



SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
 1160 NICOLE COURT
 GLENDORA, CA 91740
 (626) 793-9364 – FAX: (626) 793-9461
 www.scppa.org

ANAHEIM • AZUSA • BANNING • BURBANK • CERRITOS
 COLTON • GLENDALE • LOS ANGELES • PASADENA
 RIVERSIDE • VERNON • IMPERIAL IRRIGATION DISTRICT

California Energy Commission DOCKETED 14-RPS-01
TN # 75673 APR 30 2015

April 30, 2015 | Submitted Electronically

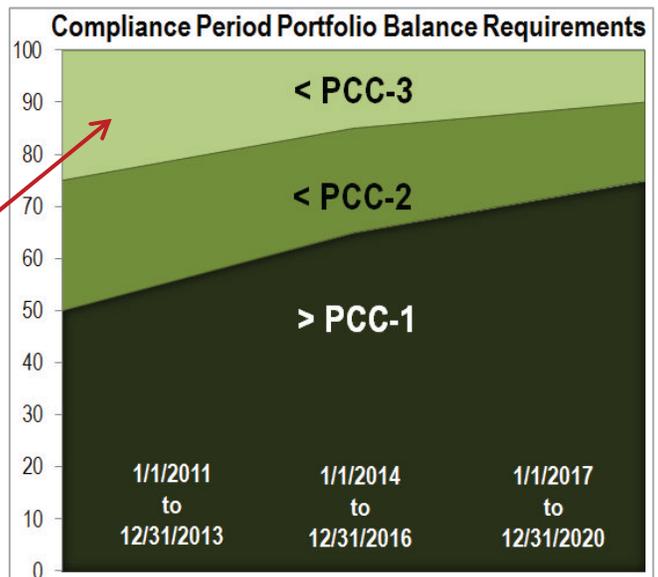
California Energy Commission
 Dockets Office, MS-4

Re: RPS Enforcement Procedures for Local Publicly-Owned Electric Utilities – Docket No. 14-RPS-01
 1516 Ninth Street
 Sacramento, California 95814-5512

RE: SCPPA Comments on the March 27, 2015 Notice of Proposed Action on the *Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities* [Docket No. 14-RPS-01] and the Notice of Joint Staff Workshop on April 9, 2015 on the Potential Development of a California Air Resources Board RPS Penalty Regulation for Publicly Owned Utilities.

The Southern California Public Power Authority (SCPPA) appreciates the opportunity to submit these comments to help further inform development of the Renewables Portfolio Standard (RPS) Enforcement Procedures and a RPS penalty regulation. SCPPA's comments are organized chronologically in the "underline/strikeout format" version of the Express Terms for ease of reference. Our Members particularly wish to draw staff's attention to the following issues:

- Distributed Generation.** SCPPA strongly encourages allowing *all* renewable distributed generation to count as "Portfolio Content Category (PCC)-1" resources, particularly given the State's march towards 50% renewables by 2030. Our Members continue to believe that the current "PCC-3" RPS categorization undervalues and deters further development of such resources under a **declining cap**. **California renewable resources should be valued more highly than out-of-state renewables under California's RPS.** The reverse cannot be the State's intent. At a minimum, the surplus energy purchased by utilities from distributed generation customers should be counted as PCC-1, since the energy and the renewable energy credits/environmental attributes are bundled and sold to the utility. This should be a statewide policy for *all* utilities. Accessing a broader renewables market is the best and most cost-effective way for California's utilities to meet such an ambitious goal.



- Definitions.** The definition of "Bundled" in Section 3201 should be refined to recognize the associated environmental attributes of POU-owned electricity. Alternative approaches do also exist to count distributed generation as PCC-1.
- Optional Compliance Measures.** SCPPA recommends that staff include in Section 3206 recognition of a "force majeure" event, unforeseen regulatory delays, and cost limitations whereby a utility may not be able to fulfill its RPS compliance obligations due to circumstances beyond its control or where compliance would exceed locally-adopted RPS expenditure limitations. SCPPA also seeks revisions on reducing PCC-1 procurement requirements below 65%.
- Compliance Reporting.** SCPPA recommends a modification that would allow documentation not currently listed to also be used to demonstrate PCC classification, as well as necessary clarification of water pumping. Staff should also consult with other State agencies working on a reporting methodology for energy usage associated with water pumping.
- Enforcement Penalties.** The Air Resources Board's statutory obligations must remain independent and unimpeded.

SCPPA and its Members also join in support of the comments being submitted by the Los Angeles Department of Water and Power, the California Municipal Utilities Association, the Northern California Power Agency, and the Sacramento Municipal Utilities District. We agree that State policymakers will need to work towards identifying solutions for achieving a more ambitious RPS target, such as how renewable resources are categorized so that the State does not *undercount* renewables procurement. We strongly encourage State policymakers to revise or eliminate the Portfolio Content Category requirements when establishing the parameters for a 50% RPS target in order to *encourage development and success* of the best-fit and most cost-effective means for California utilities to meet such an ambitious goal.

We would further recommend that the regulatory agencies refrain from interpretations of statutory language that increases the cost of complying with renewables procurement. This is important as the rest of the nation closely watches how California can successfully achieve (and maintain) a 50% renewables goal by 2030 and beyond. For example, allowing for the counting of geothermal “station service” credit (to complement the Federal Energy Regulatory Commission’s definition, that is currently applied to utilities across the nation) would ensure consistency across regulatory agencies and for regulated entities, would maximize ratepayer benefits towards achieving a diverse renewables resource portfolio, and would enhance regulatory stability in the creation, accounting, and verification of renewable energy credits. Overly restrictive administrative crediting methodologies make it unnecessarily difficult to accomplish State energy and climate change goals.

PORTFOLIO CONTENT CATEGORIZATION OF DISTRIBUTED GENERATION RESOURCES

SCPPA Members continue to strongly encourage the Energy Commission to allow all renewable distributed generation within California to be counted as a PCC-1 resource. We also recognize that legislative requirements for distributed generation are extensive and that many POUs have programs for a variety of distributed generation resources that produce energy “behind the meter.”

DG resources are located within the State of California and produce RPS-certified Renewable Energy Credits. Distributed generation (DG) will undoubtedly contribute to a larger share of California utilities’ overall resource portfolios beyond 2020, yet the Energy Commission’s interpretation placing DG in the PCC-3 category (with *decreasing incentive* to procure over time) has a perverse effect of favoring remote, utility scale renewable resources far from population centers over smaller-scale resources located in our own backyard. It is counter-productive to limit homegrown distributed generation resources in this manner. “Behind the meter” generation is interconnected to distribution systems directly serving Californians within a California Balancing Authority, conforming to the definition of PCC-1.

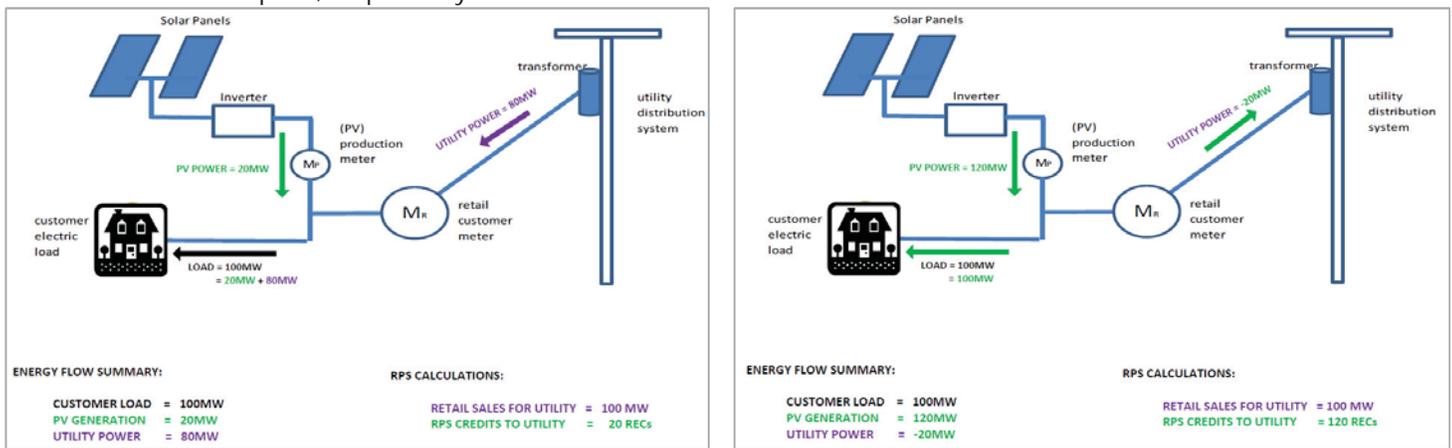
The Commission’s refusal to classify RECs produced by in-state DG resources as PCC-1 conflicts with applicable California law. Pursuant to the Commission’s request at the beginning of this rulemaking proceeding, parties submitted comments concerning whether and under which circumstances electricity products produced by distributed generation systems should be classified as PCC-1. SCPPA and a number of other stakeholders demonstrated that classifying DG RECs as PCC-1 is consistent with state policy goals and will aid POUs to achieve RPS compliance at lower cost. However, the Energy Commission’s failure to amend Section 3203 to count RECs produced by renewable DG resources as PCC-1 conflicts with applicable law. Under Public Utilities Code Section 399.16, PCC-1 includes “electricity products” that “have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area...” DG solar facilities interconnect directly to POU-owned metering equipment, which is a utility distribution facility. The Commission has interpreted “Electricity product” to mean *either*: (1) electricity and the associated renewable energy credit generated by an eligible renewable energy resource, or (2) *an unbundled renewable energy credit*.¹ Read plainly, PCC-1 necessarily includes all renewable energy credits produced by renewable DG systems connected to utility-owned distribution meters.

SCPPA fundamentally disagrees with the interpretation that most renewable DG is an “unbundled” resource. At a minimum, the surplus energy purchased by utilities from distributed generation customer-owners should be counted as

¹ CCR Title 20, Division 2, Chapter 13, Section 3201.

PCC-1 since the energy *and* the renewable energy credits/environmental attributes are bundled and sold to the utility. Whereas unbundled Renewable Energy Credits are *not linked* with energy scheduled into a California Balancing Authority, “behind the meter” distributed generation credits *are linked* with energy directly serving customers within a California Balancing Authority. Furthermore, these “best-fit” renewable resources provide environmental benefits directly to customers, offset load demand while meeting resource adequacy needs, reduce greenhouse gas emissions, and create economic development opportunities within the State. SCPPA again notes that the prohibition contained in §3203(a)(1) addressing the unbundling of credits and the commodity for wholesale transactions is functionally and policy-wise distinct from the customer-owned distributed generation.

The following diagrams illustrate the case. Here it is assumed that: 1) the POU is the title holder of the “behind the meter” renewable energy – either through ownership, a Power Purchase Agreement with a third party vendor, or by contract – with the retail customer; and 2) that the generation is separately metered from the net consumption. The POU would be able to claim the entire “behind the meter” generation as PCC-1 *and* would adjust their retail load upwards by the same amount for the purpose of compliance calculation so as not to “double count” the PCC-1 electricity or “under-count” the retail sales. The first diagram illustrates how a POU would claim 20 PCC-1 RECs, the second how a POU would claim 120 PCC-1 RECs, respectively; both reflect 100 units of gross retail sales, even though the customer meter may only register 80 units or -20 units of consumption, respectively:



ENTIRE CUSTOMER LOAD COUNTS AS RETAIL SALES

[POU receives 20 RPS Credits]

[POU receives 120 RPS Credits]

SCPPA therefore proposes that POUs simply be allowed to include renewable energy produced by customer or third party-owned eligible distributed generation installed within its service territory as part of its PCC-1 procurement. The foregoing is understood that, for the purpose of calculating compliance, the netted customer load, if any, will be added back to “retail sales.” Doing so would also ensure that the rapidly increasing supply of California’s distributed renewables generation is being adequately and appropriately counted towards California’s RPS and towards achieving overarching climate change policies. The Energy Commission should ensure that – provided that such on-site load is served by the eligible energy resource behind the meter – the load is added back to the retail sales used as basis for the RPS compliance calculation.

Counting all renewable DG within a California Balancing Authority as PCC-1 should be a statewide policy applied uniformly to both publicly- and investor-owned utilities. Comments recently filed by California’s Investor-Owned Utilities have recognized the need to re-evaluate how distributed renewable generation resources are accounted for under the State’s RPS or in achieving over-arching climate change goals. In California Public Utilities Commission Rulemaking 15-02-020, the *Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program*, Southern California Edison noted in reply comments dated April 6, 2015 that, “The Commission should consider changes to RPS rules and policies to allow renewable DG to count toward the state’s RPS goals. In particular, the Commission should work with the California Energy Commission (‘CEC’) and the Western Renewable Energy Generation Information System (‘WREGIS’) to develop a joint solution that will remove barriers to counting renewable DG toward RPS targets.” Pacific Gas and Electric Company noted in initial comments dated March

26, 2015 that, "Solar rooftops reduce GHG emissions when they displace fossil fuel generation. In areas where distributed generation is a cost-competitive tool for carbon reduction, PG&E should be able to consider distributed generation investments as part of its strategy to achieve its broader GHG reduction goals."

SCPPA and other stakeholders have actively and repeatedly engaged with policymakers on an ongoing basis to properly count renewable distributed generation as PCC-1 (not PCC-3) resources. It is now an opportune time to improve State energy regulatory policy to aid California's over-arching and long-term greenhouse gas emissions reduction goals through 2030 and to 2050 – as well as how best to meet federal Clean Power Plan rules expected later this year.

SCPPA notes that in California's November 24, 2014 formal comments filed by Air Resources Board Chairman Mary Nichols, with input from the Energy Commission, regarding the Section 111(d) proposed rule to the U.S. Environmental Protection Agency that the third recommendation was, "Regional planning modularity is critical to multi-state implementation and enforceability" and further acknowledged that California is "exploring various approaches to regional planning, including large-scale regional plans and a more focused modular approach that would allow implementing specific elements in a modular fashion... For instance, states might want to develop regional plans accounting for renewable energy and/or energy efficiency credits." One such regional modular approach may be a multi-state renewables program; however, SCPPA is concerned that ongoing implementation strategies that make it extraordinarily complex and difficult to certify renewable energy projects may indeed *deter* other states from cooperating in such a "regional planning" modular effort as suggested by the State leaders.

State policies should prioritize spending California dollars on the best-fit and least-cost renewable resources available to serve California load. Existing Energy Commission policy simply does not accomplish this. As the existing California RPS Program ramps up to 33% by the end of 2020 (and potentially to 50% by 2030), prices associated with the environmental attributes of each of the Portfolio Content Categories already reflect the current and future Portfolio Balance Requirements makeup: due to the RPS "bucket" requirements, PCC-1 resources are more highly-sought, prioritized, and are far more highly valued than PCC-3 resources. This price differential clearly illustrates which resources the market values most and *signals where utilities should be making investments*. Renewable DG generation, such as rooftop solar, will undoubtedly continue to grow rapidly in The Golden State (despite the expected decrease in federal tax credits). However, relegating "behind the meter" rooftop solar to the lower-valued, declining not-to-exceed PCC-3 category will result in a sizeable amount of California-based solar *not* being counted towards the State's renewables goal that also reduces emissions. This is wrong.

SECTION 3201 – DEFINITIONS

- The proposed modification of the definition of "**Bundled**" should be revised to recognize that, "If the POU owns *or procures* the *environmental attributes of the* eligible renewable energy resource, then electricity products associated with electricity consumed onsite *may will* be considered bundled electricity products."

Alternatively: "If the POU *or its retail customer* owns the eligible renewable energy resource, then electricity products associated with electricity consumed onsite *will* be considered bundled *renewable* electricity products."

- POU ownership unnecessarily limits the definition and is not the proper metric to count bundled electricity; it excludes resources financed through a Power Purchase Agreement or leased solar systems.
 - Concerns regarding "double counting" of renewable credits are unwarranted with WREGIS reporting requirements already in place.
- A definition of "**force majeure**" should be added to this Section, consistent with SCPPA's comments on Section 3206.
 - A definition of "**regulatory delay**" should also be added, consistent with SCPPA's comments on Section 3206.

SECTION 3202 – QUALIFYING ELECTRICITY PRODUCTS

SCPPA seeks clarification of existing law to ensure that SCPPA and its Members can acquire grandfathered resources and safeguard that the electricity products continue to count-in-full toward the RPS requirements. Ambiguous language in the Energy Commission's proposed definition of resale creates ambiguity that may otherwise lead to unintended consequences. SCPPA recommends that language be inserted into the RPS Enforcement Procedures that: "Electricity products associated with generation from an eligible renewable energy resource that meet the requirements of Section 3202(a)(2)(A) shall continue to 'count in full' toward the RPS procurement requirements following the acquisition by a POU of such eligible renewable energy resource after June 1, 2010, if such acquisition is pursuant to a purchase option, security interest, or other purchase opportunity vehicle contemplated in the original contract or ownership agreement executed on or prior to June 1, 2010, provided, however, that a POU may voluntarily request that any such electricity products be classified into a Portfolio Content Category and follow the Portfolio Balance Requirements of Section 3204(c)."

SECTION 3206 – OPTIONAL COMPLIANCE MEASURES

SCPPA recommends a modification to subsection (a)(2)(A), under "**Delay of timely compliance**," to explicitly recognize that circumstances beyond a POU's control, or circumstances that comport with Public Utilities Code Section 399.15 (c)(9)(3)(D) safeguarding a local POU from suffering disproportionate rate impacts due to compliance with the RPS requirements (the procurement expenditure limitation), may delay the timely compliance with Section 3240 RPS procurement requirements:

"(A) A POU may adopt rules permitting the POU to make a finding that conditions beyond the control of the POU exist to delay the timely compliance with RPS procurement requirements, as defined in section 3204. Such a finding ~~shall be~~ may include, but is not 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:..."

SCPPA Members further note that the *RPS Enforcement Procedures* currently lists in subsection (a)(2)(A)(2) that it may be that, "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." [emphasis added]

- Rather than listing additional reasons for a delay in timely compliance, SCPPA recommends that "**force majeure**" be included and also defined in Section 3201 to include natural (e.g., earthquakes) or manmade disasters (e.g., terrorist or cybersecurity attacks).
- SCPPA further recommends that "**regulatory delay**" be included and defined as a qualifying factor that can delay timely compliance under this section. A delay caused by a state regulatory agency is a condition beyond the control of a POU. A local governing body of a POU must be allowed to make a finding that a regulatory delay caused a delay in timely compliance with the RPS regulation if it can be demonstrated that a POU would have otherwise met its RPS procurement obligation. Regulatory delay would be a principal factor, for example, if a local POU governing board would have adopted a procurement and enforcement compliance plan consistent with statutory requirements in place at the time, only to later be subjected to a temporary regulatory moratorium.
- SCPPA is concerned that the Energy Commission has not explicitly addressed how it intends to allow for or measure the cost impacts associated with RPS compliance on POU's retail rates, and may not apply the cost limitation policies approved by POU governing bodies in an enforcement proceeding. This is particularly important for POU's that largely serve disadvantaged communities. SCPPA urges that the Energy Commission explicitly recognize any "**disproportionate rate impact**" methodology or procedure that exceeds an approved local governing body RPS procurement policy when evaluating RPS compliance.

SCPPA recommends a modification to subsection (a)(4)(C) to correct an inconsistency with subsection (a)(4)(B), regarding the inability to **reduce PCC-1 requirements below 65% prior to 2017**. A reduction in the PCC-1 procurement requirement should be allowed if a POU can reasonably demonstrate that a reduction occurred due to reasons beyond its control, such as the modification or termination of a contract or regulatory changes (such as modifications to PCC-1 eligibility rules) that alter the ability to count a resource as PCC-1. SCPPA recommends modifying subsection (a)(4)(C) to recognize

circumstances where a previously-counted resource may no longer qualify as PCC-1, and adjust the PCC-1 percentage requirements for the affected year(s) accordingly.

SECTION 3207 – COMPLIANCE REPORTING FOR POUS

- SCPPA recommends modifying the language in subsection(c)(2)(F) to make it clear that other documentation *not* listed in this section may also demonstrate PCC classification. (For example, the CEC RPS Eligibility Guidebook, though not listed, also provides data to support a PCC classification claim.)

“(F) Documentation demonstrating the portfolio content category classification claimed for procured electricity products. This documentation may include, but is not limited to, interconnection agreements, NERC e-Tag data, scheduling agreements, firming and shaping agreements, and electricity product procurement contracts or similar ownership agreements and information.”
- SCPPA seeks clarification on the newly-inserted requirement in subsection (l) regarding the necessity of a “description of the energy consumption by the POU, including any **electricity used by the POU for water pumping**, the purpose of this consumption, the annual amount in MWh, and the annual amount in MWh being satisfied with electricity products.”
 - SCPPA Members are concerned about the ever growing data reporting burden having doubled over the past two years associated with the RPS reporting requirements. This is in addition to other regional, state, and federal reporting requirements. We encourage Energy Commission staff to work with stakeholders to determine how best to address and satisfy the need for this information while minimizing the additional reporting burden on limited POU staff resources.
 - We suggest that Energy Commission staff consult with the Department of Water Resources as they work to develop the water sector’s voluntary energy intensity methodology for the purposes of reporting under their Urban Water Management Plans, to ensure that the State does not create duplicative or contradictory reporting requirements.

SECTION 1240 – RPS ENFORCEMENT

SCPPA is concerned with any abdication of the Air Resources Board’s current – and independent – statutory responsibilities to levy penalties on a POU for noncompliance. Existing statute is clear that any penalties must be comparable to those adopted by the California Public Utilities Commission for the Investor-Owned Utilities, and that a POU can cite mitigating factors for noncompliance – including optional compliance measures and cost containment considerations **before** a decision is made. Placing Publicly-Owned Utilities in the position of having to answer a noncompliance decision before the Energy Commission has even determined that there is a noncompliance is extraordinarily unfair and inappropriate. The state regulatory agencies should follow basic due process rules; the Energy Commission first needs to determine whether there has been a violation – considering optional compliance measures and other extenuating circumstances, before the Air Resources Board independently determines the penalty amount under the California Health and Safety Code (under ARB’s purview). We are concerned that the Energy Commission has assumed a dramatically expanded role in this enforcement matter.

Thank you for your time and consideration of SCPPA’s comments. We greatly appreciate the opportunity to provide stakeholder input on the Energy Commission staff’s efforts to revise the RPS Enforcement Procedures.

Respectfully submitted,



Tanya DeRivi
Director of Government Affairs