California Energy Commission
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BEFORE THE CALIFORNIA ENERGY COMMISSION

RENEWABLES PORTFOLIO STANDARD) Docket No. 13-RPS-01

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

I. Introduction

The City and County of San Francisco (CCSF or City) submits these comments in response to the California Energy Commission's (CEC's) Notice of Proposed Action (NOPA) to adopt enforcement procedures for the Renewable Portfolio Standards (RPS) for local publicly owned electric utilities (POUs). The City, through its Public Utilities Commission (SFPUC), owns and operates a publicly owned electric utility (POU), providing approximately 1 million megawatt-hours (MWh) of electricity annually for the City's municipal requirements and other uses.

CCSF appreciates the time and effort that Commission staff has spent in developing the proposed regulations, as well as staff's willingness to meet with CCSF and address many of CCSF's concerns.

CCSF appreciates the CEC's conclusion that CCSF is not subject to the Portfolio Balance Requirements (as noted in the ISOR, p. 22)[1] as well as the other requirements of Section 3204 of the draft regulations provided that CCSF meets its alternative compliance obligations under Public Utilities Code section 399.30(j). As described by the CEC:

> A POU that meets the criteria of Public Utilities Code section 399.30(j) is excused from the RPS procurement requirements and portfolio balance requirements applicable to other POUs and required to procure only eligible renewable energy resources to

[1] "Staff determined that the portfolio balance requirements of Public Utilities Code Section 399.16 do not apply to a POU that meets the criteria of Public Utilities Code section 399.30(j) because section 399.30(j) can be viewed as a stand-alone requirement, and because Section 399.30(j) does not include an express provision to meet the PCC allocation requirements of Public Utilities Code section 399.16. In addition, a POU that meets the criteria of Public Utilities Code section 399.30(j) would be unable to appropriately plan ahead for adequate PCC1 and PCC2 procurement because the level of unmet electricity demand for a compliance calendar year may not be known until the end of that year. (ISOR, p. 22) "

satisfy the POU's electricity demands unsatisfied by the POUs "qualifying hydroelectric generation" in any given year.

Our comments here are limited to six specific elements where the draft regulations are inconsistent with the requirements of SBX1-2, and in some instances, the CEC's own interpretation of SBX1-2 in its Initial Statement of Reasons (ISOR).[2] We discuss these elements below along with the changes recommended to conform to the statute. We have attached a redlined version of the regulations with these changes.[3]

II. Section 3204(a)(7) Needs to be Clarified to Reflect the Criteria that CCSF Needs to Meet to Qualify for its Alternative Compliance Obligation

CCSF, as noted above, is not subject to the multi-year compliance obligations and Portfolio Balance Requirements[4] applicable to other POUs provided that CCSF meets its alternative compliance obligations under Public Utilities Code section 399.30(j).

However, as discussed with CEC staff, there is an ambiguity in the draft regulations that makes it appear that this exemption is only available when CCSF is 100% sourced from its qualifying hydroelectric generation, and not at least 67% as required in statute. As currently written, the draft regulations state that CCSF meets the "criteria listed in Public Utilities Code section 399.30(j)" and is "in compliance with Section 3204 for a given calendar year if **all** of the POU's electric demand in that calendar year is satisfied with its qualifying hydroelectric generation." (Section 3204(a)(7), emphasis added.) This could be interpreted that CCSF must be 100% sourced with its hydroelectric generation to be in compliance. This is inconsistent with Section 3204(a)(7)(C) and (D) of the draft regulations, which correctly state that CCSF meets the "criteria listed in Public Utilities Code section 399.30(j)" and is in compliance with Section 3204 by (1) meeting at least 67% of its electric demands from qualifying hydroelectric generation, and (2) procuring electricity products to meet any remaining needs up to the lesser of 100% of its needs or the "soft target" applicable to other POUs. CCSF recommends that the requirement that **all**

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[2] California Energy Commission Initial Statement of Reasons for Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities (March, 2013, CEC-300-2013-004)

[3] CCSF's comments use the CEC's approach of referring to the legislative requirements of SBX1-2 but using the current numbering of the Public Utilities Code. As noted in the ISOR (page 1, footnote 1), Assembly Bill 2227 repealed some of the reporting requirements in SBX1-2 and re-codified them elsewhere in the Public Utilities Code. As a result of this change, subdivisions (h) through (p) of Public Utilities Code Section 399.30 as enacted by SBX1-2 have now been renumbered subdivisions (g) through (n). Thus, the current Section 399.30(j) of the Public Utilities Code, which most specifically applies to CCSF, was originally Section 399.30(k) in SBX1-2.

[4] Public Utilities Code section 399.16

electric demands be met with qualifying hydroelectric generation be stricken and replaced with a reference to the requirements of Section 3204(a)(7)(C) and (D) (see attached redline).

III. The Proposed Definition of "Qualifying Hydroelectric Generation" Should Conform to Statute and the CEC's ISOR

In determining whether CCSF meets more than 67% of its electric demands with "qualifying hydroelectric generation" and thereby qualifies for the provisions of section 399.30(j), SBX1-2 allows CCSF to count all of its hydroelectric generation towards this target, except for hydroelectric generation that qualifies as a "renewable electrical generation facility" under Public Resources Code 25741.[5] The CEC's ISOR reaches a similar conclusion (ISOR p. 9, 28, 42).[6] However, the draft regulations exclude from the calculation any hydroelectric generation that "is not a renewable electrical generation facility **and is not RPS-certified.**" (Section 3204(a)(7)(A)(3), emphasis added.) The latter portion of this phrase "and is not RPS certified" could be interpreted as excluding any of CCSF's owned and operated hydroelectric resources that are not renewable electrical generation facilities as defined in the regulations, but are RPS-certified under different sections of state law. Such resources could include, for example, an incremental hydroelectric upgrade or water conveyance facility that do not qualify as a renewable electrical generation facility but are RPS-certified under section 399.12.5 or section 399.12(e) of the Public Utilities Code.[7] The phrase "and is not RPS-certified" significantly expands the list of hydroelectric resources excluded in determining the

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[5] As summarized by the CEC at page 42 of the ISOR, "Public Utilities Code section 399.30(j) applies to a "local publicly owned electric utility in a city and county that receives greater than 67% of its electricity sources located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to section 25741 of the Public Resources Code."

[6] For example, the ISOR at page 9 states that: "any POU…that receives greater than 67% of its hydroelectricity sources from hydroelectric generation…must prove to the Energy Commission that the generation does not come from a renewable electrical generation facility." On page 28 of the ISOR it states that "These qualifying hydroelectric facilities do not meet the definition of a "renewable electrical generation facility" pursuant to Public Resources Code section 25741." On page 42 of the ISOR it states that a "hydroelectric generation facility that meets this criteria is defined as "qualifying hydroelectric generation facilities in these regulations."

[7] Under SBX1-2, a "renewable electrical generation facility" (defined in both Public Resources Code Section 25741 and Section 3201(u) of the draft regulations) is a subset of the broader category of "eligible renewable energy resource" (defined in both Public Utilities Code Section 399.12(e) and Section 3201(k) of the draft regulations) that may become RPS-certified. Essentially, by adding "and is not RPS certified", the draft regulations change the language of SBX1-2 from defining "qualifying hydroelectric generation" as excluding only a "renewable electrical generation facility" to now read that "qualifying hydroelectric generation" excludes any "eligible renewable energy resource."

67% threshold significantly beyond what is allowed under SBX1-2, and should be removed (see attached redline).

IV. CCSF's Eligibility for its Alternative Compliance Obligation Should be Determined on a Yearly Basis as Required under SBX1-2 and Not on a Compliance Period Basis

The draft regulations use a historical seven-year average to determine whether CCSF meets the 67% requirement of section 399.30(j) of SBX1-2. Although not required by SBX1-2, CCSF appreciates and supports the use of a multi-year historical average to provide certainty and to dampen the impact of a short-term decline in its hydroelectric generation (e.g. due to drought). Further, CCSF supports and appreciates the change from a five-year to a seven-year average, to better match cyclical variations in California's hydroelectric generation.

SBX1-2 requires that CCSF's eligibility for the 67% requirement should be determined every calendar year rather than at the start of every compliance period as proposed in the draft regulations.

Under the draft regulations, if CCSF were to fall below the 67% threshold at the start of a multi-year compliance period, CCSF would be unable to use its alternative compliance obligation for the entire multi-year compliance period even if CCSF exceeded the 67% requirement in all or any one of these years. Such a result is inconsistent with section 399.30(j), which requires that CCSF "shall procure renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation <u>in any given year.</u>" In crafting SBX1-2, the Legislature established a multi-year compliance obligation for other POUs,[8] but established a single-year compliance obligation for CCSF. Moreover, section 399.30(j) was designed to prevent CCSF from replacing its own greenhouse-gas free hydroelectric generation with procurement of renewable resources to meet its unmet demand. The compliance-period approach set forth in the draft regulations could result in CCSF being required to buy significant amounts of renewable resources, well in excess of its demands unmet by its hydroelectric generation, for an entire multi-year compliance period.

This violates the requirement of SBX1-2 that the SFPUC is subject to its alternative compliance obligation "in any given year" it exceeds 67%. CCSF recommends that the draft regulations retain the historical seven-year average, but measure the seven-year historical average

[8] Public Utilities Code Section 399.30(a)

at the start of each calendar year, rather than at start of each compliance period applicable to other POUs, in order to conform to the requirements of SBX1-2 (see attached redline).

V. The RECs Associated with Renewable Energy Resources that Originally Qualify as Portfolio Content Category 1 Resources Should Retain that Status When the RECs are Unbundled and Sold Separately from the Underlying Energy.

Under the draft regulations, renewable energy credits (RECs) associated with renewable energy resources that originally qualified as Portfolio Content Category 1 resources should retain that status when the REC is subsequently unbundled and sold separately from the underlying energy.

CCSF supports the comments of the California Municipal Utilities Association (CMUA) and the Sacramento Municipal Utilities District (SMUD) on this issue.

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

In the CEC's proposed 7th Edition of the RPS Eligibility Guidebook,[9] RPS eligibility for certain types of resources (such as hydroelectric facilities associated with water conveyance systems and AB920 resources) will be effective as of January 1, 2011.[10] This ensures symmetry between SBX1-2's compliance obligations (which start on January 1, 2011) and the RPS-eligibility date of the resources.

The Guidebook does not address, however, the Portfolio Content Category (PCC) designation of these resources where the underlying RPS-eligible energy was transferred to others prior to the POU/retail seller receiving these RECs.[11] Many utilities may have transferred this RPS-eligible energy to others, but the entities acquiring or purchasing this energy may not be able to claim RPS credit for these resources because the associated RECs were not available at the time this sale or transfer took place.

Purchasers and sellers should not be penalized for this time lag. The draft regulations should allow a purchaser of RPS-eligible energy from these resources during this time period[12] to

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[9] CEC staff has stated that the CEC will consider adoption of this version of the Guidebook at a late April meeting. Therefore it is likely to be adopted prior to adoption of the draft regulations currently scheduled for May, 2013.

[10] Water conveyance facilities are proposed to become eligible as of January 1, 2011. AB920 resources can become eligible when they come on line after January 1, 2011.

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

[12] This time period would cover the January 1, 2011 effective date of SBX1-2 and the date the draft regulations are

claim them as PCC1 (or Bucket 1) resources if it subsequently purchases the RECs associated with the underlying energy generated by these resources during the period. This matches the time when these resources became RPS-eligible under SBX1-2 and the time when a POU/retail seller would have had the option to either use the resource for its own use or to transfer these resources as a "bundled" PCC1 or PCC2 product.

This categorization is consistent with the "one very limited exception to the classification of unbundled RECs"[13] adopted by the California Public Utilities Commission (CPUC) in establishing its Portfolio Content Categories for retail sellers in Decision(D.)11-12-052.[14] In that decision, the CPUC allowed both Southern California Edison (Edison) and San Diego Gas & Electric (SDG&E) to "reunite" RECs associated with RPS-eligible electric generation that had previously occurred. In this instance, both utilities were assigned long-term contracts for energy from RPS-eligible resources entered into by the Department of Water Resources (DWR) during the California energy crisis, but the contracts did not include the RECs. In order to allow Edison and SDG&E to claim these resources as RPS-eligible, the CPUC allowed both Edison and SDG&E "to buy the RECs from these facilities and reunite the RECs with the underlying generation that their customers receive[d] from the DWR contracts."

The same treatment that the CPUC applied to these contracts should be applied to RECs for generation that becomes RPS-eligible after it has been generated, and these RECs should qualify as PCC1. As the CPUC noted when approving its categorization , the inability to assign the RECs to the underlying RPS-eligible energy when it was generated was beyond the control of the utility, the treatment would have limited effect and operate for only a limited duration, and would not conflict with RPS rules on a going forward basis.[15] These same factors are applicable to POUs in this situation.

VII. CONCLUSION

CCSF appreciates the opportunity to comment on the Draft Regulations. We look forward to working with the staff of the California Energy Commission to address CCSF's concerns as identified above. The attached redline includes specific changes to the regulations to address these concerns.

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adopted

[13] D.11-12-052, p. 56

[14] D.11-12-052, p. 55-57 and Conclusion of Law #22 (p. 72)

[15] D.11-12-052, p. 57

Finally, the CEC's release of its Notice of Proposed Action (NOPA) is the start of the formal evidentiary record upon which the CEC must base its decision. CCSF is attaching our previous comments filed during the informal rule development process in order to have them on the record of this proceeding if needed.

Respectfully submitted,

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CCSF PROPOSED EDITS TO CONFORM THE DRAFT REGULATIONS TO SBX1-2

SECTION 3204(a)

(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 **it meets the requirements of section 3204(a)(7)(C) and (D)** ~~**all of the POU's electricity demand in that calendar year is satisfied with its qualifying hydroelectric generation.**~~

(A) For purposes of this section 3204, "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**~~.

(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**~~ **calendar year** from qualifying hydroelectric generation. The POU shall initially submit documentation for the seven years immediately preceding January 1, 2011, **January 1, 2012, and January 1, 2013** 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**~~ **calendar year**.

(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.

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BEFORE THE
CALIFORNIA ENERGY COMMISSION

RENEWABLES PORTFOLIO STANDARD Docket No. 11-RPS-01

COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE 33% RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES

I. SUMMARY

The City and County of San Francisco (CCSF or City) submits these comments on the Draft Regulations that were published on February 17, 2012. CCSF appreciates the time and effort that Commission staff has spent in developing the Draft Regulations, as well as staff's willingness to meet with the CCSF and other stakeholders to hear their concerns.

The City, through its Public Utilities Commission, owns and operates a publicly-owned electric utility (POU), providing approximately 1 million megawatt-hours (MWh) of electricity annually to meet the municipal requirements of CCSF, including water and wastewater systems, public transit, San Francisco International Airport, and other municipal facilities and tenants. CCSF also provides wholesale power to the Modesto and Turlock Irrigation Districts (MID and TID), and to other customers, consistent with contractual obligations and federal law. CCSF's Hetch Hetchy hydroelectric system generates an average of 1.6 million MWh of clean energy each year and our power supply portfolio currently includes 7 MW of solar photovoltaic and biogas installations. The City is committed to the development of renewable resources and supports the implementation of the California Renewable Energy Resources Act (CRERA).

Senate Bill (SB) X1-2, which enacted the CRERA, established an alternative compliance obligation for CCSF to meet its RPS requirements in California Public Utilities Code Section 399.30(k).[1] CCSF is required to procure RPS-eligible resources, including renewable energy

[1] Section 399.30(k) states: "A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to Section

credits, to meet only the electricity demands that are not met by its hydroelectric generation, so long as that generation is greater than 67% of CCSF's electricity resources.

In adopting Section 399.30(k), the Legislature recognized CCSF's historically low GHG emissions from its Hetch Hetchy hydroelectric system, and determined that any RPS requirements applied to CCSF should not displace one GHG-free resource (Hetch Hetchy generation) with another (RPS-eligible resources). This would increase costs for the CCSF with no incremental progress or contribution towards the State's goals for reduced reliance on fossil fuels and reductions in GHG emissions. The provisions of Section 399.30(k) will ensure that CCSF will continue to have among the lowest GHG emissions per MWh of any California electric utilities, even after the 33% RPS standard has been met in 2020.

CCSF recommends four modifications to the Draft Regulations that are intended to achieve the goals of Section 399.30(k), and SBX1-2 , while minimizing undue cost and operational burdens.

1. The regulations specifically applicable to the CCSF in Section 399.30(k) should conform to the statutory language. The City also recommends modifications to provide clarification and consistency.
2. The Portfolio Content Category ("Bucket") rules of Section 399.16 should not apply to the CCSF, because it is not required by the statute and creates undue operating burdens for the CCSF, with no corresponding benefits towards achieving State goals for reductions in fossil fuel use and GHG emissions.
3. The regulations should include a "cure period" between the end of the applicable compliance period and the time that POUs file their reports with the Commission during which POUs could voluntarily procure additional RPS resources to meet shortfalls.
4. The Portfolio Content categories should be changed so that RECs associated with RPS resources that initially meet the requirements of "Bucket 1" or "Bucket 2" would keep these designations if they were subsequently sold or transferred separate from the underlying energy.

25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements." Subsequent statutory references are to the Public Utilities Code, unless otherwise indicated.

In addition to these four recommendations, the CCSF is working closely with the California Municipal Utilities Association (CMUA) and supports the broader issues raised by the CMUA in its written comments. Our detailed comments for each of our four recommendations are provided below and we provide suggested modifications to the Draft Regulations in Attachment A.

II. PROPOSED CHANGES TO THE REGULATIONS SPECIFICALLY APPLICABLE TO THE CCSF

A. Changes to Conform to Statutory Language

CCSF has identified some instances where the Draft Regulations use terms that are similar, but not identical, to what is contained in the statute, with the result that the regulations do not accurately reflect the statutory provisions. For example, the Draft Regulations require the CCSF to procure "electricity products" to meet its needs unmet by its Hetch Hetchy generation. Under Section 399.30(k), however, the CCSF is required to "procure eligible renewable energy resources, including renewable energy credits" to meet its "renewable energy procurement requirements."[2]

Similarly, Section 399.30(k) defines the CCSF's qualified hydroelectric generation as a hydroelectric facility that "does not meet the definition of a renewable electrical generation facility pursuant to Section 25741 of the Public Resources Code." This same definition should be used in the regulations, but the Draft Regulation uses the phrase "eligible renewable energy resource" instead. While these two phrases are comparable in the current Draft Regulations, as CMUA will note, in its comments,[3] the definition of "eligible renewable energy resource" should include renewable resources under Sections 399.12(e) and Section 399.12.5.

B. Clarifications

SBX1-2 also contains terms applicable to the CCSF that should be clarified or defined, as follows:

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[2] This section, unlike Sections 399.15(a) applicable to retail sellers or Section 399.30(a) applicable to POUs, does not require the CCSF to procure "electricity products" to meet its RPS obligations.

[3] CCSF understands that CMUA intends to submit this mark-up to the CEC by April 6, 2012.

- The CCSF's RPS obligation pursuant to 399.30(k) is based on our "electric demands," while the RPS obligations for most other POUs are based on their "retail sales." The CCSF recommends that the CCSF's "electric demands" should be defined as its "retail sales," clarifying that the CCSF's RPS obligation does not extend to its sales to wholesale customers, many of whom (such as MID and TID) have their own RPS obligations.

- A definition of "retail sales" should be provided. We recommend using the Commission's current definition of retail sales used in its Power Source Disclosure (PSD) reporting requirements. Use of similar definitions for both the PSD and RPS programs should simplify POU reporting obligations.

III. THE PORTFOLIO CONTENT CATEGORY ("BUCKET") RULES OF SECTION 399.16 SHOULD NOT APPLY TO CCSF'S RPS OBLIGATIONS UNDER 399.30(K)

The Draft Regulations require that when the CCSF procures RPS resources to meet its RPS obligations under Section 399.30(k), those resources must be procured according to the Portfolio Content Category (commonly called the "Bucket") rules of Section 399.16.[4]

This requirement should be removed from the Draft Regulations because it is not required by the statute, does not further achievement of the State's goals for fossil fuel and GHG reductions, and imposes undue cost burdens on the CCSF by requiring it to procure RPS resources to displace our Hetch Hetchy supplies.

A. Not Required by Statute

The statute does not require application of the Bucket rules to the CCSF's RPS requirement in Section 399.30(k). The RPS requirements for other POUs under SBX1-2 are contained in Section 399.30(a)-(c), while the CCSF's RPS requirement is governed by Section 399.30(k). Section 399.30(a) requires that these POUs "implement a renewable energy resource procurement plan" to meet their unmet long-term needs that "achieve[s] the target of subdivision [399.30](c)," and the Bucket requirements are contained in 399.30(c)(3).[5] There is no

[4] The requirements of the Bucket rules are contained in Section 3204(e) of the Draft Regulations and the CCSF is made subject to these requirements in Sections 3204(a)(8) and 3207.

[5] Section 399.30(c)(3) requires POUs to adopt rules "consistent with" the requirements of Section 399.16, which contains the Bucket rules.

comparable requirement in Section 399.30(k) for the CCSF to meet the requirements of Section 399.30(c) broadly, or 399.30(c)(3) (the Bucket rules) in particular.

This reading of the statute is further supported by examining the specific requirements of Section 399.30 (b) and (c) in their entirety. These sections establish several requirements for POUs to (1) meet an increasing RPS requirement over three compliance periods from 2011-2020 (Sections 399.30(b)(1)-(3)), (2) procure 20% of their retail sales from RPS resources for the period 2011-2013 (399.30(c)(1)), (3) reflect reasonable further progress toward meeting the 2020 RPS goal (399.30(c)(2)); and (4) meet the Bucket requirements of Section 399.16 (399.30(c)(3)).

Neither Section 399.30(k), nor the Commission's Draft Regulations, apply Section 399.30(b) and the first two sections of Section 399.30(c) to the CCSF's RPS requirement as established by Section 399.30(k). It is consistent with this reading to determine that the Bucket rules imposed on POUs in 399.30(c)(3) are equally inapplicable.

B. Does Not Further Achievement of State Goals and Imposes Undue Cost Burdens

One of the primary purposes of the Bucket rules (particularly the increasing percentage of RPS resources that must be acquired from Bucket 1) is to encourage and promote increased long-term investment in California renewables.[6] Imposing these Bucket 1 minimums on CCSF's fluctuating RPS obligations does not contribute to meeting this long-term goal.

Under SBX1-2, POUs' RPS requirements are known in advance and relatively predictable. POUs are given nine years to establish a long-term portfolio of resources and three-year compliance periods to provide time and flexibility to meet the various Bucket categories.

In contrast, the CCSF's RPS requirement pursuant to 399.30(k) is an annual requirement that is driven by the availability of our hydroelectric generation, and can vary significantly based on

[6] Bucket 1 includes in-state renewable resources directly connected to California's transmission or distribution grid. It also includes renewable energy that is directly scheduled or dynamically transferred to California from out-of-state.

hydroelectric conditions and maintenance outages. As a result, the CCSF's RPS requirement will be short-term, variable, and relatively unpredictable.[7]

A requirement to meet possible but uncertain short-term shortfalls with Bucket 1 resources will result in over-procurement in most years, while making up shortfalls on a short term basis as they occur will not contribute to long-term investment in RPS resources. In either case, the CCSF will be subject to increased costs with no commensurate contribution towards state-wide RPS goals. The potential for undue cost burdens on the CCSF is heightened by the Draft Regulation's proposed prohibition of unbundled RECs in Bucket 1 and Bucket 2, both of which limit the ability and/or increase the cost of the CCSF acquiring and/or selling these RPS resources within a short time frame.

Moreover, imposing the Bucket requirements on the CCSF runs counter to the intent behind the adoption of Section 399.30(k) -- to establish a compliance mechanism that does not result in displacing one zero-GHG resource (Hetchy generation) with another, costly, zero-GHG resource (RPS-eligible resources).

IV. THE REGULATIONS SHOULD INCLUDE A "CURE PERIOD" DURING WHICH POUS COULD VOLUNTARILY PROCURE ADDITIONAL RPS RESOURCES TO MEET SHORTFALLS

Under the Draft Regulations, there is a gap of five months between the end of the calendar year and the date (June 1st) when each POU reports its RPS compliance to the Commission. This gap should provide an opportunity for POUs to "true-up" or fix shortfalls that are identified as the POU prepares its compliance reports. Reasonable shortfalls could occur due to such conditions as unexpected outages late in the compliance period, normal forecasting or reporting errors, or other reasons for which POUs should not be penalized.[8]

This approach would allow for (and encourage) the earlier procurement of RPS resources than otherwise would occur under the administrative enforcement process. A true-up period would

[7] Annual forecasted generation available from the Hetch Hetchy system cannot be accurately estimated with certainty until after the spring run-offs (at least several months into the year) and can vary after that due to unexpected outages later in the year.

[8] If the Commission is concerned that a "cure period" might allow entities to game the system or defer compliance, the Commission could establish guidelines that limit the amount of shortfall that could be trued-up and/or establish other conditions for use of the "cure period".

allow a POU to procure resources to make up its shortfall at most within five months after the end of the calendar year. Under the administrative enforcement process of SBX1-2, where the Commission first determines if a violation has occurred and the Air Resources Board then determines the appropriate sanction, there could be a delay of several years before new renewable resources could be procured.[9] Allowing a cure period would further the primary goal of the RPS standard, which is to hasten the use of RPS eligible resources. Establishing a cure period would also simplify the Commission's administrative burdens. Further, the cure period does not relieve the POU from procuring renewable resources to meet its RPS obligations.

A cure period would be similar to a notice of correction, which the Commission is authorized to issue under Section 399.30(n). The Commission could also develop such a procedure in coordination with the ARB as it implements its own administrative process to enforce the RPS requirements.

V. THE PORTFOLIO CONTENT CATEGORIES SHOULD BE CHANGED SO THAT RECS ASSOCIATED WITH RPS RESOURCES THAT INITIALLY MEET THE REQUIREMENTS OF "BUCKET 1" OR "BUCKET 2" WOULD KEEP THESE DESIGNATIONS IF THE RECS ARE SUBSEQUENTLY SOLD OR TRANSFERRED SEPARATELY FROM THE UNDERLYING ENERGY.

The Draft Regulations propose to adopt the definitions of Bucket 1 and Bucket 2 portfolio content category definitions that were recently adopted by the California Public Utilities Commission (CPUC).[10] This was one of the more contentious issues addressed by the CPUC in its proceeding. As the CCSF and CMUA both stated in their comments in that proceeding,[11] the

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[9] A likely scenario is that, first, a POU that found itself slightly short would identify the shortfall in its June 1st. filing. Second, Commission staff would need time to review and verify the shortfall. Third, the Commission would institute its administrative proceeding process, which could take an additional six months if contested by the POU. Fourth, the Air Resources Board (ARB) would require additional time to conduct its administrative process to establish a penalty. Fifth, assuming the ARB assessed a penalty, the proceeds would be retained by the ARB until allocated by the State Legislature to procure additional renewable resources.

[10] Decision (D.)11-12-052.

[11] See "COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SIMON REGARDING PORTFOLIO CONTENT CATEGORIES" available at http://docs.cpuc.ca.gov/efile/CM/146436.pdf and "COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM" available at http://docs.cpuc.ca.gov/efile/CM/146795.pdf.

requirements of Section 399.16 (which provides the Bucket criteria) should be read to mean that only RECs that do not "otherwise qualify" as either Bucket 1 or Bucket 2 RPS resources should be classified as "unbundled" Bucket 3 RECs.

The CCSF supports CMUA's written comments to the Commission submitted today regarding the Draft Regulations' reliance on the CPUC's portfolio content category definitions. In particular, limiting Bucket 1 and 2 to solely to "bundled" products will increase RPS compliance costs because POUs will need to over-procure to ensure compliance. The bundling requirement will largely require POUs to acquire all Bucket 1 and 2 products in advance, often prior to having certainty as to their RPS obligation. Once acquired, Bucket 1 and 2 products will be difficult to resell, limiting the secondary market and constraining market liquidity for these resources. Over-procurement will result in increasing the cost of meeting State goals unnecessarily. The limitation will be particularly burdensome on smaller utilities, as well as on the CCSF, which, as noted above, will have fluctuating and unpredictable needs for RPS resources.

Separating a REC from its underlying energy (unbundling) does not change the quality or benefits obtained from the electricity generated by an RPS resource. A REC simply establishes a single and unique claim to the underlying RPS generation, its bucket characteristics, and its system benefits. If the REC is initially associated with either Bucket 1 or Bucket 2 generation, then it has already provided the system benefits associated with these categories. This value is not lost if the REC is subsequently sold or transferred.

The Commission should not be bound by the CPUC decision, and instead should develop its own record in this proceeding on the associated statutory and policy issues. This is particularly important since the Commission is developing regulations to enforce Section 399.30, while the CPUC was interpreting Section 399.15(a). The language of these sections is not identical.

The CCSF appreciates the opportunity to comment on the Draft Regulations and looks forward to working with the staff of the California Energy Commission on further revisions to the regulations to address the CCSF's concerns.

Respectfully submitted,

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Attachment A

Suggested modifications to the CEC Draft Regulations applicable to the CCSF.

Section 3201 – Definitions

(p)" Procurement target" means the specified percentage of retail sales that a POU must procure of electricity products from RPS-certified facilities 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 (k), the procurement target is the annual specified percentage of the POU's electricity demands ~~portion of retail sales~~ not met by the POU's qualifying hydroelectric generation that must be procured from eligible renewable energy resources or renewable energy credits during a calendar year.

( ) Retail sales mean electrical energy produced by a generating facility that a retail seller offers to sell to consumers in California under terms and conditions specific to an offer or to a tariff. It does not include the provision of electric services on site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate, as defined in Section 372, subdivision (a), of the Public Utilities Code.

Section 3204 – RPS Procurement Requirements

(7) ~~Notwithstanding Section 3204 (a)(1) – (4) of these regulations, a~~ A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall be deemed to be in compliance with this Section 3204, and not subject to the requirements of Sections 3204 (a)(1) – (4), (c), (d), and (e) of these regulations if all of the POU's electricity demand in any given calendar year is satisfied with its qualifying hydroelectric generation. For purposes of this Section 3204, "qualifying hydroelectric generation" is generation from one or more facilities that meets the following criteria:

(A) The facility is located within the state.

(B) The facility is owned and operated by the POU.

(C) The facility is a hydroelectric facility, but does not meet the definition of a "~~rRenewable eElectrical gGeneration~~ Facility pursuant to Section 25741 of the Public Resources Code" ~~and is not RPS-certified.~~

(D) The facility, in conjunction with other facilities meeting the requirements of this Section (7) provides greater than 67 percent of the POU's electricity demands~~supply~~ on an annual basis.

(E) For purposes of these regulations, the POU's electricity demand is the same as its retail sales.

(8) If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has electricity demands unsatisfied by its qualifying hydroelectric generation in any given year, then the POU shall be deemed to be in compliance with this Section 3204 and not be subject to the requirements of Section 3204 (a)(1) – (4), (c), (d), and (e) of these regulations if the POU procures eligible renewable energy sources, including renewable energy credits ~~electricity products in accordance with Section 3204 (d) of these regulations~~ equal to the lesser of the following:

(A) The electricity demands unsatisfied by the POU's qualifying hydroelectric generation.

(B) The RPS procurement requirement listed in Section 3204 (a)(1) – (4) of these regulations corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual electricity demand.

Comment [H01]: CONFORMS TO STATUTE PU Code Section 399.30(k) refers to the "electricity demands" not met by our qualifying hydroelectric generation.

Comment [H02]: CONFORMS TO STATUTE PU Code Section 399.30(k) requires that the SPPUC "procure eligible renewable energy resources, including renewable energy credits" to meet its "renewable energy procurement requirements."

Comment [H03]: This detailed definition was developed from the Energy Commission's Power Source Disclosure reporting requirements.

Comment [H04]: CLARIFICATION: We propose replacing the current use of the phrase "notwithstanding" with a more declarative statement of the SPPUC's obligation under the regulations.

Comment [H05]: CONFORMS TO STATUTE PU Code Section 399.30(k) defines the SPPUC's qualified hydroelectric generation as a hydroelectric facility that "does not meet the definition of a renewable electrical generation facility pursuant to Section 25741 of the Public Resources Code."

Comment [H06]: CONFORMS TO STATUTE The SPPUC must retrieve "greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates" in order to meet the requirements of PU Code Section 399.30(k). The SPPUC meets this requirement through the operation of four hydroelectric generation facilities.

Comment [H07]: CONFORMS TO STATUTE PU Code Section 399.30(k) refers to the "electricity demands" not met by our qualifying hydroelectric generation.

Comment [H08]: CLARIFICATION: As discussed in our comments, a definition of retail sales would be useful.

Comment [H09]: Repeats language from Section (7) so that it also applies to Section 8, and clearly identifies the provisions of Section 3204 that the SPPUC is in compliance with if it meets the requirements of Section 8.

Comment [H10]: CONFORMS TO STATUTE PU Code Section 399.30(k) required that the SPPUC "procure eligible renewable energy resources, including renewable energy credits" to meet its "renewable energy procurement requirements."

Section 3205 – Procurement and Enforcement Plans

(a) Renewable Energy Resources Procurement Plan

(1) By January 1, 2013, each POU shall submit to the Commission a renewable energy resources procurement plan that includes, at a minimum, the following information for the forthcoming calendar year and the current compliance period:

(G) A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall meet only the calendar year reporting requirements of Sections 3205(a)(1) and additionally shall provide a forecast of its annual electricity demand that will be satisfied with qualifying hydroelectric generation in MWh from a facility that meets the criteria specified (as defined in Section 3204 (a)(7)) used to meet its of these regulations. The forecast shall identify the POU's forecasted annual electricity demand, and the amount of qualifying hydroelectric generation expected for the calendar year in MWh. It shall not be required to meet the reporting requirements of Section 3205(a)(2).

Comment [H21]: CONFORMS TO STATUTE A "compliance period" corresponds to the three time periods laid out in PU Code Section 399.30(b). The SPPUC does not have a similar compliance obligation, instead it is required to meet its RPS obligations on a yearly basis.

Comment [H22]: CONFORMS TO STATUTE Same issue as previous comment.

Section 3207 – Compliance Reporting for POUs

(e) Notwithstanding Section 3207 (a) (c) of these regulations, a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall not be subject to the requirements of Sections 3207(a) –(c) but shall instead annually submit to the Commission, by the deadline for annual reports, documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state; and that the POU receives greater than 67 percent of its electricity supply sources to meet its electricity demands on an annual basis from a qualified hydroelectric facilities y as defined in that meets the criteria of Section 3204 (a)(7). of these regulations. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k). A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) must additionally submit its total retail sales 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 the procurement from eligible renewable energy resources, including renewable energy credits, of electricity products in accordance with Section 3204 (c) of these regulations.

Comment [H23]: CLARIFICATION We propose replacing the current use of the phrase "notwithstanding" with a more declarative statement of the SPPUC's obligations under the regulations.

Comment [H24]: CONFORMS TO STATUTE PU Code Section 399.30(k) refers to the "electricity sources" used to meet our "electricity demands" not met by our qualifying hydroelectric generation.

Comment [H25]: CONFORMS TO STATUTE PU Code Section 399.30(k) requires that the SPPUC "procure eligible renewable energy resources, including renewable energy credits" to meet the "renewable energy procurement requirements."

California Energy Commission
DOCKETED
11-RPS-01
TN # 66673
AUG 14 2012

BEFORE THE CALIFORNIA
ENERGY COMMISSION

RENEWABLES PORTFOLIO STANDARD Docket No. 11-RPS-01

COMMENTS OF THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION ON THE 33% RENEWABLES PORTFOLIO STANDARD PRE-RULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES

I. INTRODUCTION

The City and County of San Francisco (CCSF or City) submits these comments on the second version of the Draft Regulations that was posted on July 20, 2012. The City, through its Public Utilities Commission (SFPUC), owns and operates a publicly-owned electric utility (POU), providing approximately 1 million megawatt-hours (MWh) of electricity annually for the City's municipal requirements and other uses.

The City appreciates the time and effort that Commission staff has spent in developing the Draft Regulations, as well as staff's willingness to meet with CCSF and address many of the City's concerns. The City largely supports the Draft Regulations as they relate to CCSF. We address below areas where we urge modifications to better comport with the statute's language and purpose.

II. CCSF SUPPORTS THE CHANGES MADE TO THE DRAFT REGULATION IN RESPONSE TO CCSF COMMENTS

A. Changes Made in Response to CCSF Comments

CCSF appreciates and supports the changes made by the Commission in response to our March 30th comments on the Commission's first version of its draft regulations. These changes address CCSF's alternative compliance obligation under Section 399.30(k) and include:

- Recognizing that the Portfolio Content Category rules do not apply to CCSF as long as it meets the requirements of Section 399.30(k);

- Defining our "electricity demands" as being the same as our "retail sales"; and
- Developing the "soft target" RPS-goals that serve as the upper limit on CCSF's RPS obligations if it has retail sales "unmet by its qualifying hydroelectric generation."

B. Conforming the definition of qualifying hydroelectric generation to statute

CCSF also appreciates the Commission's changes to the definition of "qualifying hydroelectric generation" in Section 3204(A)(7) of the Draft Regulations but notes an important ambiguity in the revised definition that should be clarified.

Hydroelectric facilities may become RPS-certified under either Section 25741 of the Public Resources Code or Section 399.12 of the Public Utilities Code. Only those hydroelectric facilities that are RPS-certified under Public Resources Code 25741 are to be excluded under Section 399.30(k) for purposes of calculating CCSF's qualifying hydroelectric generation. However, the Draft Regulations could be read to also exclude hydroelectric facilities certified under section 399.12 of the Public Utilities Code. To avoid this ambiguity, Section 3204(A)(7)(A)(3) should be revised as follows: "The facility is a hydroelectric facility, but <u>is not an RPS-certified</u> ~~does not meet the definition of a~~ "Renewable Electrical Generation Facility ~~and is not RPS-certified~~."

III. CCSF RECOMMENDS USE OF A SEVEN-YEAR <u>ROLLING</u> AVERAGE TO DETERMINE CCSF'S ELIGIBILITY FOR THE ALTERNATIVE COMPLIANCE OBLIGATION OF SECTION 399.30(K)

The Draft Regulations contain an important new approach, presented for the first time, regarding the CCSF alternative compliance obligation under Section 399.30(k). Under this approach, eligibility for the alternative compliance mechanism would be determined at the start of each compliance period and the determination would remain in effect for that entire period. To be eligible for the alternative compliance obligation pursuant to Section 399.30(k) during a compliance period, at the start of the relevant compliance period, CCSF's hydroelectric generation would have to have exceeded 67% of retail sales for the five years preceding the start of the compliance period. The purpose of this proposal is to ensure that both Commission staff and CCSF know at the start of the compliance period, CCSF's RPS compliance framework for the upcoming period, and to dampen the impact of a short-term decline in CCSF's hydroelectric generation (e.g. due to drought).

While CCSF supports the averaging approach, it should be modified to be consistent with 399.30(k). First, the compliance period should be returned to one year. As proposed by the CEC, a single compliance period could be as long as four years. For example, if CCSF were to fall below the five-year 67% average just prior to the start of the 2017-2020 compliance period, then CCSF would be precluded from utilizing its Section 399.30(k) alternative compliance obligation for this entire four year period, even if it turns out that in every one of these years CCSF exceeded its 67% requirement.

Such a result is inconsistent with Section 399.30(k) which requires that CCSF "shall procure renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year" if it meets the 67% requirement. In crafting SBX1-2 the Legislature established a multi-year compliance period for other POUs[1] but only specified a yearly compliance obligation for CCSF. In fact, the Section 399.30(k) approach was designed to avoid CCSF having to sell rather than itself use greenhouse gas free hydroelectric generation, because it had to buy renewable resources that exceeded its unmet demand. The approach set forth in the Draft Regulations, in contrast, could result in CCSF being required to buy renewables in excess of its unmet demand for an entire compliance period if in the five years prior to the commencement of a compliance period it had less than average hydroelectric generation available. This could be true even in years of greater than average hydroelectric generation.

CCSF does not object to using a rolling average approach to determine each year whether CCSF can use the alternative compliance mechanism in 399.30(k) provided that it retains the yearly assessment and compliance requirement. Under the City's recommended approach, CCSF's compliance obligation would be set at the beginning of each year (not compliance period) based on its hydroelectric generation over the previous five or (as proposed here by CCSF) seven years. This approach allows CCSF and the CEC to determine at the beginning of each year whether in that year CCSF can use the alternative compliance approach described in Section 399.30(k) without creating a risk that CCSF will be required to buy renewable resources in excess of its unmet demand for an extended, multi-year period.

If the Commission decides to adopt the averaging approach, CCSF recommends an important change. As discussed with Commission staff, calculating CCSF's hydroelectric generation on a seven-year, rather than a five year basis, would better correspond to the cyclical nature of California's

[1] Public Utilities Code Section 399.30(a)

hydroelectric generation. It is also consistent with the seven-year average used to determine RPS obligations for the Power and Water Resources pooling Authority (PWRPA) pursuant to Section 399.30(j). Further, CCSF requests that filings to determine the applicable compliance mechanism be made 90 days after the start of each calendar year to allow the City to collect and compile the information.

IV. PROCUREMENT PLAN AND COMPLIANCE REPORTING REQUIREMENTS

A. The Procurement Plan Requirements should be clarified to allow CCSF to develop multi-year procurement plans.

The Procurement Plan requirements applicable to the CCSF are comparable to, and largely parallel, the requirements established for all other POUs. In response to comments from CMUA, these requirements have been modified to better conform to the statutory requirements of SBX1-2. Consistent with these statutory requirements, CCSF is proposing minor changes to the procurement plan requirements to clarify that, similar to all other POUs, it may develop a multi-year procurement plan. This will allow CCSF to better manage the variability of its hydroelectric generation and synchronize the Public Utilities Commission's (PUC's) multi-year budgeting process with its RPS obligations.[2]

B. The Compliance Reporting Requirements should be further clarified.

The reporting requirements established for CCSF are also comparable to those established for other POUs while also taking into account CCSF's yearly compliance obligation under Section 399.30(k).

CCSF supports Commission staff's statements, both at the July 30th Workshop and in the Draft Regulations, to coordinate any RPS-related reporting requirements with other reports (such as the Power Source Disclosure and CEC S-1 and S-2 forms) that POUs are already required to submit to the Commission.

To facilitate this process, CCSF again recommends that the Commission include in its Draft Regulations a definition of retail sales. We recommend using a definition based

[2] The SFPUC's Enforcement Program, adopted on December 13, 2011 (Section 5 – Timing of Submission and Adoption of Procurement Plans, p. 2), proposes that the timing of the PUC's Procurement Plan be developed with sufficient time so the Plan's fiscal effects can be included into the PUC's budget process which currently is on a two-year cycle.

on the Commission's current definition of "electricity product" which is used to determine the amount of retail sales a retail seller must report for the Commission's Power Source Disclosure/Power Content Label (PSD/PCL) reporting requirements[3]. Use of similar definitions for both the PSD and RPS programs should simplify POU reporting obligations and ensure consistent reporting.

V. CONCLUSION

CCSF appreciates the opportunity to comment on the Draft Regulations.Attached to this filing are recommended changes to the Draft Regulation to address the above concerns as well as other minor clean-up language.

Respectfully submitted,
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[3] California Code of Regulations, Title 20, Article 5 (Electricity Generation Source Disclosure), Section 1391(b) and (r).

ATTACHMENT

SUGGESTED CHANGES TO DRAFT REGULATIONS

Section 3204 (a)(7)(A) – Definition of Qualifying Hydroelectric Generation (Page 15)

(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 (k) shall be deemed to be in compliance with this Section 3204 if either 1) all of the POU's retail sales in any given calendar year is satisfied with its qualifying hydroelectric generation or 2) the POU meets the requirements of Section 3204(7)(C). [HJ1]

(A) For purposes of this Section 3204, "qualifying hydroelectric generation" is generation from one or more facilities 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 is not an RPS-certified [HJ2] ~~does not meet the definition of a~~ "Renewable Electrical Generation Facility" ~~and is not RPS-certified~~.

~~4. The facility, in conjunction with other facilities meeting the requirements of this Section 3204 (a)(7), provides greater than an average of 67 percent of the POU's retail sales for the five years preceding the beginning of each compliance period.~~ [HJ3]

Section 3204 (a)(7)(B) – Eligibility for Section 399.30(K) (Page 15-16)

(B) A POU shall demonstrate that it meets the criteria listed in Section 399.30 (k) by providing the Commission documentation showing the POU received ~~from hydroelectric sources that the POU owns and operates~~ at least an average of 67 percent of its retail sales in the seven[HJ4] ~~five~~ years preceding the start of each calendar year ~~compliance~~ period from hydroelectric sources that the POU owns and operates . The POU shall initially submit documentation for the seven ~~five~~ years preceding January 1, 2011 and January 1, 2012~~,~~ within 60 calendar days of the adoption of these regulations. New documentation for each subsequent calendar year shall[HJ5] ~~must~~ be submitted within ~~in~~ 90 calendar days after the start ~~end~~ of each year. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k)[HJ6]

Section 3204 (a)(7)(C) – Satisfying Needs Unmet by Qualifying Hydroelectric Generation

C) If a POU meeting the criteria listed in Public Utilities Code Section 399.30 (k) has retail sales 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 specified percentage [HJ7]~~portion~~ of the POU's retail sales unsatisfied by the POU's qualifying hydroelectric generation.
2. The soft target as defined in Section 3201(bb) [HJ8]~~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~~ retail sales.

Section 3205 – Procurement Plans and Enforcement Programs

(2) By January 1, 2013 [HJ9]a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) 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 retail sales [HJ10]~~electricity demand~~. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 days of adoption.

Section 3207 – Compliance Reporting for POUs (Page 30-31)

(e) Notwithstanding Section 3207 (a) – (c) a POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) shall annually submit to the Commission, by the deadline for annual reports specified in Section 3207 (b), 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~~ meets ~~its~~ ~~retail sales as calculated under~~ the requirements of Section 3204(a)(7)(B); ~~electricity demands on an annual basis from qualified hydroelectric facilities as defined in Section 3204 (a)(7)~~[HJ11]. ~~The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code Section 399.30 (k).~~ [HJ12]~~A POU that meets the criteria listed in Public Utilities Code Section 399.30 (k) must additionally~~ that the POU [HJ13]submit its total retail sales and documentation of its annual qualifying hydroelectric generation, and that the POU met its RPS requirements under either Section 3204(a)(7) or Section 3204(a)(7)(C). ~~provide evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with the procurement from eligible renewable energy resources, including renewable energy credits.~~ [HJ14]

Section 3201 – Definitions

(.) **"Retail Sales"** means electrical energy produced by a generating facility that a retail seller offers to sell to consumers in California under terms and conditions specific to an offer or tariff. It does not include the provision of electric services on site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utiltiies Code, or sold or transferred to an affiliate, as defined in Section 372, subdivision (a), of the Public Utilities Code.[HJ15]

Entities Considered to Be in Compliance With This Law (Page 4)

Additionally, SB X1-2 states, "A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a 'renewable electrical generation facility' pursuant to Section 25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements."[10] This provision applies to the City and County of San Francisco and its hydroelectric generation from the Hetch Hetchy ~~reservoir~~ Water and Power System[HJ16]. If the provision is satisfied, the City and County of San Francisco must meet the RPS procurement ~~targets~~ only for its electricity demand that is not satisfied by hydroelectric generation from the Hetch Hetchy ~~reservoir~~ Water and Power System in any given year.