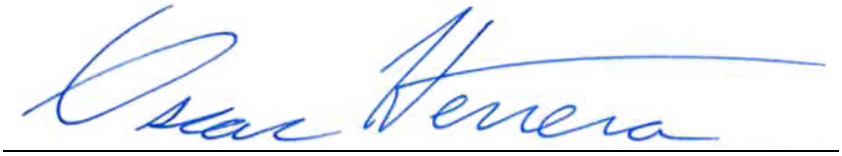
[8] Bill Analysis for SB X1 2, Senate Energy, Utilities and Communications Committee, dated February 15, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110214_141136_sen_comm.html

III. CONCLUSION

SCPPA would like to thank CEC staff for their time and effort spent in developing the proposed Regulations and all the accompanying documentation. SCPPA believes that staff is moving in the right direction, and looks forward to working with CEC staff these important matters.

Dated: April 16, 2013

Respectfully Submitted,



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