

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:

Adoption of Regulations Establishing Enforcement  
Procedures for the Renewables Portfolio Standard for  
Local Publicly Owned Utilities

Docket No. 13-RPS-01

California Energy Commission

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**TURLOCK IRRIGATION DISTRICT  
COMMENTS ON PROPOSED REGULATIONS**

Brian S. Biering  
Ellison, Schneider & Harris, L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

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Attorneys for Turlock Irrigation District

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Turlock Irrigation District (“TID”) respectfully submits these comments on the California Energy Commission’s (“Commission”) Proposed Regulations on Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (“Proposed Regulations”). TID applauds the Commission and Staff for their efforts thus far in the development of the Proposed Regulations, and the time made to consider input from numerous stakeholders in the development of the Renewables Portfolio Standard (“RPS”) program. For the most part, TID supports the Commission’s goals and policies set forth in the Proposed Regulations. However, TID urges the Commission to modify the Proposed Regulations to properly calculate the volume of Historic Carryover for publicly owned utilities (“POUs”). Additionally, the Commission should adopt the RPS procurement targets described in Section 3204 of the Proposed Regulations.

## **I. Comments on Proposed Regulations**

### **A. The Historic Carryover Provisions of the Proposed Regulations Must be Modified to Properly Calculate Eligible Procurement that may be Carried Forward by POUs**

As currently drafted, Section 3206(a)(5) of the Proposed Regulations would improperly subject POUs to statutory renewable procurement targets meant to apply to retail sellers. Prior to the adoption of Senate Bill X1-2 (“SB X1-2”), POUs were responsible for the design and implementation of their own RPS programs, in accordance with Senate Bills 1078 and 107. However, POUs were not statutorily obligated to utilize a specific RPS program or satisfy specific RPS procurement obligations until SB X1-2 became effective. As POUs did not have specific statutory RPS procurement requirements prior to 2011, the imposition of such procurement targets by the Proposed Regulations is inappropriate.

In calculating the Historic Carryover, the Proposed Regulations would deduct the yearly deficits associated with the annual procurement target (“APT”) from the total Historic Carryover volume that is allowed to be carried forward into future compliance periods. By imposing specific targets for each year between 2004 and 2010, and by requiring POUs to make up in future years any deficits that result for failure to meet a target for a specific year, the Proposed Regulations are effectively rewriting the law for POUs for the years 2004-2010 by imposing specific procurement targets upon the POUs. Such retroactive rulemaking must be avoided to provide market certainty and to ensure that prior procurement will fully count to ensure that customers benefit from the early adoption of RPS programs by POUs.

Instead, POUs should not be required to make up statutory “deficits” for years 2004-2010. This is consistent with SB X1-2, which does not require that POUs are obligated to make up any deficits for years 2004-2010. For these reasons, the Proposed Regulations should be modified to reflect the fact that POUs have no “deficits” to make up by adjusting the requirement

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for determining the Historic Carryover. Specifically, the determination should only consider surplus volumes that exceed the APTs for each year between 2004 and 2010, thereby avoiding the imposition of inapplicable statutory targets.

This change would allow POU's to carry forward any RPS-eligible procurement that exceeded APTs for *any* year between 2004 and 2010, better recognizing the unique characteristics of POU's and the different RPS requirements that apply to POU's versus retail sellers. Additionally, making the recommended change to the Proposed Regulations will properly reward and incentivize those POU's that procured RPS-eligible generation at an early date, and will thereby ensure that customers of such POU's are fully credited for the procurement efforts undertaken. Without making the recommended changes to the Proposed Regulations, the Commission will fail to account for the different requirements applicable to POU's and retail sellers.

Accordingly, to properly determine the Historic Carryover for POU's, TID recommends that the Proposed Regulations be modified as recommended below. Recommended additions are shown with underlined text and proposed deletions are shown with strikethrough text.

### **TID's Recommended Revisions to the Proposed Regulations**

Recommended revisions to proposed Section 3201(m):

“Historic carryover” means a POU’s procurement that satisfies the following criteria: 1) the procurement is for electricity and the associated renewable energy credit generated in 2004-2010 by an eligible renewable energy resource that met the Commission’s RPS eligibility requirements in effect when the original procurement contract or ownership agreement was executed by the POU, 2) the original contract or ownership agreement was executed by the POU prior to June 1, 2010, and 3) the procurement exceeded the annual procurement target for that year, as is in excess of the sum of the 2004—2010 annual procurement targets defined in section 3206 (a)(5)(D) and was not applied to the RPS of another state or to a voluntary claim.

Recommended revisions to proposed Section 3206(a)(5):

(A) A POU may adopt rules that allow for procurement generated before January 1, 2011, that meets the criteria of section 3202 (a)(2), that is in excess of the sum of the 2004—2010 exceeds the annual procurement targets for each year from 2004-2010, defined in section 3206 (a)(5)(D) and that was not applied to the RPS of another state or to a voluntary claim, to be applied to the POU’s RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period.

...

(C) For those years where procurement exceeds the annual procurement target defined in section 3206 (a)(5)(D), hHistoric carryover shall be calculated by subtracting: (1) the annual procurement target for the year, subtracting procurement generated between January 1, 2004, and December 31, 2010, in an amount that is equal to the sum of the 2004—2010 annual procurement targets defined in section 3206 (a)(5)(D) and (2) the amount of procurement that was sold, claimed for a voluntary program, or claimed for compliance with the RPS of another state, from the total procurement generated during that year same period. For those years where procurement does not exceed the annual procurement target, there will be no historic carryover. If a POU was not in existence as of January 1, 2004, historic carryover shall be calculated based on procurement generated between the first full calendar year during which the POU became operational and December 31, 2010.

....

TID believes that the recommended changes outlined above will properly determine the amount of Historic Carryover for POUs, avoiding the imposition of inapplicable statutory targets. However, if the Commission decides to maintain the current proposed method for calculating Historic Carryover, TID would alternatively recommend that the Proposed Regulations be modified to allow POUs the opportunity to purchase renewable energy credits (“RECs”) and retroactively apply those RECs to satisfy any pre-2011 deficits. Applying RECs retroactively would thereby allow POUs to carry forward any additional procurement above and beyond the pre-2011 procurement targets. This would provide the POUs with

adequate notice as well as the opportunity to fully satisfy targets that are only now being imposed, thereby allowing customers to fully benefit from any procurement undertaken and fully optimizing flexible procurement options and cost savings opportunities for POUs. For example, if TID were allowed to apply RECs to pre-2011 “deficits,” the resulting Historic Carryover volume could save TID and its customers approximately \$3.2 to \$4 million, based on today’s market.

### **B. TID Supports the Procurement Quantity Requirements in the Proposed Regulations**

As outlined more fully in the California Municipal Utilities Association’s (“CMUA’s”) comments on the Proposed Regulations, TID supports the proposed procurement quantity requirements for compliance periods two and three as provided in Section 3204 of the Proposed Regulations. Although the Proposed Regulations adopt procurement requirements that differ from the requirements administered by the California Public Utilities Commission (“CPUC”) and applicable to retail sellers, this result is proper based on the differing responsibilities and authorities of the Commission and the CPUC, as well as the differences between POUs and retail sellers. Furthermore, the procurement quantity requirements applicable to POUs are not yet fully adopted or implemented, whereas the CPUC issued its decision adopting procurement quantity requirements for retail sellers in December of 2011.<sup>1</sup> The lapse in time between the retail seller and POU procurement quantity requirements further justifies the need for a difference in procurement targets for POUs and retail sellers. For these reasons, as well as the reasons articulated in CMUA’s comments, the Commission should adopt Section 3204 as currently written in the Proposed Regulations.

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<sup>1</sup> See CPUC Decision 11-12-020, Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program, issued on December 5, 2011, available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/154695.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/154695.PDF).

## II. Conclusion

TID appreciates this opportunity to provide these comments on the Proposed Regulations, and for the reasons enumerated above, urges the Commission to revise the Proposed Regulations to properly calculate Historic Carryover for POU's and adopt the procurement quantity requirements in Section 3204. TID looks forward to working with the Commission and other stakeholders going forward to help further refine and implement the RPS program.

Respectfully submitted,



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Brian S. Biering  
Ellison, Schneider & Harris, L.L.P.  
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Sacramento, CA 95816  
Telephone: (916) 447-2166  
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