

**BEFORE THE CALIFORNIA  
ENERGY COMMISSION**

RENEWABLES PORTFOLIO STANDARD

Docket No. 13-RPS-01

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

The City and County of San Francisco (San Francisco) submits these comments in response to the 15-day Comment Package<sup>1</sup> released by the California Energy Commission (CEC) on April 19, 2013.

San Francisco appreciates the changes that Commission staff has made to the proposed regulation in response to San Francisco's comments. This includes clarifying San Francisco's obligations under Section 3204 of the proposed regulation and conforming to statute the definition of "qualifying hydroelectric generation."

Our comments here are limited to the three elements where the proposed regulations remain inconsistent with the requirements of the California Renewable Energy Resources Act (the Act), as well as responding to the comments made by Pacific Gas and Electric (PG&E) during the 45-day comment period.

**II. San Francisco's Eligibility for its Alternative Compliance Obligation Should be Determined on a Yearly Basis as Required under the Act and Not on a Compliance Period Basis**

The draft regulations continue to determine CCSF's eligibility for the 67% requirement at the start of every compliance period rather than at the start of every calendar year. As noted in San Francisco's initial comments, this is inconsistent with section 399.30(j) of the Act, which requires that San Francisco "shall procure renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year." Making San Francisco's section 399.30(j) eligibility subject to the multi-year compliance period applicable to other POU's could result in San Francisco needing to replace its own greenhouse-gas

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<sup>1</sup> Notice of Changes to Proposed Regulations and Notice of 15-day Comment Period Regarding Proposed Regulations Establishing Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities

free hydroelectric generation with procurement of renewable resources to meet its unmet demand, an outcome that section 399.30(j) was designed to prevent.

San Francisco continues to recommend that the draft regulations retain the historical seven-year average, but perform this measurement at the start of each calendar year, rather than at start of each compliance period, in order to conform to the Act's requirements.

### **III. The Draft Regulations Should be Clarified to Require San Francisco to Meet only the Reporting Requirements Applicable to San Francisco.**

San Francisco's reporting requirements when it uses the alternative compliance obligation set forth in Public Utilities Code section 399.30(j) are specified in Section 3207(f). This section originally stated that "Notwithstanding the requirements of sections 3207(a)-(d)" San Francisco would submit the information required in Section 3207(f). It has now been changed in the 15-day Comment Package to read; "In addition to the requirements of sections 3207(a)-(d)."

San Francisco should be required to comply only with those portions of the reporting requirements that are specifically applicable to San Francisco. Accordingly, the beginning of section 3207(f) should read "In addition to the applicable requirements of Section 3207(a)-(d)."

The reporting requirements contained in Section 3207(a)-(d) can be broadly categorized into three categories; those that are applicable to San Francisco in all years;<sup>2</sup> those which might be applicable to San Francisco if it chooses to utilize any of the optional compliance measures in the Act;<sup>3</sup> and those that are inapplicable to San Francisco if it uses the alternative compliance obligation in section 399.30(j), such as multi-year compliance period obligations, reasonable progress, and portfolio balancing requirements. Allowing San Francisco to meet only the applicable requirements of sections 3207(a)-(d) provides CEC staff with the information it needs while minimizing an unnecessary reporting burden. CCSF is willing to work with CEC staff to identify the applicable requirements.

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

The draft regulations still do not address the issue of the Portfolio Content Category (PCC) designation of renewable energy credits (RECs) from renewable energy resources that will now

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<sup>2</sup> This includes such reporting requirements as contact information, attestation as to accuracy, etc.

<sup>3</sup> This includes reporting requirements related to such areas as cost limitation, deferral of compliance, excess carryover, etc.

become retroactively RPS-eligible<sup>4</sup> as a result of the CEC's adoption of its 7<sup>th</sup> Edition of the RPS Eligibility Guidebook.<sup>5</sup> As San Francisco noted, many utilities may have transferred this now RPS-eligible energy to others prior to the POU/retail seller receiving the RECs associated with this generation.<sup>6</sup> The entities acquiring or purchasing this energy may not be able to claim RPS credit for these resources because the associated RECs were not available at the time this sale or transfer took place.

In its comments, San Francisco proposed that the draft regulations should ensure that the retroactive PCC designation will apply in the case of a purchaser of RPS-eligible energy during the time period between the January 1, 2011 effective date of SBX1-2 and the date on which the draft regulations become effective. Such a purchaser should be able to get credit for a PCC1 (or Bucket 1) purchase if it subsequently purchases the RECs associated with the underlying energy it purchased from a retroactively designated resource. This treatment is consistent with the treatment that the California Public Utilities Commission (CPUC) provided to the investor-owned utilities in developing their PCC rules.

San Francisco urges CEC staff to address this issue in this rulemaking.

**V. San Francisco is not subject to the Portfolio Balancing Requirements if It meets the Requirements of Section 399.30(j)**

In comments on the draft regulations, PG&E takes issue with the CEC's Initial Statement of Reasons (ISOR)<sup>7</sup> that San Francisco is not subject to the portfolio balancing requirements of section 399.30(c) if it meets its alternative compliance obligation under section 399.30(j). San Francisco, in its comments both in this rulemaking as well as the pre-rulemaking workshops,<sup>8</sup> has extensively addressed the reasoning in support of the CEC's conclusion and will not repeat this reasoning here except to briefly respond to PG&E's assertions.

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<sup>4</sup> In the 7<sup>th</sup> Edition of the RPS Eligibility Guidebook RPS eligibility for certain types of resources such as hydroelectric facilities associated with water conveyance systems and AB920 resources will be effective as of January 1, 2011 or the date the facility started operation.

<sup>5</sup> Adopted April 30, 2013.

<sup>6</sup> Under the CEC's regulatory framework, RPS-eligibility and certification is determined through the RPS Eligibility Guidebook while the classification of RECs into their PCC categories for POUs is determined in this regulatory process.

<sup>7</sup> California Energy Commission Initial Statement of Reasons for Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities (March, 2013, CEC-300-2013-004)

<sup>8</sup> San Francisco addressed this issue in comments during the pre-rulemaking phase of this proceeding (CCSF Comments on the 33% Renewables Portfolio Standard Pre-Rulemaking Draft Regulations for Publicly-Owned Electric Utilities (p. 4-6) submitted to the CEC on April 2, 2012) and included these comments into this rulemaking proceeding as an attachment to San Francisco's comments filed on April 16, 2013.

PG&E's argument appears to rest on the assertion that that the language used in Section 399.30(j) "is identical to that used in Section 399.30(a), which applies to all POU's."<sup>9</sup> This is incorrect. In crafting SBX1-2 the Legislature specifically directed that POU's subject to the requirements of Section 399.30(a) would need to acquire "electricity products" to "**achieve the targets of subdivision (c)**" of 399.30 (emphasis added). In contrast, Section 399.30(j) requires San Francisco to procure "eligible renewable energy resources, including renewable energy credits"<sup>10</sup> for its needs unmet by its qualifying hydroelectric generation. The Legislature did not include in Section 399.30(j), as it did in Section 399.30(a), an explicit requirement to "achieve the targets of subdivision (c)" of 399.30. PG&E noted that "If the Legislature had intended to exempt the CCSF from the portfolio balance requirements, it would have made that exemption clear and specific."<sup>11</sup> However, the converse is true, if the Legislature had intended the portfolio balance requirements to apply, it would have so stated, as it did in Section 399.30(a).

Accordingly, the draft regulations meet the statutory requirements of the Act.

## VI. CONCLUSION

San Francisco appreciates the opportunity to comment on the 15-day Comment Period and urges the CEC to make the changes proposed above.

Respectfully submitted,

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<sup>9</sup> PG&E Comments filed April 15, 2013, p. 7

<sup>10</sup> Although the term "electricity products" is used throughout the draft regulations, there is no requirement in SBX1-2 for San Francisco to procure "electricity products." SBX1-2 instead requires that San Francisco procure "eligible renewable energy resources, including renewable energy credits" to meet its RPS obligations.

<sup>11</sup> PG&E Comments filed April 15, 2013, p. 7.