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May 6, 2013

California Energy Commission
Dockets Office, MS-4
Docket No. 13-RPS-01
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

Re: CMUA Comments on 15 Day Language, Proposed Regulations: Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Proposed Regulations, Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (15 Day Language), issued on April 19, 2013.

CMUA would like to recognize the hard work of the CEC Commissioners and CEC staff in implementing SB1X-2. This has been a substantial undertaking and the CEC has faced many difficult decisions. While CMUA has disagreed with some of the statutory interpretations incorporated into the various drafts of regulations, CMUA has never doubted that the CEC Commissioners and staff are committed to faithfully implementing SB1X-2 in a manner that promotes the best interests of the state and its people. CMUA and its members look forward to working in collaboration with the CEC as we move into the implementation phase of this process. Despite various areas of disagreement, CMUA believes that on the whole, the 15-Day Language represents a reasonable implementation of the CEC's role pursuant to the statute. Subject to the limited changes identified below, CMUA recommends that the CEC adopt the 15-Day Language.

CMUA understands that there is a tension between the desire to have finalized regulations so that there is certainty and the need to get the regulations right. However, CMUA discourages the CEC from adopting regulations with the simultaneous intent to immediately initiate a process to amend the regulations to address lingering concerns. Such an action would permanently increase the regulatory uncertainty surrounding these regulations. Instead, the CEC should wait for a clear and demonstrated need before initiating an amendment process. This will likely allow sufficient time to demonstrate that the extreme predictions of some of the parties in this proceeding are entirely unfounded.

I. COMMENTS ON 15 DAY LANGUAGE

A. Compliance Period 3 Procurement Quantity Requirements

CMUA is deeply troubled by the change in the 15-Day Language that substantially alters the procurement quantity requirements for Compliance Period 3. Since the initial draft of regulations was released over a year ago, the CEC has taken a consistent approach to the requirements for the second and third compliance periods: A focus on full compliance during the final full year, combined with a clear qualitative demonstration of actions representing reasonable progress during the Compliance Period. The CEC supported this reasonable interpretation with a strong legal justification in the CEC's *Initial Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (ISOR), issued on March 1, 2013. The change in the 15-Day Language represents a sharp divergence from the CEC's previously consistent position.

While several parties have objected to this interpretation, they have all done so based on requirements that they wished had been in statute not on what is actually in the statute. To reiterate this point, these parties have made no legal argument based on the actual statutory language. Rather, they are seeking to accomplish in the regulatory process what they were unable to accomplish in the legislative process.

The meaning of the statute is irrefutably clear: (1) SB1X-2 does not dictate a precise procurement quantity percentage during the second and third compliance periods; (2) the phrase "reasonable progress" necessarily provides a range of potential options; (3) SB1X-2 clearly provides the relevant regulatory authority with the discretion to choose the appropriate path and actions to demonstrate reasonable progress; (4) the CEC's role for the POUs is to specify the minimum statutory requirement; and (5) the CEC's previous interpretation reasonably defined the minimum statutory requirement by setting a "floor" for the procurement quantity requirements combined with a qualitative showing of reasonable progress. As described further below, nothing in any of the parties' comments on this issue refutes these points.

1. The CEC's Original Interpretation Was Correct

a. <u>SB1X-2 Does Not Specify a Numerical Percentage for Reasonable Progress.</u>

The most fundamental rule of statutory construction is that "To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable

indicator of legislative intent."[1] If the words of the statute are "clear and unambiguous" the inquiry ends there.[2] The interpretation of the procurement quantity requirements for Compliance Periods 2 and 3 present such a situation. California Public Utilities Code section 399.30(c)[3] provides:

> (c) The governing board of a local publicly owned electric utility shall ensure all of the following:
>
> > (1) The quantities of eligible renewable energy resources to be procured for the compliance period from January 1, 2011, to December 31, 2013, inclusive, are equal to an average of 20 percent of retail sales.
> >
> > (2) The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020. The local governing board shall require the local publicly owned utilities to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years

The plain language of subdivision (2) is clear: The POU governing board is delegated the authority to set procurement requirements for its POU during the second and third compliance periods subject to two requirements: (A) the POU must demonstrate reasonable progress and (B) the POU must achieve a 25 percent Renewable Portfolio Standard (RPS) by December 31, 2016 and a 33 percent RPS by December 31, 2020. Subdivision (2) does not mandate a single numerical percentage for either the second or third compliance periods.

The contrast between subdivision (1) and subdivision (2) is highly instructive on this point. In subdivision (1), the Legislature clearly and unambiguously established a precise percentage for the procurement obligation during the first compliance period: an average of 20 percent of retail sales. This demonstrates that the Legislature was clearly capable of mandating a specific numeric obligation. In stark contrast, subdivision (2) provides no such specificity.

Indeed, by using the term "reasonable progress" the Legislature was clearly delegating the authority to set the precise procurement quantity requirement with the relevant regulatory authority. Terms such as "reasonable progress" necessarily imply such a delegation of authority. For example, courts have recognized that the phrase "due diligence" implies flexibility, subject to the limitations set out in the relevant statutory provision.[4] Arguing that the California Public Utilities Commission's (CPUC) interpretation of the similar section 399.30(b)(2)(B) is the only legislatively permissible interpretation defies the plain language of the statute.

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[1] *Hsu v. Abbara*, 9 Cal.4th 863, 871 (1995).
[2] *In re Waters of Long Valley Creek Stream System*, 25 Cal.3d 339, 348 (1979) (citing *Solberg v. Superior Court*, 19 Cal.3d 182 (1977)).
[3] Unless otherwise specified, all statutory references are to the California Public Utilities Code.
[4] San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd., 74 Cal. App. 4th 928, 933 (1999).

b. There are a Range of Options that Qualify as Reasonable Progress

In Decision (D.) 11-12-020, the CPUC adopted the retail seller procurement quantity requirements for compliance periods 2 and 3 pursuant to the very similar statutory language found in section 399.15(b)(2)(B). The CPUC adopted a straight-line trend methodology for calculating the procurement quantity requirements. However, the CPUC did not claim that this methodology was the only permissible statutory interpretation. Rather, when evaluating a range of proposals submitted by parties, the CPUC determined that the "straight-line trend provides the **most sensible approach** to setting quantitative targets that represent retail sellers' 'reasonable progress' for the 'intervening years' of a compliance period."[5]

It is instructive that the parties to the CPUC's proceeding presented a broad range of options. For example, the CPUC's Division of Ratepayer Advocates (DRA) recommended a less aggressive "concave" line methodology.[6] Further, Pacific Gas and Electric (PG&E) and Southern California Edison (SCE), who filed comments arguing that the CEC must adopt the CPUC's straight-line trend methodology, strongly opposed this interpretation during the CPUC's process. As summarized in D.11-12-020:

> PG&E, SCE and SDG&E propose that the target for each intervening year of the second and third compliance periods should be a 1% increase over the prior year; i.e., 21% in 2014, 22% in 2015, and then the statutory 25% in 2016; and 26% in 2017, 27% in 2018, 28% in 2019, and then the statutory 33% in 2020. They argue that year-to-year variations in the availability of renewable resources and the uncertainties of the contracting process make RPS procurement inherently "lumpy." Having straight-line targets for the intervening years, the large utilities assert, is unrealistic and reduces the flexibility they need to make the most effective RPS procurement decisions.[7]

There is clearly not a single possible interpretation of this statutory language that is permissible to the relevant regulatory authority.

c. The Relevant Regulatory Authority is Vested with the Discretion to Adopt the Procurement Quantity Requirements for Compliance Periods 2 and 3 and the Associated Reasonable Progress Showing

As CMUA recognized in comments filed in the CPUC's proceeding, the CPUC was within its statutorily delegated role as the relevant regulatory authority to weigh the various proposals and choose what it determined to be the most sensible.[8] The CPUC was acting within its clearly delegated authority to define reasonable progress using a quantitative straight-line trend methodology instead of a qualitative showing.

Consistent the structure of SB1X-2, the POU governing boards are expressly delegated with the authority to adopt the Compliance Period 2 and 3 procurement quantity targets: "The governing board of a local publicly owned electric utility shall ensure . . . ."[9] This means that

[5] D.11-12-020 at 14.
[6] D.11-12-020 at 13-14.
[7] D.11-12-020 at 13.
[8] CMUA Comments on Proposed Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program, November 17, 2011.
[9] Cal. Pub. Util. Code § 399.30(c).

each individual POU governing board must evaluate, based on its unique characteristics, what level of RPS procurement and what specific actions are necessary to ensure that the targets set in the statute are achieved. The CPUC's interpretation of this language, therefore, provides little relevant guidance on this issue. Indeed, it provides as little guidance to a POU as an individual POU governing board's rationale would provide to the CPUC.

It is also important to reiterate the point clearly articulated by the CEC in the ISOR. Despite the claims of the various parties, the CPUC ***was not*** interpreting identical statutory language to the statutory language applicable to the POUs. There were two additional statutory requirements applicable to the retail sellers that are not found or cross referenced in the POU section. Section 399.15(b)(2)(C) provides:

> Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.

Thus, the POU governing board is interpreting a fundamentally different set of statutory requirements in implementing section 399.30(c)(2).

d. <u>The CEC's Proper Role is to Establish the Statutory Floor Below Which a POU's Procurement Quantity Targets Would Violate the Provisions of the Statute.</u>

As CMUA has articulated throughout this process, the CEC's role specified by the statute is not to act as the CPUC does for the retail sellers, but rather to specify the minimum statutory requirements and to identify POU violations of these requirements. In the case of the Compliance Period 2 and 3 procurement quantity requirements, it would obviously defy logic for a POU to claim that it could set any target for the intervening years that its governing board determined was reasonable. Thus, there must be a defined "floor" below which a target is out of compliance with the statute. CMUA believes that setting this floor is reasonably within the statutory role set out for the CEC. As part of its role in setting the minimum statutory requirements, the CEC is also within its reasonable role to specify that POUs must make a qualitative demonstration of reasonable progress during each compliance period.

When viewed from this perspective, it is clear that the CEC is not required to follow the CPUC's straight-line trend because this represents a discretionary choice out of a range of statutorily permissible options. While some POU governing boards may adopt a similar approach as the CPUC, that is a decision rightly within the discretion of the POU governing board. The CEC should not step into the role of regulatory authority for the POUs and make this decision on their behalf.

2. No Party Comments Refute the Clear Statutory Intent

a. <u>There Is No Statutory Requirement for POU Compliance Period 2 and 3 Procurement Quantity Requirements to Be Identical to the Requirements Adopted by the CPUC</u>

The comments filed by PG&E, SCE, The Utility Rate Network (TURN), and that comments jointly filed by the Union of Concerned Scientists (UCS) and the Large-Scale Solar Association

(LSA) all make various claims about the need for consistency between the POU and retail seller procurement quantity requirements during the second and third compliance periods. However, these parties provide no citation to specific statutory language. Instead, they simply make broad and unsupported claims, such as TURN's claim that "In enacting SBx2 (Simitian), the Legislature intended to adopt equivalent renewable procurement targets for both POUs and retail sellers."[10] Alternatively, these parties rely on the CEC's own statements in the ISOR and the Notice of Proposed Action.

California has a long history of adopting similar but fundamentally distinct requirements for the POUs and retail sellers.[11] This bifurcated approach recognizes the fundamental differences between not-for-profit public agencies and for-profit, private companies. The structure of SB1X-2, with a completely separate POU section that cross references only some retail seller sections, make it abundantly clear that the Legislature intended to follow this historic, bifurcated approach for POUs. The express language of SB1X-2 is equally clear in regard to the Legislature's intent.

Indeed, there are many areas that are expressly not identical for the POUs and retail sellers, which reinforces the argument that the legislature intended POUs and retail sellers to be treated differently. For example, CMUA notes that the Brown Act requirements of section 399.30(f)(1) do not apply to the IOUs, and would be surprised if the IOUs argued in favor of such application. Along the same lines, all of the IOUs except the three largest were provided substantial exemptions from the requirements of SB1X-2,[12] while only a very limited number of POUs were accorded the same exemptions.[13] Numerous POUs would likely meet the small IOU exception provided in section 399.18(a)(1), however, the CEC has not incorporated this provision in the POU regulations.

Thus, there is no statutory basis for imposing identical requirements on the POUs and retail sellers. Conversely, there is a long history of imposing appropriately distinct requirements on the retail sellers and POUs. The long history of treating POUs and IOUs differently also demonstrates no pressing policy reason for identical treatment.

b. <u>The Rules of Statutory Construction Do Not Refute the Plain Meaning of Section 399.30(c)(2).</u>

PG&E's primary legal argument is based on a single rule of statutory construction: "It is an accepted rule of statutory interpretation that 'identical words used in different parts of the same act are intended to have the same meaning.'"[14] PG&E then asserts that based on this rule, the Legislature clearly "intended the same RPS obligations to apply to all LSEs in California,

[10] TURN Comments at 1.
[11] *See e.g.*, Cal. Pub. Util. Code § 2827(h)(4)(A) (directing the local governing board of each POU and the Commission to adopt their own valuation methodologies to compensate eligible customers for net surplus electricity generated.); Cal. Pub. Util. Code § 9620 (requiring the local governing board of each POU to adopt a planning reserve margin); Cal. Pub. Util. Code § 380 (directing the Commission to adopt resource adequacy requirements for the IOUs); Cal. Pub. Util. Code § 9615(b) (directing the local governing board of each POU to establish annual targets for energy efficiency savings); Cal. Pub. Util. Code § 454.55 (directing the Commission to establish energy efficiency targets for the IOUs); Cal. Pub. Util. Code § 8369 (directing the local governing board of POUs with more than 100,000 service connections to develop a smart grid deployment plan.); Cal. Pub. Util. Code § 8362 (directing the Commission to determine the requirements for the IOU smart grid deployment plans.).
[12] *See* Cal. Pub. Util. Code §§ 399.17, 399.18.
[13] *See, e.g.,* Cal. Pub. Util. Code 399.30(g) (providing and exemption for Trinity Public Utilities District).
[14] PG&E Comments at 2.

including POUs.[15] PG&E's logical conclusion is then that the POUs must follow the exact requirements adopted by the CPUC.

The primary problem with PG&E's argument is that, as discussed above, there is absolutely no support for this position in statute. Section 399.30(c) clearly states that "The governing board of a local publicly owned electric utility shall ensure . . . ."[16] Thus, the POU governing board is clearly vested with the same discretion that the CPUC has for the retail sellers. To clear up any doubt on this issue, SB1X-2 states that: "The [CPUC] has no authority or jurisdiction to enforce any of the requirements of this article on a local publicly owned electric utility."[17] Yet this is precisely what PG&E is arguing for: the direct application of CPUC decisions to POUs. No rule of statutory construction can overcome the clear and unambiguous statutory language.

However, even applying the rule of statutory construction cited by PG&E would not impact this interpretation. This is because PG&E conflates the ***meaning*** of a term with the ***application*** of a term. Two separate regulatory authorities that are both delegated authority to take a specific action may both be subject to identical statutory boundaries for these actions. However, that does not mean that one regulatory authority's specific decision must necessarily dictate the decisions made by the other.

The unreasonableness of PG&E's argument can easily be demonstrated by way of example. Under the current statutory requirements for net energy metering programs, the relevant regulatory authority is delegated the authority to establish the rate for compensating net surplus compensation.[18] The relevant statutory provision provides:

> The ratemaking authority shall establish a net surplus electricity compensation valuation to compensate the net surplus customer-generator for the value of net surplus electricity generated by the net surplus customer-generator. The commission shall establish the valuation in a ratemaking proceeding. The ratemaking authority for a local publicly owned electric utility shall establish the valuation in a public proceeding. **The net surplus electricity compensation valuation shall be established so as to provide the net surplus customer-generator just and reasonable compensation for the value of net surplus electricity, while leaving other ratepayers unaffected.**.[19]

Under PG&E's proposed interpretation, all POU governing boards and the CPUC would need to adopt identical rates because they are delegated authority by identical statutory language. Such an outcome defies logic and is clearly at odds with the plain and obvious meaning of the statute. Clearly, each POU had and continues to have the discretion to adopt its own net surplus rate based on its own unique characteristics.

Similarly, the mere fact that similar language is used in the retail seller and POU sections of SB1X-2 does not mandate that the relevant regulatory authorities apply their discretion to reach identical outcomes.

[15] PG&E Comments at 3.
[16] Cal. Pub. Util. Code § 399.30(c).
[17] Cal. Pub. Util. Code § 399.30(n).
[18] Cal. Pub. Util. Code § 2827(h)(5)(A).
[19] *Id.* (emphasis added)

c. TURN's Claims that The CEC's Original Interpretation Will Result in Less Capacity is False.

TURN's comments include a statement that is factually inaccurate and is based on a highly misleading assumption. TURN's comments state:

> For the second compliance period (2014-2016), the reduction is equivalent to almost 500 MW of new solar capacity. [citation] For the third compliance period, the reduction is equivalent to approximately 900 MW of new solar capacity. As a result, the revised draft would result in the development of 1,400 fewer MW (solar) than would be expected under the 'linear trend' approach.

This statement is simply false. The most fundamental requirement of SB1X-2 is a 33 percent RPS by 2020. In each yearly compliance period after 2020, POUs must continue to meet a 33 percent RPS. Regardless of the path that POUs take to get to 33 percent, once POUs reach 2020, there will have to be sufficient capacity to meet that requirement. Mandating that POUs ramp up to this target on a steeper trajectory will not result in more installed capacity. Instead, the primary impact will be to limit the flexibility of POUs to develop renewable resources in California on a reasonable schedule. Limiting this flexibility will significantly increase costs, which for POUs are borne directly by ratepayers.

No party has provided sufficient justification for the changes made in the 15-Day Language. Therefore, the CEC should return to the regulatory language as proposed in the March 1, 2013 draft of Proposed Regulations.

B. Long-Term Contract Requirements for Excess Procurement Rules

The 15-Day Language includes a reasonable change that CMUA and its members requested in their comments. The 15-Day Language removed the requirement that: "Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product counts in full in accordance with Section 3202 (a)(2)." As CMUA pointed out in its comments, there is both a clear legal and a practical rationale for deleting this requirement.

1. SBX1-2 Does Not Require Identical Treatment Between IOUs and POUs for Excess Procurement

First, SB1X-2 permits POU governing boards to adopt an excess procurement rule "**in the same manner as** allowed for retail sellers pursuant to Section 399.13."[20] The phrase "in the same manner as" is not the same as "identical to." One clear area where there are significant differences between POUs and retail sellers is on the issue of contract term. Section 399.13(b) strictly limits an IOU's ability to enter into short-term contracts. No such limitation is applicable to POUs. Further, the CPUC plays a central role in approving contracts for IOUs. The limitations on IOU contracts exist for a host of reasons not relevant to POUs.

Second, there are practical reasons why this limitation is restrictive for POUs to the point where it would largely make excess procurement rules unavailable. This is because POUs

[20] Cal. Pub. Util. Code § 399.30(d)(1) (emphasis added).

have and will likely continue to use short-term contracts for portfolio content category (PCC) 3 and, to a lesser extent, PCC2 electricity products. This limitation exists simply because of the relatively small size of most POUs and the nature of these types of contracts. Additionally, some POUs have used short-term PCC1 contracts to cover near term compliance requirements while the POU has generation projects that are under development.

2. TURN'S Comments Are Not Supported by SBX1-2 And Have Been Rejected by the CPUC

In response to the CEC's modest and reasonable change, TURN filed comments that are deeply troubling due to both an inappropriate tone and a shocking lack of understanding of the utility industry and the functioning of the RPS regulations.

First, any implication that a particular interest group has a monopoly on legislative intent is false and legally unsupportable.[21] CMUA and its members supported SB1X-2. "We," however, did not draft it. TURN did not draft it; the IOUs did not draft it; environmental groups or renewable developers did not draft it. The law is the product of the Legislature. Any statement or implication otherwise makes a mockery of the legislative process.

Of course, no party waives its rights to seek judicial review of any CEC decision. This is part and parcel of the regulatory process. TURN's threat of legal action, therefore, is not novel. The possibility or threat by any party that it may challenge an adopted regulation in the courts cannot dictate CEC action on its regulations. To do so would bring the regulatory process to an utter standstill.

Second, TURN's comments demonstrate a fundamental lack of understanding of the existing RPS requirements both that have already been adopted by the CPUC and as they exist in the 15 Day Language. TURN's comments state:

> . . . I am concerned that POUs may execute short-term contracts in 2014, 2015 or 2016 to run up their banks in anticipation of the third compliance period and thereby delay meaningful commitments to new renewable resource development by several additional years.

The situation that TURN's comments so strenuously warn of is already expressly allowed under both the CPUC's regulations and the 15-Day Language. This is due to the 36-month retirement requirement for Renewable Energy Credits (RECs). Any POU is perfectly free to procure short-term electricity products in 2014, 2015, and 2016 and then simply wait until the third compliance period to retire these RECs. SB1X-2 allows this because the RECs will be retired within 36-months of date of generation. CMUA finds it hard to believe that TURN could be confused on this point because TURN was one of the main parties arguing for a narrow interpretation of these retirement rules in the CPUC's proceeding. The CPUC expressly discussed and rejected TURN's arguments:

[21] Metropolitan Water District of Southern California v. Imperial Irrigation District et al., 80 Cal.App.4th 1403, (2000). "If statutory language is unclear, or terms used are not specifically defined, a court may also consider evidence of legislative history in ascertaining the statute's meaning. However, a court will generally consider only those materials indicative of the intent of the Legislature as a whole…. Material showing the motive or understanding of an individual legislator, including the bill's author, his or her staff, or other interested persons, is generally not considered. This is because such materials are generally not evidence of the Legislature's collective intent.

> In considering this issue, it is important to keep in mind that Section 399.21 applies to all RECs used for RPS compliance; i.e., to all RPS procurement that is tracked in WREGIS. TURN/CUE and UCS seek to carve out an exception to the general rule. TURN/CUE and UCS assert this exception is necessary in order to prevent retail sellers from improperly carrying over unbundled RECs (as well as RECs associated with any other procurement meeting the criteria of Section 399.16(b)(3)) from one compliance period to the next by acquiring them late in one compliance period but retiring them for RPS compliance in the next compliance period.
>
> Although the concern of TURN/CUE and UCS is understandable, it appears to conflate acquiring a REC with using that REC for RPS compliance. These are, however, two different processes. PG&E correctly notes that a REC maintained in a retail seller's "active" WREGIS subaccount may be sold or transferred at any time before it is retired for RPS compliance. The retail seller has not yet committed to use that REC for RPS compliance; it may determine that the REC is not needed for RPS compliance and sell it at any time. Only when the REC has been retired in WREGIS for RPS compliance does it enter into the RPS compliance system. A REC that has been retired for RPS compliance is indeed subject to any applicable prohibition or limitation on being counted as "excess procurement" that can be applied to the next compliance period.
>
> Moreover, the exception proposed by TURN/CUE and UCS is not supported by the statutory language. Section 399.21(a)(6) imposes an absolute limit on the retirement of RECs, measured in months from the initial date of the associated generation.[22]

Therefore, even if TURN's request were granted, it would not significantly impact a POU's incentives to sign short-term contracts. The primary impact of the change in the 15-Day Language is that it allows POUs greater flexibility in retiring RECs rather than having to strategically purchase and retire them. It also helps avoid the situation where a POU would be penalized because of an inadvertent error in retiring RECs too early or too late.

3. The Draft Regulations, Contrary to TURN's Comments, Will Not Result In Increased Short-Term Contracting

Finally, TURN's comments demonstrate a lack of understanding of the electric industry and more specifically, the procurement practices of POUs. The presumption that POUs would go out and sign a large number of short-term contracts in the near term to somehow avoid long-term commitments to renewable generation is not supported by any historical practice.

POUs have an excellent record in RPS procurement both overall (exceeding that of retail sellers) and in regards to the use of short-term contracts. According to the CEC database of POU RPS procurement of nearly 250 POU contracts signed prior to 2012, fewer than 10 percent of the contracts were "short-term" as in "less than 10 years," and about half of those

[22] D.12-06-038 at 49-50.

were month long or similar contracts that would not have added significantly to any "excess procurement" concern.[23]

In light of these reasons, TURN's comments should be disregarded.

C. Historic Carryover

CMUA applauds the CEC for deleting the former Section 3206(a)(5)(E) and replacing it with a reasonable alternative. CMUA and its members are committed to working with the CEC staff to ensure that adequate documentation is provided to meet the necessary verification requirements for historic carryover.

D. Firmed and Shaped

The 15-Day Language makes significant changes to Section 3203(b), which specifies the requirements for PCC2 Electricity Products. CMUA generally believes that these changes represent an improvement and provide greater clarity. However, the term "match" is not defined in Section 3201 and is not a clearly understood industry term. Similarly, the term "incremental" is not defined in Section 3201. CMUA recommends that the CEC consider adding definitions for these two terms to Section 3201 of the regulations, for purposes of providing absolute clarity.

E. Portfolio Content Categories (PCC)

CMUA remains concerned that under the draft regulations, RECs that initially qualify as either PCC1 or PCC2 resources would lose that status if the underlying REC is subsequently transferred to a different entity. As noted above in the discussion of other issues, CMUA recognizes that the CEC has the ability to adopt regulations that differ from what the CPUC has adopted where the statute gives the CEC the discretion to do so. The CEC is also legally required to adopt regulations that differ from what the CPUC has adopted if it is required by statute. As noted in CMUA's comments filed on April 16, 2013, both the statutory construction and legislative history support CMUA's contention that RECs should retain their initial classification if they are subsequently transferred and that Section 399.16 clearly contemplates that RECs may be associated with multiple PCCs. The CEC cannot solely rely on a desire to be consistent with the CPUC's decision on this issue but must fully and openly address how the CEC's conclusion is supported by statute.

[23] Updated Publicly Owned Utilities Database, November 16, 2011, *available at* http://www.energy.ca.gov/2008publications/CEC-300-2008-005/index.html.

II. CONCLUSION

CMUA appreciates this opportunity to provide these comments to the CEC on the 15-Day Language. CMUA asks that the CEC consider CMUA's recommendations.

Sincerely;

Tony Andreoni, P.E.
Director of Regulatory Affairs