California Energy Commission

PROPOSED REGULATIONS

Second 15-Day Language Changes

ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

Proposed Regulations
Title 20, Division 2, Chapter 13, Sections 3200 – 3208
Title 20, Division 2, Chapter 2, Article 4, Section 1240

CALIFORNIA
ENERGY COMMISSION

Edmund G. Brown Jr., Governor

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PREFACE

The California Energy Commission is releasing for public review and comment revisions to the text of the proposed regulations specifying rules and procedures for enforcement of the Renewables Portfolio Standard ("RPS") for local publicly owned electric utilities ("POUs") pursuant to Public Utilities Code section 399.30 (l), as enacted by Senate Bill (SB) X1-2 (Simitian, Stats. 2011, 1st Ex. Sess., ch. 1) and subsequently revised by Assembly Bill 2227 (Stats. 2012, ch. 606, sec. 8). The proposed regulations are available online at: http://www.energy.ca.gov/portfolio/pou_rulemaking/documents/.

On July 13, 2011, the Energy Commission adopted an Order Instituting Rulemaking, Order No. 11-0713-04, opening the public process to develop and adopt new regulations specifying rules and procedures for enforcing the RPS requirements for POUs pursuant to SBX1-2. Energy Commission staff held a public workshop on June 17, 2011, and a public WebEx meeting on September 1, 2011, to provide information on the rulemaking process and solicit information on concepts for the proposed regulations. Energy Commission staff held additional public workshops on March 1, 2012, and July 30, 2012, to solicit public comments on initial drafts of the proposed regulations. Throughout this process, the Energy Commission received and considered comments from stakeholders and the public, including POUs, investor-owned electric utilities, renewable energy marketers and organizations, environmental organizations, and consumer advocates. During this process Energy Commission staff also consulted with staff from the California Public Utilities Commission (CPUC) to ensure the proposed regulations were consistent with the RPS rules and policies established by the CPUC for retail sellers of electricity, to the extent appropriate. Energy Commission staff also consulted with staff from the California Air Resources Board (ARB) to ensure the proposed regulations meshed with the enforcement processes for POUs contemplated by the ARB under SBX1-2.

ABSTRACT

The California Energy Commission developed the proposed regulations to fulfill the purposes of Public Utilities Code section 399.30 (l), which directs the Energy Commission to adopt regulations specifying procedures for the enforcement of the RPS on POUs under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part I of Public Utilities Code. Section 399.30 (l) also states that these "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…."

The proposed regulations implement, interpret, and make specific the provisions in Public Utilities Code section 399.30 (l). The proposed regulations also implement, interpret, and make specific related provisions in Public Utilities Code sections 399.13, 399.15, 399.16, 399.21, 399.30, 9507, and 9508 and in Public Resources Code sections 25741 and 25747.

The proposed regulations establish the rules and procedures that the Energy Commission will use to assess a POU's procurement actions and determine whether those actions meet the RPS procurement requirements in the law. 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. The proposed regulations require POUs to submit various information and reports to the Energy Commission so the Energy Commission may verify and determine compliance with the RPS, and, if appropriate, issue a notice of violation and correction for a POU's failure to comply and refer the violation to the ARB for potential penalties.

Once final, the regulations will be codified in the California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3200 through 3208, and in Title 20, Division 2, Chapter 2, Article 4, section 1240.

Keywords: California Energy Commission, Renewables Portfolio Standard, regulations, rulemaking, local publicly owned electric utility (POU)

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Changes to the text of the proposed regulations by the Second 15-Day Language are shown in bolded double-underline for added text (**Example**) and bolded double-strikeout for deleted text (~~**Example**~~). Changes to the text of the proposed regulations by the initial 15-Day Language are shown in bolded underline for added text (**Example**) and bolded strikeout for deleted text (~~**Example**~~). The text of the proposed regulations from the 45-Day Language Express Terms is shown in plain text.

PROPOSED REGULATIONS

Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 13. Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

(Sections 3200 through 3208)

Section 3200 – Scope

The regulations in this chapter implement enforcement procedures for the Renewables Portfolio Standard for local publicly owned electric utilities established in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

Section 3201 – Definitions

The following definitions apply to this chapter:

(a) **"Annual procurement target"** means the amount of procurement that a POU must meet for a particular year for the purposes of calculating historic carryover.

(b) **"Balancing authority"** means a balancing authority as defined in Public Utilities Code section 399.12 (b).

(c) "**Balancing authority area**" means a balancing authority area as defined in Public Utilities Code section 399.12 (c).

(d) **"Baseline"** means the initial RPS procurement of a POU that will form the basis of that POU's annual procurement targets.

(e) "**Bundled**" means an electricity product that, when procured by the POU claiming the electricity product to satisfy its RPS procurement requirements, includes both the electricity and the associated renewable energy credits from an eligible renewable energy resource.

(f) **"California balancing authority"** means a balancing authority primarily located in California with more than 50 percent of its end-use electric load physically located within the political boundaries of California. This includes balancing authority areas operated by

the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California, Imperial Irrigation District, and Turlock Irrigation District.

(g) **"Commission"** means the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

(h) **"Compliance period"** means the compliance period~~s~~ as defined in Public Utilities Code section 399.30 (c).

(i) **"Compliance report"** means the report that each POU~~s~~ files with the Commission by July 1 of the calendar year following the end of a compliance period as specified in section 3207.

(j) **"Electricity product"** means either:

(1) Electricity and the associated renewable energy credit generated by an eligible renewable energy resource.

(2) An unbundled renewable energy credit.

(k) **"Eligible renewable energy resource"** means an electrical generating facility that the Commission has determined meets the definition of a "renewable electrical generation facility" in section 399.12 (e) of the Public Utilities Code, including a facility satisfying the criteria of section 399.12.5 of the Public Utilities Code, and has certified as an RPS-certified facility.

(l) **"Executive Director"** means the Executive Director of the Commission, or his or her designee.

(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 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.

(n) **"Megawatt-hour" or "MWh"** means a unit of energy equivalent to one megawatt of electricity supplied for one hour.

(o) "**NERC e-Tag**" means an electronic record that contains the details of a transaction to transfer energy from a source point to a sink where the energy is scheduled for transmission across one or more balancing authority area boundaries. For purposes of this definition, "source point" refers to the generation source of the energy, and "sink" refers to the balancing authority in which the electric load is located.

(p) **"Ownership agreement**" includes:

(1) An agreement between a POU and a third party to acquire or develop an electrical generation facility or

(2) If the POU built and owns the electrical generation facility and therefore has no such agreement with a third party, the arrangement by which the POU built the facility, in which case the date of the arrangement for the purposes of section 3202(a) is the commercial operation date of the facility.

(q) **"Portfolio balance requirement"** refers to the portfolio content category minimum and maximum requirements defined in Public Utilities Code section 399.16.

(r) "**Portfolio content category**" refers to one of three categories of electricity products procured from an eligible renewable energy resource, as specified in section 3203.

(s) "**POU"** or "**Local publicly owned electric utility**" means a local publicly owned electric utility as defined by Public Utilities Code section 224.3.

(t) "**Procure**" means to acquire electricity products from eligible renewable energy resources**, <u>either directly from the eligible renewable energy resource or from a third party,</u>** through executed contracts or ownership agreements.

(u) **"Renewable electrical generation facility"** means a facility as defined in Public Resources Code section 25741(a).

(v) **"Renewable energy credit"** or "**REC**" means a certificate of proof**,** as defined in Public Utilities Code section 399.12 (h), associated with the generation of electricity from an eligible renewable energy resource.

(w) **"Renewables Portfolio Standard"** or **"RPS**" has the same meaning as defined in Public Utilities Code section 399.12 (i).

(x) **"RPS-certified facility"** means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission's RPS Guidelines, or that the Commission has granted limited RPS certification in place for the duration of that facility's contract or ownership agreement term pursuant to the Commission's RPS Guidelines.

(y) **"RPS Guidelines"** means the guidelines adopted by the Commission pursuant to Public Resources Code section 25747 (a) to implement the RPS.

(z) **"RPS procurement requirements"** refers to both the portfolio balance requirement and the RPS procurement target with which a POU must comply.

(aa) **"RPS procurement target"** means the specified percentage of retail sales that a POU must procure of electricity products from eligible renewable energy resources for each compliance period as defined in Public Utilities Code section 399.30 (c). For POUs that meet the criteria listed in Public Utilities Code section 399.30 (j), the procurement target is the annual specified percentage of the portion of electricity demand not met by the POU's qualifying hydroelectric generation, or the soft target for that year, whichever is less, that must be procured from eligible renewable energy resources.

(bb) **"Retail sales"** means sales of electricity by a POU to end-use customers and their tenants, measured in MWh. This does not include energy consumption by a POU, electricity used by a POU for water pumping, or electricity produced for onsite consumption (self-generation).

(cc) **"Retire"** means to claim a renewable energy credit in the tracking system established by the Commission pursuant to Public Utilities Code section 399.25 (c) and thereby commit the renewable energy credit to be used for compliance with the RPS.

(dd) **"Soft target**" means an amount equivalent to the percentage of retail sales for a single year within a compliance period that is used to calculate the RPS procurement target for that compliance period. For example, the soft target for 2014 is equal to 20 percent of retail sales for that year.

(ee) **"Unbundled REC"** means a REC from an eligible renewable energy resource that is not procured as part of the same contract or ownership agreement with the underlying energy from that eligible renewable energy resource; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.

(ff) **"Western Electricity Coordinating Council"** or **"WECC"** means the electricity coordinating council as defined in Public Utilities Code section 399.12 (k). WECC is part of the North American Electric Reliability Corporation and the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection serving all or part of the 14 western states and portions of Mexico (in northern Baja California) and Canada (in British Columbia and Alberta).

(gg) "**Western Renewable Energy Generation Information System"** or **"WREGIS"** refers to the independent, renewable energy tracking system implemented for the region covered by the Western Electricity Coordinating Council.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 25741 and 25747, Public Resources Code; and section 399.30, Public Utilities Code.

Section 3202 – Qualifying Electricity Products

(a) For an electricity product to be used for compliance toward the RPS procurement requirements specified in section 3204, the electricity product must meet one of the following requirements:

(1) The electricity product is procured pursuant to a contract or ownership agreement executed on or after June 1, 2010.

(A) Procurement must be classified into a portfolio content category in accordance with section 3203.

(B) Procurement will be included in the calculation of the portfolio balance requirements as defined in section 3204 (c)**, unless the procurement is retired by a POU that meets the criteria of section 3204 (a)(7), 3204 (a)(8), or 3204 (a)(9)**.

(2) The electricity product is procured pursuant to a contract or ownership agreement executed before June 1, 2010, and the electricity product is associated with generation from an eligible renewable energy resource that met the Commission's RPS eligibility requirements that were in effect when the original procurement contract or ownership agreement was executed by the POU.

(A) Except as provided in paragraphs (B) and (C), the electricity product shall count in full toward the RPS procurement requirements, subject to the following:

1. If the associated REC is retired within 36 months of the date the electricity product is generated, the electricity product will count toward the RPS procurement targets as defined in section 3204 (a).

2. The electricity product will not be classified within a portfolio content category and will not count toward the requirements of section 3204 (c).

~~**3. Electricity products associated with contracts of less than 10 years will not be subtracted when calculating excess procurement in accordance with section 3206 (a).**~~

3. Electricity products associated with contracts of less than 10 years will not be subtracted when calculating excess procurement in accordance with section 3206 (a).

(B) If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as provided in 3202 (a)(2)(C),or substitute a different eligible renewable energy resource, only the MWhs or resources procured prior to June 1, 2010, shall count in full toward the RPS procurement targets. The remaining procurement must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).

(C) The term of such procurement contract may be extended if the initial term of the contract specified a procurement commitment of 15 years or more.

(3) The electricity product is procured pursuant to a contract or ownership agreement executed before June 1, 2010, but the eligible renewable energy resource did not meet the Commission's RPS eligibility requirements when the original procurement contract or ownership agreement was executed by the POU.

(A) Procurement must be classified into a portfolio content category in accordance with section 3203.

(B) Procurement will not be included in the calculation of portfolio balance requirements in section 3204 (c).

(b) If any electricity products procured pursuant to a contract or ownership agreement executed prior to June 1, 2010, are resold on or after June 1, 2010, and the resale is not explicitly included in the original contract or ownership agreement terms, the electricity products must be classified in a portfolio content category and follow the portfolio balance

requirements of section 3204 (c)**, unless the procurement is retired by a POU that meets the criteria of section 3204 (a)(7), section 3204 (a)(8) or 3204 (a)(9)**.

(c) A POU may not use a REC associated with electricity products to meet its RPS procurement requirements unless it is retired within 36 months from the initial month of the generation of the associated electricity. For example, a POU can retire a REC associated with electricity generated in February 2011 no later than February 28, 2014, to claim the REC toward the POU's RPS procurement requirements. RECs may not be retired for purposes of the RPS procurement requirements of a compliance period if that compliance period begins after the date of retirement.

(d) A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date of generation of the electricity associated with that REC. For example, a POU may not retire a REC associated with electricity generated in April 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.

(e) **A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date the POU procured that REC. For example, a POU may not retire a REC associated with electricity generated in November 2013 that the POU procured in February 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.**

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16, 399.21, and 399.30, Public Utilities Code.

Section 3203 – Portfolio Content Categories

(a) Portfolio Content Category 1

(1) Portfolio Content Category 1 electricity products must be procured bundled to be classified as Portfolio Content Category 1, and the POU may not resell the underlying electricity from the electricity product back to the eligible renewable energy resource from which the electricity product was procured. The electricity products must be generated by an eligible renewable energy resource that is interconnected to a transmission network within the WECC service territory. For purposes of this section 3203, the first point of interconnection to the WECC transmission grid is the substation or other facility where generation tie lines from the eligible renewable energy resource interconnect to the network transmission grid. Portfolio Content Category 1 electricity products must also meet ~~at least~~ one of the following criteria:

(A) Electricity products must be generated by an eligible renewable energy resource that has its first point of interconnection within the metered boundaries of a California balancing authority area.

(B) Electricity products must be generated by an eligible renewable energy resource that has its first point of interconnection to an electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area. For purposes of this section 3203, the first point of interconnection to an electricity distribution system is within the service area boundaries of a utility distribution company.

(C) Electricity products from the eligible renewable energy resource **with a first point of interconnection outside the metered boundaries of a California balancing authority** must be scheduled into a California balancing authority without substituting electricity from another source. For purposes of this section 3203, electricity generated by the eligible renewable energy resource must be scheduled into a California balancing authority on an hourly or subhourly basis, and the POU's governing board or other authority, as delegated by the POU governing board, must have approved an agreement, before the electricity is generated, to schedule the electricity from the eligible renewable energy resource into the California balancing authority on an hourly or subhourly basis. If there is a difference between the amount of electricity generated **within an hour** and the amount of electricity scheduled ~~and delivered~~ into a California balancing authority **within that same hour**, only the lesser of the two amounts shall be classified as Portfolio Content Category 1.

(D) Electricity products must be subject to an agreement between a California balancing authority and the balancing authority in which the eligible renewable energy resource is located, executed before the product is generated, to dynamically transfer electricity from the eligible renewable energy resource into the California balancing authority area.

(2) Electricity products originally qualifying in Portfolio Content Category 1 and resold must meet the following criteria to remain in Portfolio Content Category 1:

(A) The original contract for procurement of the electricity products meets ~~at least~~ one of the criteria in section 3203 (a)(1)(A) – (D).

(B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.

(C) The electricity and associated RECs must be transferred by the resale contract to the ultimate buyer, and the electricity must be transferred in real time.

(D) For those electricity products that satisfy section 3203 (a)(1)(C), the original hourly or subhourly schedule is maintained, and the criteria of section 3203 (a)(2)(A) – (C) are met.

(3) Electricity products originally qualifying in Portfolio Content Category 1 and resold that do not meet the criteria of section 3203 (a)(2)(A) – (D) shall not be counted in Portfolio Content Category 1.

(b) Portfolio Content Category 2

(1) Portfolio Content Category 2 electricity products must be generated by an eligible renewable energy resource that is interconnected to a transmission network within the WECC service territory, and the electricity must be ~~firmed and shaped~~ **matched** with ~~substitute electricity to provide~~ incremental electricity that is scheduled into a California balancing authority.

(2) Portfolio Content Category 2 electricity products must be procured bundled and must meet all of the following criteria:

(A) The first point of interconnection to the WECC transmission grid for both the eligible renewable energy resource and the resource providing the ~~substitute~~**incremental** electricity must be located outside the metered boundaries of a California balancing authority area.

(B) The ~~substitute~~**incremental** electricity used to ~~firm and shape~~**match** the electricity from the eligible renewable energy resource must be incremental to the POU. For purposes of this section 3203, "incremental **electricity**" means electricity that is **generated by a resource located outside the metered boundaries of a California balancing authority area and that is** not in the portfolio of the POU claiming the electricity products for RPS compliance prior to the date the contract or ownership agreement for the electricity products from the eligible renewable energy resource**, with which the incremental electricity is being matched,** is executed by the POU or other authority, as delegated by the POU governing board.

(C) The contract or ownership agreement for the **incremental** 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.

(D) The ~~substitute~~**incremental** 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.

(E) The electricity from the eligible renewable energy resource must be available to be procured by the POU and may not be sold back to that resource.

(3) Electricity products originally qualifying in Portfolio Content Category 2 and resold must meet the following criteria to remain in Portfolio Content Category 2:

(A) The original contract for procurement of the electricity products meets the criteria of section 3203 (b)(2)(A) – (E).

(B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.

(C) The resale contract transfers the original arrangement for ~~substitute~~**incremental** electricity, including the source and quantity for the ~~substitute~~**incremental** electricity.

(D) The resale contract retains the scheduling of the ~~substitute~~**incremental** electricity into the California balancing authority as set out in the original ~~firming and shaping~~ transaction.

(E) The transaction provides incremental electricity ~~from the substitute resource~~ for the POU claiming the transaction for RPS compliance.

(F) The ~~transaction~~**incremental electricity** is scheduled into the California balancing authority.

(4) Electricity products originally qualifying in Portfolio Content Category 2 and resold that do not meet the criteria above must be counted in Portfolio Content Category 3.

(c) Portfolio Content Category 3

(1) All unbundled renewable energy credits and other electricity products procured from eligible renewable energy resources located within the WECC transmission grid that do not meet the requirements of either Portfolio Content Category 1 or Portfolio Content Category 2 fall within Portfolio Content Category 3.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.16 and 399.30, Public Utilities Code.

Section 3204 – RPS Procurement Requirements

(a) RPS procurement targets for each compliance period:

(1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, a POU shall demonstrate it has procured electricity products sufficient to meet or exceed an average of 20 percent of its retail sales over the three calendar years in the compliance period. The numerical expression of this requirement is:

$$\frac{(EP_{2011} + EP_{2012} + EP_{2013})}{(RS_{2011} + RS_{2012} + RS_{2013})} \geq 0.20$$

EP_X = Electricity ~~P~~products retired for the specified year X; this may include excess procurement and historic carry~~-~~over that the POU has chosen to apply to the compliance period containing year X
RS_X = Total retail sales made by the POU for the specified year X

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(5) toward its RPS procurement target for this period.

(2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 20 percent of its 2014 retail sales, 20 percent of its 2015 retail sales, and 25 percent of its 2016 retail sales. The numerical expression of this requirement is:

$$EP_{2014} + EP_{2015} + EP_{2016} \geq 0.20(RS_{2014}) + 0.20(RS_{2015}) + 0.25(RS_{2016})$$

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(6) toward its RPS procurement target for this period.

(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 27~~5~~ percent of its 2017 retail sales, 29~~5~~ percent of its 2018 retail sales, **31~~25~~** percent of its 2019 retail sales, and 33 percent of its 2020 retail sales. The numerical expression of this requirement is:

$$(EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020})$$
$$\geq 0.2\cancel{5}7(RS_{2017}) + 0.2\cancel{5}9(RS_{2018}) + 0.\cancel{25}31(RS_{2019}) + 0.33(RS_{2020})$$

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(7) toward its RPS procurement target for this period.

(4) For the calendar year ending December 31, 2021, and each calendar year thereafter, a POU shall procure electricity products sufficient to meet or exceed 33 percent of its retail sales by the end of that year. No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(8) toward its RPS procurement target for the calendar year ending December 31, 2021, or for any calendar year thereafter.

(5) For a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code), the percentage of total retail sales, upon which the RPS procurement targets in section 3204 (a)(1)-(4) are calculated, shall be based on that POU's average annual retail sales over the seven years preceding the end of each year within that compliance period. (For example, for the compliance period ending December 31, 2013, the retail sales for 2011 shall equal the average annual retail sales for January 1, 2005 – December 31, 2011, the retail sales for 2012 shall equal the average annual retail sales for January 1, 2006 – December 31, 2012, and the retail sales for 2013 shall equal the average annual retail sales for January 1, 2007 – December 31, 2013.) If the POU has not furnished electric service for the seven years preceding the end

of a compliance period, then the calculation shall be based on average annual retail sales over the number of completed years during which the authority has provided electric service.

(6) Notwithstanding section 3204 (a)(1) – (4) or section 3204 (c)(1)-(9), a POU that meets the criteria listed in Public Utilities Code section 399.30 (g) shall be deemed to be in compliance with this section.

(A) A POU shall demonstrate that it meets the criteria listed in section 399.30 (g) by providing the Commission documentation showing the POU receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386). The documentation shall include a copy of any written notice filed with the United States Secretary of the Interior or the Western Area Power Administration declaring the POU's intent to exercise its preference rights under the Trinity River Diversion Act and any integrated resource plan filed with the Western Area Power Administration confirming the POU's election to receive all of its electricity pursuant to its preference rights, and any updates or amendments to those written notices and integrated resource plans. The POU shall initially submit documentation to the Commission within 30 calendar days of the effective date of these regulations. Thereafter, the POU shall submit to the Commission a copy of any new or updated written notices or integrated resource plans filed with the United States Secretary of the Interior or the Western Area Power Administration. Copies of such notices and plans shall be submitted to the Commission within 30 calendar days of the date the notices and plans are filed with the United States Secretary of the Interior or the Western Area Power Administration. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (g).

(7) Notwithstanding section 3204 (a)(1) – (4) or section 3204 (c)(1)-(9), a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall be deemed to be in compliance with this section 3204 for a given calendar year if all of the POU's electricity demand in that calendar year is satisfied with its qualifying hydroelectric generation **or if the POU meets the requirements of paragraph (D).**

(A) For purposes of this section 3204**(a)(7)**, "qualifying hydroelectric generation" is generation from a facility that meets the following criteria:

1. The facility is located within the state.
2. The facility is owned and operated by the POU.
3. The facility is a hydroelectric facility but does not meet the definition of a renewable electrical generation facility and is not RPS-certified **based on the definition of a renewable electrical generation facility**.

(B) For purposes of this section 3204 (a)(7), "electricity demand" means consumption of electricity by all end-use customers and their tenants, including but not limited to the POU itself, measured in MWh.

(C) A POU shall demonstrate that it meets the criteria listed in Public Utilities Code section 399.30 (j) by providing the Commission documentation showing the POU received at least an average of 67 percent of its electricity demand in the seven years preceding each compliance period from qualifying hydroelectric generation. The POU shall initially submit documentation for the seven years immediately preceding January 1, 2011, within 30 calendar days of the effective date of these regulations. New documentation shall be submitted within 90 calendar days of the end of each compliance period.

(D) If a POU meeting the criteria listed in Public Utilities Code section 399.30 (j) has electricity demand unsatisfied by its qualifying hydroelectric generation in any given year, the POU shall procure electricity products equal to the lesser of the following:

1. The portion of the POU's electricity demand unsatisfied by the POU's qualifying hydroelectric generation.
2. The soft target listed in section 3204 (a)(1) – (4) corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual electricity demand.

(8) A POU that meets the criteria of Public Utilities Code section 399.30 (h) shall not be subject to the requirements in section 3204 (c)(1)-(9). A POU shall demonstrate that it meets the criteria listed in Public Utilities Code section 399.30 (h) by providing the Commission documentation showing the POU was in existence on or before January 1, 2009, that it provides retail electric service to 15,000 or fewer customer accounts in California, and that it is interconnected to a balancing authority primarily located outside California but within the WECC.

(9) <u>A POU that meets the criteria of Public Utilities Code section 399.18 shall not be subject to the requirements in section 3204 (c)(1)-(9). A POU shall demonstrate that it meets these criteria by providing the Commission documentation showing that the POU is a successor to an electrical corporation that had 1,000 or fewer customer accounts in California as of January 1, 2010, and was not interconnected to any transmission system or to the Independent System Operator as of January 1, 2010.</u>

(b) RPS procurement requirements deficits incurred by a POU in any ~~one~~ compliance period shall not be added to the RPS procurement requirements of the POU in a future compliance period.

(c) In meeting the RPS procurement targets as defined in section 3204 (a), each POU shall also be subject to the following portfolio balance requirements:

(1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, not less than 50 percent of electricity products that meet the criteria of section 3202 (a)(1)

and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2011\text{-}2013} \geq 0.50 \times (POST_{2011\text{-}2013})$$

$PCC1_X$ = Electricity products retired and applied to the RPS procurement target for compliance period X that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)
$POST_X$ = Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance period X

(2) For the compliance period beginning January 1, 2014, and ending December 31, 2016, not less than 65 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2014\text{-}2016} \geq 0.65 \times (POST_{2014\text{-}2016})$$

(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, not less than 75 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_{2017\text{-}2020} \geq 0.75 \times (POST_{2017\text{-}2020})$$

(4) For the calendar year ending December 31, 2021, and each calendar year thereafter, not less than 75 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_Y \geq 0.75 \times (POST_Y)$$

$PCC1_Y$ = Electricity products retired and applied toward the RPS procurement target for compliance year Y that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)
$POST_Y$ = Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance year Y

(5) For the compliance period beginning January 1, 2011, and ending December 31, 2013, no more than 25 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2011\text{-}2013} \leq 0.25 \times (POST_{2011\text{-}2013})$$

$PCC3_X$ = Electricity products retired and applied toward the RPS procurement target for compliance period X that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in section 3203 (c)

(6) For the compliance period beginning January 1, 2014, and ending December 31, 2016, no more than 15 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2014\text{-}2016} \leq 0.15 \times (POST_{2014\text{-}2016})$$

(7) For the compliance period beginning January 1, 2017, and ending December 31, 2020, no more than 10 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_{2017\text{-}2020} \leq 0.10 \times (POST_{2017\text{-}2020})$$

(8) For the calendar year ending December 31, 2021, and each calendar year thereafter, no more than 10 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this requirement is:

$$PCC3_Y \leq 0.10 \times (POST_Y)$$

$PCC3_Y$ = Electricity products retired and applied toward the RPS procurement target for compliance year Y that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in section 3203 (c)

(9) Except as otherwise required by section 3204 (c), electricity products meeting the definition of Portfolio Content Category 2 specified in section 3203 (b) may be used to meet RPS procurement requirements.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16 and 399.30, Public Utilities Code.

Section 3205 – Procurement Plans and Enforcement Programs

(a) Renewable Energy Resources Procurement Plan

(1) 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 requirements for each compliance period. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption. **A POU that has previously adopted a renewable resources procurement plan before the effective date of these regulations does not need to adopt a new renewable energy resources procurement plan and submit the plan to the Commission if no changes are made to the plan after the effective date of these regulations.**

(2) A POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS targets annually. The renewable energy resources procurement plan shall additionally provide a forecast of the qualifying hydroelectric generation expected to meet the POU's forecasted annual electricity demand. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption.

(3) Each POU shall provide the following notice regarding new or updated renewable energy resources procurement plans:

(A) The POU shall post notice, in accordance with Chapter 9 (commencing with section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, whenever its governing board will deliberate in public on its renewable energy resources procurement plan.

(B) Contemporaneous with the posting of the notice of a public meeting to consider the renewable energy resources procurement plan, the POU shall notify the Commission of the date, time, and location of the public meeting to consider the procurement plan. This requirement is satisfied if the POU provides the Commission with the uniform resource locator (URL) that directly links to the notice for the public meeting. Alternatively, an e-mail with information on the public meeting in Portable Document Format (PDF) may also be provided to the Commission.

(C) The POU must notify the Commission if any URL provided by the POU pursuant to this section 3205 no longer contains the correct link, and the POU must send the Commission a corrected URL that links to the information or a PDF containing the information as soon as it becomes available.

(b) Enforcement Program

(1) ~~By~~**As of** January 1, 2012, each POU shall **have** adopt**ed** an enforcement program detailing actions the POU will take if the POU determines that it will not meet its RPS procurement requirements in accordance with section 3204. The enforcement program, and any revisions or updates to the program, shall be submitted to the Commission within 30 calendar days of adoption.

(2) Each POU shall provide notice regarding new or updated enforcement programs. The enforcement program must be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment.

(A) No~~t~~ less than 30 calendar days notice shall be given to the public of any meeting held for purposes of adopting the enforcement program.

(B) If the enforcement program is modified or amended, no less than 10 calendar days notice shall be given to the public before any meeting is held to make a substantive change to the enforcement program.

(3) Contemporaneous with the posting of the notice of a public meeting to consider the enforcement program, the POU shall notify the Commission of the date, time, and location of the public meeting to consider the enforcement program. This requirement is satisfied if the POU provides the Commission with the URL that directly links to the notice for the public meeting. Alternatively, an e-mail with information on the public meeting in PDF may also be provided to the Commission.

(4) The POU must notify the Commission if any URL provided by the POU pursuant to this section 3205 no longer contains the correct link, and the POU must send the Commission a corrected URL that links to the information or a PDF containing the information as soon as it becomes available.

(c) If a POU distributes information to its governing board related to its renewable energy resources procurement status or future procurement plans or enforcement programs, for the governing board's consideration at a public meeting, the POU shall make all that information available to the public **at the same time it is distributed to its governing board** and shall provide an electronic copy of that information to the Commission for posting on the Commission's website.

(1) This requirement is satisfied if the POU provides to the Commission the URL that directly links to the documents or information regarding other manners of access to the documents. Alternatively, an e-mail with the information in PDF may also be provided to the Commission.

(2) The POU must notify the Commission if any URL provided by the POU pursuant to this section 3205 no longer contains the correct link, and the POU must send the Commission a corrected URL that links to the information or a PDF containing the information as soon as it becomes available.

(d) Notwithstanding section 3205 (a) – (c), a POU that meets the criteria listed in Public Utilities Code section 399.30 (g) is not required to provide the Commission with a renewable energy resources procurement plan, enforcement program, or public notice or information concerning any such procurement plans or enforcement programs.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.30, Public Utilities Code.

Section 3206 – Optional Compliance Measures

(a) In meeting its RPS procurement requirements, the governing board of a POU may adopt at a noticed public meeting any of the following measures:

(1) Excess procurement

(A) A POU may adopt rules permitting the POU to apply excess procurement in one compliance period to a subsequent compliance period, as specified in paragraphs (B) – (D) and subject to the following limitations:

1. Electricity products **that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are** classified in Portfolio Content Category 3 may not be counted as excess procurement.

2. Electricity products **that meet the criteria of section 3202 (a)(1) and** that exceed the maximum limit for Portfolio Content Category 3, as specified in section 3204 (c), must be subtracted from the calculation of excess procurement.

~~**3. 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 meets the criteria in section 3202 (a)(2).**~~

3. 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 meets the criteria in section 3202 (a)(2).

(B) A POU that opts to allow the application of excess procurement as part of its renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.

(C) Electricity products qualifying as excess procurement may be applied toward any future compliance periods, including compliance years following 2020.

(D) Excess procurement shall be calculated as follows:

1. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2013, is:

Excess Procurement =

*$(EP_{2011\text{-}2013}) - (RPS_{2011\text{-}2013} + S3_{2011\text{-}2013}$ ~~+STC2011-2013~~ **+ STC2011-2013**)*

*EP_X = Electricity ~~P~~**p**roducts retired and applied toward the RPS procurement target for the compliance period X*
RPS_X = The RPS procurement target calculated in section 3204 (a) for compliance period X
$S3_X$ = Retired PCC 3 RECs ***that meet the criteria of section 3202 (a)(1)***
in excess of the maximum calculated in ***s***~~S~~*ection 3204 (c) for compliance period X*

~~***STCX = All electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance period X***~~

STC_X = All electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance period X

2. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2016, is:

   Excess Procurement =
   *$(EP_{2014\text{-}2016}) - (RPS_{2014\text{-}2016} + S3_{2014\text{-}2016}$ ~~+STC2014-2016~~ **+ STC2014-2016**)*

3. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, is:

   Excess Procurement =
   *$(EP_{2017\text{-}2020}) - (RPS_{2017\text{-}2020} + S3_{2017\text{-}2020}$ ~~+STC2017-2020~~ **+ STC2017-2020**)*

4. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2021, and each annual compliance period thereafter is:

   Excess Procurement =
   *$(EP_Y) - (RPS_Y + S3_Y$ ~~+ STCY~~ **+ STCY**)*

   *EP_Y =Electricity ~~P~~**p**roducts retired and applied toward the RPS procurement target for the compliance year Y*
   RPS_Y = The RPS procurement target calculated in section 3204 (a) for compliance year Y
   $S3_Y$ =

Retired PCC 3 RECs ***that meet the criteria of section 3202 (a)(1)*** *in excess* ~~***of the maximum***~~ ***of the maximum calculated in section 3204*** *(c) for compliance year Y*
~~***STC_Y = All electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance year Y***~~

STC_Y = All electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance year Y

(E) Notwithstanding section 3206 (a)(1)(A)-(D), a POU that meets the criteria **of section 3204 (a)(8) or section 3204 (a)(9)** ~~**of Public Utilities Code section 399.30 (h)**~~ may adopt rules permitting the POU to apply excess procurement in one compliance period to a subsequent compliance period, subject to the following limitations.

1. Unbundled RECs that do not meet the criteria of section 3202 (a)(2) may not be counted as excess procurement. Electricity products that exceed the maximum limit for unbundled RECs specified in paragraph ~~**54**~~**5** must be subtracted from the calculation of excess procurement.

~~**2. 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 meets the criteria in section 3202 (a)(2).**~~

2. 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 meets the criteria in section 3202 (a)(2).

3. A POU that opts to allow the application of excess procurement as part of its renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.

4. Electricity products qualifying as excess procurement may be applied toward any future compliance periods, including compliance years following 2020.

5. Excess procurement shall be calculated as follows:

   i. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2013, is:

   Excess Procurement =
   $(EP_{2011\text{-}2013}) - (RPS_{2011\text{-}2013} + UR_{2011\text{-}2013}$ ~~$+ STC_{2011\text{-}2013}$~~ $+ STC_{2011\text{-}2013})$

   $UR_{2011\text{-}2013}$ = *Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2013, that exceed an amount equal*

to 25 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.

ii. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2016, is:

Excess Procurement =
$(EP_{2014\text{-}2016}) - (RPS_{2014\text{-}2016} + UR_{2014\text{-}2016}$ ~~**+ STC$_{2014\text{-}2016}$**~~ **+ STC$_{2014\text{-}2016}$**$)$

$UR_{2014\text{-}2016}$ *= Unbundled RECs that do not meet the criteria of* ~~**S**~~*section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2016, that exceed an amount equal to 15 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.*

iii. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, is:

Excess Procurement =
$(EP_{2017\text{-}2020}) - (RPS_{2017\text{-}2020} + UR_{2017\text{-}2020}$ ~~**+ STC$_{2017\text{-}2020}$**~~ **+ STC$_{2017\text{-}2020}$**$)$

$UR_{2017\text{-}2020}$ *= Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2020, that exceed an amount equal to 10 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.*

iv. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2021, and each annual compliance period thereafter is:

Excess Procurement $= (EP_Y) - (RPS_Y + UR_Y$ ~~**+ STC$_Y$**~~ **+ STC$_Y$**$)$

UR_Y *= Unbundled RECs that do not meet the criteria of* ~~**S**~~*section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance year Y that exceed an amount equal to 10 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.*

(2) Delay of timely compliance

(A) A POU may adopt rules permitting the POU to make a finding that ~~**reasonable cause**~~**conditions beyond the control of the POU** exist~~**s**~~ to delay the timely compliance with RPS procurement requirements, as defined in section 3204. Such a finding shall be limited to one or more of the following causes for delay and shall demonstrate that the POU would have met its RPS procurement requirements but for the cause of delay:

1. There is inadequate transmission capacity to allow sufficient electricity to be delivered from eligible renewable energy resources, or proposed eligible renewable energy resource projects, to the extent applicable, using the current operational protocols of the balancing authority in which the POU operates. A POU that owns transmission or has transmission rights may find that:

   i. The POU has undertaken all reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of its expectation for cost recovery.

   ii. The POU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.

2. Permitting, interconnection, or other circumstances have delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. The POU must also find that:

   i. The POU prudently managed portfolio risks, including, but not limited to, holding solicitations for RPS-eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.

   ii. The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.

   iii. The POU procured an appropriate minimum margin of procurement above the level necessary to comply with the RPS to compensate for foreseeable delays or insufficient supply.

   iv. The POU had taken reasonable measures to procure cost-effective distributed generation and allowable unbundled RECs.

3. Unanticipated curtailment of eligible renewable energy resources was necessary to address the needs of a balancing authority.

(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:

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) 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.

(D) When applying procurement expenditures under an adopted cost limitation rule, the POU shall apply only those types of procurement expenditures that are permitted under the adopted cost limitation rule.

(E) Adopted cost limitation rules shall include planned actions to be taken in the event the projected cost of meeting the RPS procurement requirements exceeds the cost limitation.

(4) Portfolio balance requirement reduction

(A) A POU may adopt rules that allow for the reduction of the portfolio balance requirement for Portfolio Content Category 1 for a specific compliance period consistent with Public Utilities Code section 399.16 (e).

(B) The need to reduce the portfolio balance requirements for Portfolio Content Category 1 must have resulted because of conditions beyond the control of the POU as provided in section 3206 (a)(2).

(C) A reduction of the portfolio balance requirement for Portfolio Content Category 1 below 65 percent for any compliance period after December 31, 2016, will not be considered consistent with Public Utilities Code section 399.16 (e).

(D) A POU that reduces its portfolio balance requirements for Portfolio Content Category 1 must adopt these changes at a publicly noticed meeting, providing at least 10 calendar days advance notice to the Commission, and must include this information in an updated renewable energy resources procurement plan submitted to the Commission. The notice to consider the portfolio balance requirement reduction and the procurement plan must include the following information:

1. The compliance period for which the reduction may be adopted.

2. The level to which the POU has reduced the requirement.

3. The reason or reasons the POU has proposed for adopting the reduction.

4. An explanation of how the needed reduction resulted from conditions beyond the control of the POU as provided in section 3206 (a)(2).

~~**5. If applicable, an explanation of why the reduction was needed as a result of cost limitations adopted by the POU as provided in section 3206 (a)(3).**~~

(5) Historic Carryover

(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 annual procurement targets 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.

(B) **The historic carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010.** Both the historic carryover and the procurement applied to the POU's annual procurement targets ~~**must be procured pursuant to a contract or ownership agreement executed before June 1, 2010, and**~~ must be from eligible renewable energy resources that were RPS-eligible under the rules in place for retail sellers at the time of execution of the contract or ownership agreement, except that the generation from such resources need not be tracked in the Western Renewable Energy Generation Information System. If the contract or ownership agreement is executed prior to April 21, 2004, the procurement must be from resources that were RPS-eligible under the rules in the RPS Guidelines in place as of April 21, 2004.

(C) Historic carryover shall be calculated by 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 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 same period. 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.

(D) The RPS compliance obligation used to calculate a POU's historic carryover shall be based on the following:

1. A baseline of an amount equal to 2001 procurement divided by 2001 total retail sales, multiplied by 2003 total retail sales, plus 1 percent of 2001 total retail sales (or, if the POU was not in existence in 2001, "2001" in this calculation shall be replaced by the first full calendar year in which the POU was operational, and "2003" in this calculation shall be replaced by the second full calendar year after which the POU was operational). The numerical expression of the baseline is:

Baseline = $(EP_{2001} \div RS_{2001}) \times RS_{2003} + (0.01 \times RS_{2001})$

EP_X = *Electricity* ~~P~~*products procured and retired and applied toward the RPS procurement target for the specified year X*
RS_X = *Total retail sales made by the POU for the specified year X*

2. Annual procurement targets for ~~the years~~ 2004-2010 that are equal to the lesser of 20 percent of the previous year's retail sales or 1 percent of the previous year's retail sales greater than the annual procurement target for the previous year. The POU's annual procurement target for 2004 shall be equal to the lesser of 20 percent of 2003 retail sales or the baseline plus 1 percent of 2003 total retail sales, and the annual procurement target for 2010 shall be an amount equal to 20 percent of 2010 total retail sales. For POUs that were not in existence in 2001, "2003" in this calculation shall be replaced by the second full calendar year after which the POU became operational, and "2004" in this calculation shall be replaced by the third full calendar year after which the POU became operational.

~~**(E) Any REC qualifying as historic carryover shall be retired within 36 months of the month in which the REC was generated.**~~

~~**(F)**~~**(E)** A POU that adopts rules allowing for the use of historic carryover shall submit all applicable procurement claims for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations, annual procurement target calculations, and any other pertinent documentation to the Commission ~~**by**~~ **within** ~~**July 1, 2013, or 30**~~**90** calendar days after the effective date of these regulations~~**, whichever is later**~~. **All applicable procurement claims must be retired and reported to the Commission** ~~**by**~~ **within 90**~~**30**~~ **calendar days after the effective date of these regulations to qualify as historic carryover.**

(b) Rules adopted under this section 3206 shall be in place and described in a POU's renewable energy resources procurement plan or enforcement program for a given compliance period if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements. The Commission may, when hearing a complaint against a POU under section 1240, consider the date of adoption of any rules adopted pursuant to this section that the POU relied upon to satisfy or delay its RPS procurement requirements.

(c) Any rule or rule revision adopted under this section 3206 shall be submitted to the Commission within 30 calendar days after adoption. The rule or rule revision shall be submitted along with all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision.

(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 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 or solicit information from the public ~~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.

(e) In determining a POU's compliance with the RPS procurement requirements, the Commission will not consider the application of any rule or rule revision adopted by a POU under this section 3206 that the Commission determines does not comply with Public Utilities Code section 399.30, these regulations, or any applicable order or decision adopted by the Commission pertaining to the RPS.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.15, 399.16 and 399.30, Public Utilities Code.

Section 3207 – Compliance Reporting for POUs

(a) Each POU shall submit the following reports to the Commission as required by this section.

(b) ~~By~~ **Within**~~July 1, 2013, or~~ ~~30~~90 calendar days after the effective date of these regulations, ~~whichever is later,~~ any POU that has adopted rules allowing for historic carryover, in accordance with section 3206 (a)(5), shall submit documentation to the Commission including all applicable procurement claims by RPS-certified facility and generation month for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations used to determine the amount of historic carryover claimed, annual procurement target calculations for ~~the years~~ 2004-2010, and any other pertinent documentation necessary.

(c) By September 1, 2013, or 30 calendar days after the effective date of these regulations, whichever is later, and by July 1 of each year thereafter, each POU shall submit an annual report to the Commission that includes the information in paragraphs (1) - (4) below for the prior calendar year. The report submitted in 2013 shall include information required by paragraphs (1)-(4) below for both the 2011 and 2012 calendar years. 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.

(1) POU identifying information, including:

(A) POU name, contact name, mailing address, phone number, and e-mail address.

(B) Year the POU was established.

(C) Number of end-use retail customer accounts in California.

(2) RPS annual progress information for the prior calendar year, including:

(A) Amount of total retail sales to end-use customers, in MWh, and projected retail sales for the current compliance period.

(B) Amount of procured electricity products retired, in MWh.

(C) WREGIS compliance report for procurement claims in the prior calendar year. For any procurement claims not tracked through WREGIS as permitted by the RPS Guidelines, the POU shall report procurement claims using the interim tracking system established by the Commission prior to the implementation of WREGIS.

(D) An initial, nonbinding classification of retired electricity products qualifying for each portfolio content category or qualifying to count in full in accordance with section 3202 (a)(2).

(E) A description of each of the eligible renewable energy resources with which the POU has executed contracts or ownership agreements during the prior year, including but not limited to the contracted amount of MWh, the contracted amount of MWh as a percentage of retail sales, resource fuel type, the execution date of the procurement contract or ownership agreement, the duration of the procurement contract or ownership agreement, a summary of the procurement contract or ownership agreement, the operational status of the resource, the date the resource came on-line, the date the resource came on-line using a renewable fuel or technology, if different, the date on which procurement of electricity products begins, if different, RPS certification status, the county, state, and country in which the resource is located, and a summary of the resource names and identification numbers.

(F) Documentation demonstrating the portfolio content category classification claimed for procured electricity products. This documentation may include interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and electricity product contract information.

(G) An explanation of any public goods funds collected for eligible renewable energy resource development, including a description of programs, expenditures, and expected or actual results.

(H) A description of any identified issues that occurred that have the potential to delay the POU's timely compliance with the RPS procurement requirements defined in section 3204, and planned actions to minimize the delay of timely compliance. Such issues may include, but are not limited to, inadequate transmission to allow for procurement to be delivered from eligible renewable energy resources, permitting, interconnection, or other circumstances that have delayed the procurement from eligible renewable energy resources, unanticipated curtailment of a contracted or

owned eligible renewable energy resource, and higher-than-expected costs for the procurement or development of eligible renewable energy resources.

(I) An attestation, signed by an authorized agent of the POU, affirming that the information provided in the report is true and correct.

(3) Actions taken by the POU demonstrating reasonable progress toward meeting its RPS procurement requirements. The information reported shall include, but not be limited to, a discussion of the following actions taken by the POU during the prior calendar year:

(A) Solicitations released to solicit bid for contracts to procure electricity products from eligible renewable energy resources to satisfy the POU's RPS procurement requirements.

(B) Solicitations released to solicit bid for ownership agreements for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.

(C) Actions taken to develop eligible renewable energy resources to satisfy the POU's RPS procurement requirements, including initiating environmental studies, completing environmental studies, acquiring interests in land for facility siting or transmission, filing applications for facility or transmission siting permits, and receiving approval for facility or transmission siting permits.

(D) Interconnection requests filed for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.

(E) Interconnection agreements negotiated and executed for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.

(F) Transmission-related agreements negotiated and executed to transmit electricity products procured from eligible renewable energy resources to satisfy the POU's RPS procurement requirements.

(G) Other planning activities to procure electricity products from eligible renewable energy resources.

(4) In addition to the information specified in subparagraphs (~~b~~c)(3)(A) – (G), the POU shall include a description of all actions planned by the POU in the current calendar year to demonstrate progress toward~~s~~ achieving the POU's RPS procurement requirements. The description of actions planned shall include, but not be limited to, a discussion of activities specified in subparagraphs (~~b~~c)(3)(A) – (G).

(d) By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, each POU shall submit to the Commission a compliance report that addresses the reporting requirements of section 3207 (c) and the following information for the preceding compliance period:

(1) Classification per RPS-certified facility of the amount of procurement qualifying for each portfolio content category and procurement that shall count in full in accordance with section 3202 (a)(2).

(2) The POU's RPS procurement target for the compliance period, in MWh.

(3) The amount of excess procurement, in MWh, from previous compliance periods, if any, and historic carryover, if any, that the POU is applying to the compliance period.

(4) The amount of procurement retired, in MWh, that the POU wishes to claim toward the RPS procurement target for calculating the portfolio balance requirements.

(5) The amount of excess procurement, in MWh, for the compliance period, if any, that may be applied toward future compliance periods, as determined by applying the calculation in section 3206 (a)(1)(D) **or section 3206 (a)(1)(E), as applicable**.

(6) If a POU's compliance report indicates that the POU's RPS procurement requirements were not met, the POU shall provide documentation to justify the application of any optional compliance measures adopted by the POU in accordance with section 3206. The documentation shall include all reports, analyses, proposed findings, and any other information upon which the POU relied in applying the measure. The POU shall also submit an updated enforcement program and/or procurement plan that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU's shortfall.

(A) If a POU applies adopted cost limitation measures, the POU shall report that cost limitation to the Commission in dollars spent during the compliance period. The POU shall also provide the Commission with an estimate of the total cost for the POU to procure sufficient electricity products to meet its RPS procurement requirements for the preceding compliance period. The POU shall additionally report on actions taken in response to RPS procurement expenditures meeting or exceeding the cost limitation.

(e) Notwithstanding section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (g) shall submit to the Commission documentation as specified in section 3204 (a)(6).

(f) ~~Notwithstanding~~ **In addition to the applicable reporting requirements in** section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall annually submit to the Commission, by the deadline for annual reports specified in section 3207 (c), documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state, that the POU receives greater than 67 percent of its electricity sources to meet its electricity demands on an annual basis from qualified hydroelectric facilities as defined in section 3204 (a)(7). The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (j). A POU that meets the criteria listed in Public Utilities Code section 399.30 (j) must additionally submit its total electricity demand and documentation of its annual qualifying hydroelectric generation, and provide

evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with procurement from eligible renewable energy resources, including renewable energy credits.

(g) Incorrect and incomplete reports.

(1) If the Executive Director determines a report submitted by a POU pursuant to this section is incorrect or incomplete, he or she shall issue a written notice to the POU specifying what information is missing or needs to be corrected in the report. If a POU submits the missing or correct information to the Commission within ten (10) business days of receipt of such notice, the POU's initial failure to submit a complete and correct report shall not be processed as a separate violation under these regulations. Written notices issued pursuant to this subdivision may include e-mail or **other** written communications.

(2) A POU may request an extension of time to submit the missing or correct report information specified in the written notice issued by the Executive Director. Such a request for an extension of time must be received by the Commission no later than the date the missing or correct information is due to the Commission. The Executive Director shall act on a request for an extension of time within five business days after it is received by the Commission~~,~~ and may grant an extension of time of up to 30 calendar days from the date the missing or correct report information is due under the written notice if he or she finds that there is good cause for an extension. The POU's initial failure to submit a complete and correct report shall not be deemed a separate violation under these regulations if the Commission receives the complete or correct report information by the date specified in the extension. In determining whether good cause exists for purposes of this subdivision, the Executive Director may consider, without limitation, the following factors:

(A) Whether the POU was diligent in gathering the information necessary to submit a complete and correct report to the Commission and preparing the report for submission by the due date.

(B) Whether there were circumstances beyond the control of the POU that prevented the POU from gathering and producing a complete and correct report to the Commission by the due date.

(C) Whether the extension of time is likely to enable the POU to submit a complete and correct report by the extended due date.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30 and 9508, Public Utilities Code. Reference: Section 25747, Public Resources Code; and sections 399.13, 399.15, 399.16, 399.30, 9507 and 9508, Public Utilities Code.

Section 3208 – Enforcement

(a) Any complaint against a POU pertaining to the enforcement of a RPS requirement, or any regulation, order, or decision adopted by the Commission pertaining to the RPS, shall be filed in accordance with Title 20, section 1240 of the California Code of Regulations.

(b) A complaint may be issued for a POU's failure to comply with any of the requirements in these regulations, including, but not limited to any of the following:

(1) Failure to meet an RPS procurement target as specified in subdivision (a) of section 3204 for reasons other than the POU's adopted cost limitations and/or delay of timely compliance rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2) and (3) of section 3206~~;~~

(2) Failure to meet a Portfolio Content Category 1 portfolio balance requirement as specified in subdivision (c) of section 3204 for reasons other than the POU's adopted cost limitation and/or delay of timely compliance rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2) and (3) of section 3206~~;~~

(3) Failure to adopt an RPS procurement plan, enforcement program or plan, or provide notice, disclosure, or other information to the Commission and public as specified in section 3205~~;~~

(4) Failure to submit a complete annual, compliance, or other report, or other documentation or information as specified by section 3207.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 2. Rules of Practice and Procedures
Article 4.Complaints and Investigations

(Section 1240)

Section 1240 – Renewables Portfolio Standard Enforcement

(a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.

(b) Complaints

(1) No complaint for the failure of a local publicly owned electric utility to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, may be filed by any person or entity listed in section 1231, except Commission staff.

(2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the following:

(A) A statement of facts upon which the complaint is based.

(B) A statement indicating the statute, regulation, order, or decision upon which the complaint is based.

(C) The action the Commission is requested to take.

(D) The authority for the Commission to take such action.

(3) A declaration under penalty of perjury shall not be required for the filing of a complaint under this section 1240.

(c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer with the Chief Counsel within 45 calendar days after service of the complaint. In addition to those matters set out in section 1233 (b), the answer shall include all data, reports, analyses, and any other

information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer. The answer may also include information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating factors related to any alleged violation.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, respondent shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the Executive Director along with a complete request for confidential designation in accordance with section 2505.

(e) Response

(1) Commission staff may file with the Chief Counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.

(2) In the event that Commission staff files a response under (e)(1), the local publicly owned electric utility may file with the Chief Counsel a reply to such response no later than 10 calendar days from receipt of such response. The reply shall be served upon Commission staff upon filing.

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than 30 calendar days after the filing of a staff response pursuant to subdivision (e) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section 1234 (b). Such notice shall be provided no later than 30 calendar days after the last filing is made.

(3) The hearing may be scheduled before the full Commission, a committee designated by the Commission, or a hearing officer assigned by the Chair at the request of the committee as provided in section 1205.

(4) If the hearing is not held before the full Commission, the proposed decision set out in section 1235 shall be forwarded to the full Commission, to the extent reasonably possible, no later than 45 calendar days after the hearing has been concluded. If the hearing is held before the full Commission, to the extent reasonably possible, the Commission shall publish its decision within 45 calendar days after the hearing has been concluded.

(g) The decision of the full Commission shall be a final decision. There is no right of reconsideration of a final decision issued under this section ~~3208~~**1240**. The decision will include all findings, including findings regarding mitigating and aggravating factors, upon which the Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions (l) and (m).

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, Commission staff shall forward a notice of violation, based on the final decision of the full Commission, together with the record of proceedings, to the Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the Commission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, Commission staff shall not forward the notice of violation to the Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.