

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

In the Matter of:)
Developing Regulations and Guidelines)
for the 33 Percent Renewables Portfolio)
Standard)

Docket No. 13-RPS-01

California Energy Commission DOCKETED 13-RPS-01
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**COMMENTS OF THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ON
THE CALIFORNIA ENERGY COMMISSION'S
SECOND PROPOSED 15-DAY LANGUAGE REGARDING
REGULATIONS ESTABLISHING ENFORCEMENT PROCEDURES FOR THE
RENEWABLES PORTFOLIO STANDARD FOR
LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

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Pursuant to the procedures established by the California Energy Commission (CEC, or Energy Commission) in the Notice of Changes to Proposed Regulations and Notice of Second 15-Day Comment Period (Notice) dated May 22, 2013, the Southern California Public Power Authority (SCPPA) respectfully submits the following comments on the Energy Commission staff revisions to the proposed regulations establishing Enforcement Procedures (Regulations) for the RPS for local POUs.

I. INTRODUCTION

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

SCPPA was formed in 1980 to finance the acquisition of generation and transmission resources for its members. Over the past several years, SCPPA has

increasingly become a primary means by which its members procure renewable energy resources. As such, it is important for SCPPA to ensure that its members' historical procurement decisions, and the value of such, both in the economic and regulatory sense are preserved, and that new renewable resources are both eligible for the RPS and fall into clear and well-defined Portfolio Content Categories (PCCs).

II. COMMENTS

SCPPA understands that these Regulations are on an expedited process for adoption in order to move forward with the RPS. However, there are several outstanding issues that need to be tackled that cannot be addressed in a 15-Day comment period. But in order to remain on record that these issues are still of concern to SCPPA and its membership, SCPPA provides the following comments. Further, SCPPA would like to incorporate by reference all other comments presented by SCPPA in this proceeding as well as proceedings Docket No. 11-RPS-01 and Docket No. 02-REN-1038.

a. Compliance Period 3 Targets Not Consistent With Statute

SCPPA remains opposed the CEC's last-minute change to the procurement requirements for Compliance Period 3, which would make the California Public Utilities Commission's (CPUC's) linear intervening targets applicable to POUs:

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 percent of its 2017 retail sales, 29 percent of its 2018 retail sales, 31 percent of its 2019 retail sales, and 33 percent of its 2020 retail sales. The numerical expression of this requirement is:

$$(EP_{2017} + EP_{2018} + EP_{2019} + EP_{2020}) \geq 0.27(RS_{2017}) + 0.29(RS_{2018}) + 0.31(RS_{2019}) + 0.33(RS_{2020})^1$$

¹ Gonzalez, Lorraine and Angela Gould. 2013. *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. California Energy Commission, Energy Efficiency and

Several parties have commented that the CEC should adopt the CPUC formula in order to align the Investor-Owned Utilities (IOUs) and POU requirements, but such alignment is not contemplated by statute. Stakeholders in this proceeding had accepted the Compliance Period proposals made by the CEC and have relied upon this interpretation in executing long-term procurement plans to meet Compliance Period 3 obligations. Given that the proposed Regulations are not approved and POU are operating in the bookend of the first compliance period, this last minute change again introduces a new change-in-law which would wreak havoc on POU planning strategies.

SCPPA first questions whether the linear intervening target rule as adopted by the CPUC is consistent with SBX-1 2. Public Utilities Code Sections 399.15(b)(2)(B) and (C) clearly state that state that:

(B) In establishing quantities for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, ***the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.***

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

There have been several interpretations of this language proposed throughout the course of both the CPUC and CEC proceedings, ranging from interim linear and “concave” targets to qualitative analyses of reasonable progress. The interpretations provided by the CEC and stakeholders may be acceptable to some utilities, but not

others. However, regardless of the interpretations provided on record, one piece provision in the statute is crystal clear: ***Utilities are not required to demonstrate procurement for any individual, intervening year.***

Additionally, the authority given to POU governing boards in PUC Section 399.30(c), is consistent with the above-quoted prohibition in section 399.15(b)(2)(C) on specific procurement targets:

(c) The governing board of a local publicly owned electric utility shall ensure all of the following:...

(2)The quantities of eligible renewable energy resources to be procured for all other compliance periods **reflect reasonable progress** in each of the intervening years ...

Working directly with the express language of SB X1-2, POU governing boards, and not the CEC, have the authority to interpret the exact meaning of reasonable progress for the second and third compliance periods. The only firm requirement is that a POU meet the 25% and 33% targets by the end of each compliance period. The statute very plainly prohibits the CEC from requiring anything more from POU's.

Therefore, SCPPA urges the CEC to return to its previous interpretation of the procurement rules for Compliance Period 3, which was an interpretation that aligned with the intent of SBX1-2 that POUs found acceptable and workable.

b. Definitions Between the Guidebook and the Regulation

SCPPA recommends that the CEC ensure that the definitions provided in the proposed Regulations are consistent with those definitions provided in Glossary of the RPS Eligibility Guidebook, 7th Edition and across all pertinent documentation.

c. POU's Option to Categorize Grandfathered Resources

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

POU's are required by law to procure renewable resources to "fulfill unmet long-term generation needs."² However, if a POU is fully resourced, that POU has no need for additional resources of any kind, but under the "count in full" interpretation the POU would have to comply with the PCC requirements by supplementing or displacing existing, cost effective, RPS-eligible pre-June 1, 2010 renewable energy generation with additional, expensive, and unneeded (from the energy standpoint) renewables. In the end, the resulting additional costs would be borne directly by the POU ratepayers.

The main difference between the pre and post-June 1 certification processes are the rules against which renewable contracts/resources are assessed. For pre-June 1, 2010 contracts, the resource is assessed against the "rules in place" at the time of procurement, while a newer resource is assessed against the latest RPS Eligibility Guidebook. If a POU is able to demonstrate to the CEC that a grandfathered resource meets the current "rules in place," then it is sensible for the CEC to allow the POU to "categorize" such resource under a PCC. Indeed, many POU's have done so in good faith in their governing body-approved RPS compliance plans.

² PUC Section 399.30(a)

In addition to the above described consequences, Section 399.30(c)(3) of the PUC lends itself to an interpretation that a POU's governing body can, or perhaps should, be making PCC categorization decisions. Indeed, many POUs have done so in good faith in their governing body-approved RPS compliance plans.

Section 399.30(c)(3) of the PUC states:

A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.
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By using the adjective “consistent” in the above Section, the legislature clearly did not mean “the same” or “identical” requirements.

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

d. Renewable Energy Credit Retirement Restriction

SCPPA is extremely concerned with the CEC's proposed language in Sections 3202 (d)-(e):

(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.
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(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
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the POU procured in February 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.

It is important to note that any shortfalls will not be known until after the close of the compliance period. As currently drafted, if a POU is short in the previous compliance period, the POU will not be allowed to make up the shortfall in the current compliance period. This interpretation will automatically put a POU into non-compliance and subject it to enforcement consequences with no reasonable opportunity to cure the shortfall. This will, by default, force a POU to over-procure resources at the expense of its ratepayers.

The CEC needs to provide POUs with the ability to fully close the compliance periods without the risk of enforcement. Therefore, SCPPA recommends that the CEC remove Sections 3202 (d)-(e) in their entirety.

e. Portfolio Content Category 2 Calendar Year Delivery Requirement

As expressed in previous comments, SCPPA is still concerned about the CEC's current imposition of a "calendar year" scheduling requirement for incremental electricity used for firming and shaping. Section 3203 (b)(2)(D) states:

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 executed.

This requirement is completely unrealistic and does not recognize the realities of the power industry. It would disqualify generation of PCC 2 electricity products in the last few months of each year, because that generation is typically delivered (shaped) and trued-up during the first few months of the following calendar year. Several contracts for firmed-and-shaped energy already use this approach, which simply recognizes the fact

that only *actual* generation from a renewable energy resource can be firmed and shaped for later delivery, and *actual* generation is not verified until sometime after the moment of generation. This proposed interpretation is simply not supported by statute and creates another unnecessary hurdle in this already-complex regulatory scheme.

PUC Section 399.16 (b)(2) imposes no time limitation on scheduling and delivery of the substitute/incremental electricity associated with a firmed and shaped product: it simply provides the following definition:

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

Moreover, it is important to note that POU compliance is analyzed through an entire compliance period, not just an individual year. If electricity is generated in December 2011 and scheduled and delivered in March 2012 with substitute/incremental electricity, the entire firming and shaping process still occurs within the same compliance period.

SCPPA requests that the CEC remove the calendar year restriction for PCC 2 electricity products and allow POUs to schedule the substitute/incremental electricity on a rolling 12-month basis.

f. Portfolio Content Category 2 Substitute Electricity Requirement

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

- (A) The first point of interconnection to the WECC transmission grid for both the eligible renewable energy resource and the resource providing the incremental electricity must be located outside the metered boundaries of a California balancing authority area.
- (B) The first point of interconnection to the WECC transmission grid for both 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 , which with the incremental electricity is being matched, is executed by the POU or other authority, as delegated by the POU

governing board.

The current market thrives on economic decisions: in order to reduce costs for PCC 2, the substitute electricity provider will typically procure the least-cost substitute electricity available. The economic decision to procure the least-cost should be under the purview of the POU or the substitute electricity provider, not the CEC. In implementing this section, the CEC has inadvertently influenced market activity and impels substitute electricity providers to purchase out-of-state substitute electricity as the PCC 2-compliant product, which could not have been the intent of the Legislature. This proposed language is further not supported by SB X1-2. PUC Section 399.16(b)(2) simply states:

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

As such, SCPPA requests that the CEC remove this language from the proposed Regulations, as this restriction is not supported by statute and inadvertently influences market decisions that are not under its purview.

g. Distributed Generation – Metering Requirement

The currently-drafted metering requirement for facilities participating in the RPS requires that such installments be metered with revenue-quality meters with an accuracy of ± 2 percent:

All electrical generation facilities participating in the RPS must use a meter with an independently verified rating of 2 percent or higher accuracy to report the generation output of the facility in WREGIS.³

However, several small scale solar distributed generating systems currently do not meet this requirement. These smaller installations contain performance meters with an

³ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 57

accuracy of $\pm 5\%$. The WREGIS system does not exclusively require revenue-quality metering in order to report and generate RECs:

Recognition of generation for creation of WREGIS Certificates from renewable electricity generation resources that do not have metering that meets the ANSI C-12 or equivalent standard will only be at the direction of state or provincial regulators or voluntary program administrators. Program administrators must notify the WREGIS Administrator in writing of approved exceptions to the ANSI C-12 standard; upon receipt, WREGIS will make that information publicly available on its website.⁴

A metering requirement should not be the roadblock for eligibility of these resources. Solar distributed generation (DG) is clearly renewable. Solar DG is normally physically located in California; there should be no question regarding the eligibility and the PCC treatment for these resources.

As SCPPA has previously recommended, the CEC should allow utilities (1) to utilize performance meters with an accuracy of $\pm 5\%$, (2) to report such data on a monthly or bi-monthly basis, and (3) to request an exception from WREGIS for such meters.

h. Portfolio Content Category Verification

SCPPA has previously commented that its members remain concerned with the lack of certainty regarding the PCC designation of an electricity product. There is an enormous need to develop a process to provide PCC certainty due to the large price differences between a PCC 1 and a PCC 3 RECs, and the potential cost impact to POU ratepayers inherent in after-the-fact PCC determinations.

On September 21, 2012, CEC staff held a workshop on 2008-2010 RPS Procurement Verification and SB X1-2 RPS procurement verification. During the workshop, Iberdrola proposed that the CEC develop a checklist to help utilities

⁴ WECC WREGIS Operating Rules, dated December 2010. Section 9.3.3, Classes H-J. Available at: <http://www.wecc.biz/WREGIS/Documents/WREGIS%20Operating%20Rules.pdf>

determine if their energy resources fall within PCC1, PCC2 or PCC3, and several POU's submitted comments supporting the idea of a checklist.

At the March 14, 2013 workshop, it was further discussed whether the CEC could provide a PCC verification process that would assign each project to the appropriate PCC. This verification process would also provide the standard caveats to PCC REC classification, such as the limitations on resale, if any, and PCC re-classification if such RECs are unbundled.

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

i. Change of Law Risks and Their Effects on Procurement

As the CEC continues to develop both the RPS Eligibility Guidebooks and the Regulations, one issue that has evolved to become a primary point of contention between SCPPA members and project developers is the risk associated with change of law. As we have experienced in this mix of issues in this proceeding, the applicable laws of today will not be the laws that govern us tomorrow. However, there are clear instances where both legislation and the CEC through its documents have retroactively applied new requirements to old procurement decisions that significantly affect the overall value of such decisions. For example, with the passage of both Assembly Bill (AB) 2196 and AB 1900, the Legislature has effectively applied new rules and regulations to historic biomethane contracts and it essentially favors in-state development of biomethane facilities. However, there is no means of recovering the

value of such renewable energy resources if they are deemed non-eligible or are not ideally categorized in the appropriate PCC.

There needs to be a mechanism or off-ramp for utilities to take in the case where Change in Law affects their progress. As such, SCPPA requests that the CEC add a section to Section 3206 that addresses Change of Law.

III. CONCLUSION

SCPPA would like to thank CEC staff for their time and effort spent in developing the proposed Regulations and all the accompanying documentation. Despite having many concerns about the proposed enforcement rules as expressed in this Comment, SCPPA remains willing to work with CEC staff on these important matters.

Dated: June 6, 2013

Respectfully Submitted,



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