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April 16, 2013

California Energy Commission
Docket Office, MS-4
Re: Docket No. 13-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512



Comments of the Small POU Group on the California Energy Commission Proposed Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

The Small POU Group is an *ad hoc* group consisting of some of California's smallest local publicly owned electric utilities ("POUs"). Currently included within this group are the cities of Cerritos, Corona, Moreno Valley, Needles, Rancho Cucamonga, and Victorville, and the Eastside Power Authority (collectively, "Small POU Participants"). The Small POU Group was formed for the purpose of addressing the Renewables Portfolio Standard ("RPS") and the unique implementation challenges facing small POUs, many of which have been formed within the last decade.

The Small POU Group is submitting these comments on the California Energy Commission's ("CEC") proposed Regulations Specifying Rules and Procedures for Enforcement of the RPS for POUs¹ ("Proposed Regulations"). Attached to these comments are formal written comments previously submitted by participants in the Small POU Group on earlier versions of the Proposed Regulations.² The Small POU Group believes that the arguments and alternatives described in the Small POU Previous Comments are persuasive and relevant to the Proposed Regulations. Accordingly, the Small POU Group incorporates herein the Small POU Previous Comments, and requests that the CEC's record in this proceeding include these comments and the Small POU Previous Comments.

The Small POU Group supports the positions and arguments previously submitted by the California Municipal Utilities Association ("CMUA") in this proceeding. The Small POU Group has reviewed CMUA's draft comments on the Proposed Regulations, and supports CMUA's positions expressed

¹ Pursuant to Public Utilities Code section 399.30(1), as enacted by Senate Bill X1-2 (Simitian, Stats. 2011, 1, Ex. Sess., ch. 1) and subsequently revised by Assembly Bill 2227 (Stats. 2012, ch. 606, sec.8)

² *Comments of the Small POU Cities on 33 Percent Renewable Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper*, September 12, 2011, Docket No. 11-RPS-01 ("Small POU Cities September Comments"), *Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on 33 Percent Renewables Portfolio Standard Pre-Rulemaking Revised Draft Regulations*, March 30, 2012, Docket No. 11-RPS-01 ("Small POU Cities March 30 Comments"), and *Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on the 33 percent Renewables Portfolio Standard Pre-Rulemaking Revised Draft Regulations*, August 13, 2012, Docket No. 11-RPS-01 ("Small POU Cities August 13 Comments") (collectively, "Small POU Previous Comments").

therein. The Small POU Group urges the CEC to revise the Proposed Regulations to respond to CMUA's concerns.

The Small POU Group appreciates the numerous opportunities that the CEC has provided to meet with both the staff and the Commissioners throughout this proceeding. As described in previous comments and meetings with the CEC, the Small POU Participants are challenged with meeting regulatory mandates of all sorts because they are so small and because most of them were formed relatively recently in response to the energy crisis in 2000. The total load of the Small POU Participants is roughly 1/10th of 1% of the total electrical load in California.

The Small POU Group appreciates the CEC's efforts to listen to the concerns of the smallest POUs, but we believe that the CEC has failed to incorporate reasonable accommodations and deference for enforcement of the RPS which take into account both the abilities of the smallest POUs to meet RPS obligations and the administrative cost associated with the CEC's proposed regulatory requirements. It is within the administrative discretion of the CEC and consistent with its administrative responsibility to craft reasonable accommodations. Indeed, there is a commensurate and unreasonable burden of enforcement on the smallest POUs that the CEC and the California Air Resources Board must address – one which is vastly disproportionate to the value of any contribution the Small POU Cities could make to the State's RPS goals.³

In previous comments, the Small POU Participants have suggested several alternatives which are consistent with the overall purpose and intent of the State's RPS goals and within the discretion of the CEC. These comments will briefly highlight how those alternatives might achieve the goals of the State RPS policies and be in the interests of both the Small POU Participants and the regulatory agencies.⁴

The CEC states that the problem that the Proposed Regulations are attempting to address is the inconsistent application and enforcement of the State's RPS to POUs.⁵ The Small POU Group agrees with CMUA that such a purpose is not consistent with the structure of SB1X-2 or the historical and organic separation of purposes and business structures of the State's investor-owned utilities and publicly owned utilities. SB 1X-2 states that the intent of the Legislature in enacting SB 1X-2 is to increase the amount of electricity generation from eligible renewable energy resources per year, so that it equals at least 33 percent of total retail sales of electricity in California per year by December 31,

³ California Environmental Protection Agency, Air Resources Board, Proposed Regulation for a California Renewable Electricity Standard, Staff Report: Initial Statement of Reasons, June, 2010 at VII-5 (“The analysis shows that retail sellers that qualify for the partial exemption are so small that they do not have the staffing or budget to absorb the administrative burden of compliance with a 33 percent renewables requirement. Requiring these entities to spend additional funds to procure renewable energy or RECs would create a disproportionate use of resources relative to the environmental benefits.”)

⁴ As noted above, the Small POU Group requests that the Small POU Previous Comments be incorporated herein and be included in the record on which the CEC bases its final decision.

⁵ See Specific Purpose, Rationale, and Necessity of Each Regulation, p. 3 - 5 of Initial Statement of Reasons for the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, March 2013, CEC-300-2013-004.

2020.⁶ It is not necessary or reasonable to try to create consistency between investor-owned utilities and publicly owned utilities to meet that objective. Many publicly owned utilities both in California and other states have been on the forefront in developing innovative energy solutions, including renewable energy generation sources, and the CEC does not describe in the Initial Statement of Reasons why or how lack of consistency has been detrimental to the State's RPS goals in the past. Such a purpose seems at odds with continuing to encourage innovation from the publicly owned utilities participating in the renewable energy market.

Crafting regulations which address the challenges of the smallest POUs, including specifically those formed in the last decade, instead of trying to apply rules to them that are designed to regulate utilities that began operations a century ago, is the clearest example of a place where the CEC could be most effective in applying its administrative discretion. It does not make sense for the CEC to require the smallest POUs to conform to a set of rules designed for large, well-established investor-owned utilities. It also does not meet administrative standards of cost effectiveness when measuring the contributions to overall RPS implementation that the smallest POUs can make relative to the various costs incurred.⁷ In light of this, we again ask that the CEC make meaningful and necessary accommodations for the smallest POUs.

Specifically, the Small POU Group requests that the Proposed Regulations be modified to include reasonable accommodations which would not subject the smallest POUs to unnecessary and unduly complex oversight by the CEC with respect to the procurement plans and cost limitation provisions adopted by their governing boards. Among other flexible compliance measures, SB 1X-2 provides for the governing boards to adopt cost limitations which would excuse the obligation of the POUs to acquire renewable resources to the extent procurement costs would exceed the cost limitation.⁸ The Small POU Participants are still in the process of acquiring the information which would provide necessary inputs into the development of procurement plans and cost limitations. These include, for example, determining the cost of renewable resources in the small quantities and with the flexibility required to be incorporated into any truly viable resource mix matching the small loads of the Small POU Participants.⁹ It also requires cost of service studies, preparation of alternate rate studies and economic impacts relevant to the loads and economic make-up of the customers served by the Small POU Participants, and consideration of other budgetary and financial factors, such as the requirement to build financial reserves and establish rate stabilization funds.

⁶ Public Resources Code Section 25740

⁷ See Recommendation 2 of October 2011, Little Hoover Commission report on Better Regulation: Improving California's Rulemaking Process, providing as follows: "...the economic analysis should be a cost-effectiveness assessment of alternatives that meet the statutory purpose of the regulation to determine the lowest cost alternative to meeting this goal..." at p. 46.

⁸ Cal. Pub. Util. Code Section 399.30(d)(3)

⁹ The Small POU Cities issued a Request For Information for Renewable Resources in October, 2012. Responses are still being evaluated in the context of development of renewable procurement plans.

In the Proposed Regulations, the CEC has proposed oversight of the governing boards' development of cost limitations, which is both unnecessary and beyond the purview of the CEC.¹⁰ This added layer of oversight is also wasteful. The oversight results in a degree of uncertainty and a use of staff resources beyond any value that the CEC adds to the responsibility of the Small POU Cities' governing boards.

As described in CMUA's comments, and in the Small POU Previous Comments, the combination of restrictive oversight of cost limitation provisions and language prohibiting the acquisition of Procurement Content Category ("PCC") 3 resources to meet RPS requirements effectively abrogates the overall purpose of SB 1X-2 by inhibiting a small POU's governing board from pursuing alternative, less expensive and less risky resources while still achieving the overall objectives of RPS policy.¹¹ If the procurement plans adopted by a POU governing board fit the overall objectives of encouraging the development of renewable resources and achieving the State's targets for renewable energy by 2020, the CEC should give deference to the governing board of the POU, particularly the governing board of a small POU. With respect to the smallest POU's, deference could be accomplished by including general language in the Proposed Regulations indicating that the CEC will review the cost limitation provisions and procurement plans of the smallest POU's only as necessary to address material concerns that such provisions and plans have not been adopted in good faith or in a manner that promotes the overall objectives of the State's RPS policies. For example, if expected procurement costs of resources in PCCs 1 or 2 are determined by the governing boards to exceed the cost limitation threshold of the small POU, the governing board should be able to adopt alternative compliance measures, such as setting aside the unspent funds for future procurement of renewable resources that may be better suited to the small POU's risk profile and cost management or buying PCC 3 resources. Such a result would be consistent with the general purpose of SB1X-2 renewable resource goals, and it would be disheartening, to the say the least, if the CEC felt compelled under its enforcement regulations to thwart or unduly scrutinize the governing board's action. The CEC's express adoption of a cooperative approach for oversight of the smallest POU's, which initiates oversight activity only on an as-needed basis, can be justified as a reasonable exercise of the CEC's administrative authority in achieving a cost-effective, win-win regulatory solution consistent with the State's goals.

¹⁰ E.g. Proposed Regulations, Initial Statement of Reasons Section 3206, proposed subdivisions (b), (c), and (e)

¹¹ Under the proper legal standard of review, a court will determine whether the agency reasonably interpreted its legislative mandate when deciding that the challenged regulation was necessary to accomplish the purpose of the statute. In other words, "the court will determine whether the regulation is reasonably designed to aid a statutory objective." (*Benton v. Board of Supervisors*, 226 Cal.App.3d 1467, 1479 (1991)).

Comments of the Small POU Group

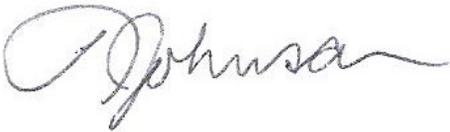
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The Small POU Group appreciates the efforts of the CEC staff in developing the Proposed Regulations and the willingness to discuss and consider the arguments of the Small POU Participants. The Small POU Group encourages the CEC to consider adding provisions to the Proposed Regulations consistent with the proposals described in these comments.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in cursive script, appearing to read "Linda Johnson".

Linda Johnson

Scott Blaising

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August 13, 2012

California Energy Commission
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Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512



Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on the 33 Percent Renewables Portfolio Standard Pre-Rulemaking Revised Draft Regulations

I. INTRODUCTION

The Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga, and Victorville (“Small POU Cities”) appreciate the opportunities that the California Energy Commission (“CEC”) has provided to meet with both the staff and the Commissioners throughout this proceeding. The Small POU Cities have previously submitted comments on the *33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations*, issued by the CEC, Energy Efficiency and Renewable Energy Division (CEC-300-2012-001-SD) (“Draft Staff Report”).

As described in earlier comments,¹ the Small POU Cities are challenged in trying to implement the new renewables portfolio standard (“RPS”) described under Senate Bill (“SB”) X1-2 in the same way as the larger, older utilities in California. Several alternatives have been described in previous comments and the Small POU Cities continue to request the CEC to consider those alternatives.

II. COMMENTS ON THE DRAFT STAFF REPORT

A. The CEC can limit the burden on the Small POU Cities by expressly acknowledging the authority of the governing boards to adjust the portfolio content category requirements under SB X1-2.

Still missing from the draft staff report is an express acknowledgement by the CEC that the governing boards of the Small POU Cities may rely on the statutory framework of SB X1-2 to reduce the impact of RPS compliance.

What would be helpful is an acknowledgement by the CEC that certain existing statutory provisions may be implemented by the very small POU’s governing boards. These include the right to alter the

¹ *Comments of the Small POU Cities on 33 Percent Renewable Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper*, September 12, 2011, Docket No. 11-RPS-01 (“Small POU Cities September Comments”), and *Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on 33 Percent Renewables Portfolio Standard Pre-Rulemaking Revised Draft Regulations*, March 30, 2012, Docket No. 11-RPS-01 (“Small POU Cities March 30 Comments”).

portfolio content category requirements of Section 399.16² pursuant to Section 399.16(e) which grants the governing boards of the Small POU Cities the discretion to adjust the percentage requirements for the reasons provided by that section, including inadequate supply of the nature and type fit for the very small POU's (i.e., small, incremental portions of resources or contracts). The Small POU Cities would appreciate express inclusion of the right to adjust the portfolio content category requirement in the draft regulation.

B. The CEC can design its procedures for enforcement under Section 399.30(n) to exempt the Small POU Cities from a finding of failure to comply due to the cost of compliance relative to the de minimis contribution of the Small POU Cities to California's RPS goals.

In previous comments, the Small POU Cities have made extensive arguments that the CEC has relatively broad authority to make reasonable distinctions in its enforcement rules on the basis of the size of the POU.³ Section 399.30(n) provides the basis for the CEC's enforcement authority and provides discretion on the part of the CEC as to whether a violation is noticed and ultimately referred to the California Air Resources Board ("ARB"). The Small POU Cities believe that the CEC can design its enforcement regulations to exempt very small POU's from a finding of non-compliance if, among other things, the Small POU Cities use good faith efforts to meet the RPS requirements.

III. CONCLUSION

The Small POU Cities appreciate the efforts of the CEC staff in developing the proposed regulation and the willingness to discuss and consider the arguments of the Small POU Cities.

Thank you for your consideration of these comments.

Respectfully,



Linda Johnson

Scott Blaising

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² Small POU Cities September Comments at 6.

³ See Small POU Cities September Comments at 2 (citing Gen. Elec. Co. v. State Bd. of Equalization, 111 Cal. App. 2d 180, 187 (1952)); also Small POU Cities March Comments, Cal. Gov. Code § 11346.2(b)(5)(B) (enacted by SB 617).

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California Energy Commission
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DOCKET

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DATE SEP 12 2011

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Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on 33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper

I. INTRODUCTION

The Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga, and Victorville (“Cities”) appreciate the opportunity to submit comments on the 33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper (“Concept Paper”). The Cities have reviewed the Concept Paper and respectfully submit the following comments.

As a preliminary matter, the Cities support the comments made by the California Municipal Utilities Association (“CMUA”). In particular, the Cities fully support the CMUA discussion of the limits of the CEC’s authority over the publicly owned utilities’ (“POUs”) programs implementing Senate Bill (“SB”) 2 (1X). CMUA is correct in stating that **“SBX1-2 did not change the basic statutory framework of regulation for procurement and ratemaking for either retail sellers or POU; the California Public Utility Commission [(“CPUC”)] maintains those obligations for retail sellers, and the POU governing boards maintain those same obligations for their respective community utilities.”**¹ For the smallest POU, like the Cities, this control is essential insofar as it will allow the Cities’ respective city councils to establish rules that are specific with respect to the unique circumstances facing their municipal electric utility.

As described in the Cities’ opening comments,² the Cities are among a handful of the smallest POU, which currently serve loads of 30 MWs or less (“Smallest POU”). On average, the Cities have annual retail sales of approximately 70,000 MWhs, well below the 200,000 MWhs threshold established by the California Air Resources Board for partial exemption under the Renewable Electricity Standard. The Cities are also unique among the Smallest POU in regard to vintage and scope. Regarding vintage, the Cities are still in a relative state of infancy, having their origin as an outgrowth of and a response to the State’s energy crisis in 2000-2001. The Cities began providing service as a means of self-

¹ CMUA Comments, September 12, 2011, at 2(emphasis in original).

² *Opening Comments of the Cities of Cerritos, Corona, Moreno Valley and Victorville On the Renewables Portfolio Standard Regulations*, July 8, 2011, Docket # 03-RPS-1078.

help, seeking to better protect against the volatility and economic instability that resulted from the energy crisis. Regarding scope, the Cities are unlike traditional POU's, which serve the entirety of the city limits. Instead, the Cities provide so-called "spot" municipal utility service, providing service to developing pockets or portions of the city. In this way, the Cities have sought to serve as an economic development catalyst within their communities.

Because of these unique attributes, the Cities have struggled to catch up with the renewable resource acquisition programs that are well under way by the larger, more-established utilities. Given their size relative to dominant market participants, their late start, and their role as an economic vehicle, the Cities have found it very difficult to compete with large utilities to develop or acquire resources of any kind, much less cost-competitive renewable resources.

II. COMMENTS ON THE CONCEPT PAPER

A. The CEC has the legal authority to make reasonable distinctions in the implementation of its regulations.

In the Opening Comments of the Cities, the Cities put forth arguments that support lighter regulatory treatment and differentiation of the Cities based on their size.³ The Concept Paper takes the position that there is no support in SB 2 (1X) for different treatment based on the size of an entity.⁴ However, administrative agencies adopting rules in a quasi-legislative capacity have broad authority in this regard:

Rule-making bodies have a wide discretion in exercising the power to classify. As long as the rule works uniformly upon all persons in a class and the classification is based upon some natural or reasonable distinction, the classification is not invalid. Classifications will not be overthrown unless plainly arbitrary.⁵

In each rule that the CEC adopts as part of its regulations, the CEC should determine whether there is a natural or reasonable distinction among the POU's, such that certain POU's should be subject to different requirements. This will be particularly true in the areas of reporting and verification, which may be unnecessarily burdensome for the Smallest POU's.

³ *Id.*

⁴ Concept Paper at 10-11 ("[N]o language in the statute indicates that exemptions or variations in the rules are necessary for smaller POU's.").

⁵ *Gen. Elec. Co. v. State Bd. of Equalization*, 111 Cal. App. 2d 180, 187 (1952) (internal citations omitted).

B. In general, the CEC's Concept Paper includes provisions that are overly restrictive and usurp the authority which was clearly given to POU governing boards.

All of the POUs in California have governing boards which consist of elected representatives who are bound to conduct processes that are subject to open meeting rules and related requirements.⁶ They are given authority under SB 2 (1X) to adopt and implement an enforcement program and adopt periodic procurement plans.⁷ If they adopt cost limitations and other processes that are specifically delegated to them under SB 2 (1X), they will be required under their own processes and the new legislation to hold public hearings.⁸ Such proceedings will be conducted in a public forum. Decisions and policies adopted in such a public process should be given substantial deference and presumed correct.⁹

During the September 1, 2011, CEC staff meeting on the Concept Paper ("CEC Staff Meeting"), CEC staff suggested that the CEC's role could be viewed as that of an appellate court. The Cities believe that this analogy goes beyond the limited role designated by SB 2 (1X). However, even accepting such an analogy as correct, the proposals supported in the Concept Paper would still exceed an appellate role. Under an appellate-style review, the CEC's role would be to review each POU governing board's actions and decisions to determine whether they were in compliance with the procedures required by SB 2 (1X) and supported by findings, which in turn are supported by substantial evidence in the decision-making records of the governing board.¹⁰ In that role, the CEC should not be substituting its views for the views of the elected governing boards which are closest to the issues and most able to balance the interests of the Cities.¹¹ This is contrary to the proposals of the Concept Paper, which would have the CEC evaluate the "reasonableness" of the cost limitations and waiver conditions adopted by the POUs.¹²

Regulations adopted by the CEC under SB 2 (1X) should be limited to "specifying *procedures* for enforcement," defined as a "public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply . . ." ¹³ Given this role, the CEC should not be interpreting or adding to the provisions of SB 2 (1X), as CEC staff recommends in the

⁶ See Cal. Gov. Code § 54950 et seq.

⁷ Cal. Pub. Util. Code § 399.30(a).

⁸ Cal. Pub. Util. Code § 399.30(d), (f).

⁹ See *Generally Save our Peninsula Comm. v. Monterey County Bd. of Supervisors*, 87 Cal. App. 4th 99, 142 (2001) (discussing deference to local governments in reviewing a local governmental agency's decision under the California Environmental Quality Act for consistency with its general plan).

¹⁰ See Cal. Pub. Res. Code § 21167.3; *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 393 (1988).

¹¹ Cal Code Civ. Proc. § 1094.5(d).

¹² Concept Paper at 10-11.

¹³ Cal. Pub. Util. Code § 399.30(n).

Concept Paper. If there is a need for interpretation with respect to a particular provision of SB 2 (1X), such interpretation is within the scope of the responsibilities delegated to the governing boards of the POU's, not the CEC. If, as is indicated in the Concept Paper, the CEC intends to delve into the details and reasonableness of findings of elected representatives executing their responsibilities as members of governing boards, then the CEC will not only be acting contrary to the intent of the legislation, it will be assuming an overwhelming oversight role that is unnecessary, given the inherent safeguards of a public and open process.

It would be particularly burdensome for the Smallest POU's if the CEC seeks to play such a comprehensive oversight role. The small administrative staff at each of the Cities already struggle with the current CEC reporting requirements. It would be excessively burdensome if the Cities were required to not only follow the public process laid out in SB 2 (1X), but also make detailed showings of the reasonableness of their actions to CEC staff. As discussed above, the cost limitations and waiver conditions adopted by the Cities will be adopted in public and open processes. It is unnecessary for the Commission to insert itself into this process.

C. SB 2 (1X) clearly establishes two distinct regulatory schemes for POU's and CPUC-jurisdictional entities and the CEC has no authority or direction to "assurance consistency" between these classes of entities.

During the CEC Staff Meeting, a participant suggested that the CEC should assure consistency between POU's and retail sellers. Such an argument lacks merit. It would be extremely difficult, given the varying organizational structures, rate designs, and resource mixes of the POU's, to even assure consistency among the POU's. More importantly, there is no requirement in SB 2 (1X) that there be a "level playing field between all entities" as described by the Pacific Gas and Electric Company ("PG&E") in the CEC Staff Meeting. Even if such were a goal of SB 2 (1X), establishment of a true level playing field would require some way to assure that entities with less market dominance than PG&E and less ability to assume risk compared to the guaranteed rate of return accorded to PG&E, would have equivalent opportunity to acquire the same resources. The Cities do not have either the administrative or financial resources to compete with the larger utilities for the most cost effective renewable resources.

D. The Cities' adoption of cost limitations will prevent disproportionate rate impacts.

SB 2 (1X) provides that the governing boards of the POU's can adopt cost limitations for procurement expenditures consistent with section 399.15(c).¹⁴ The author of SB 2 (1X), Senator Simitian clearly thought that the cost limitations included in SB 2 (1X) were a significant improvement to the State's RPS policies. "The new law will stimulate the

¹⁴ Cal. Pub. Util. Code § 399.30(d)(3).

economy and improve the environment, while protecting ratepayers from excessive costs.”¹⁵

SB 2 (1X) provides the governing boards of the Cities with the authority to interpret the cost limitation provisions of the legislation, as they may apply to the Cities. Since the language on cost limitations is ambiguous, the Cities can use the rules of statutory construction to determine how to assure that their policies are consistent with the intent of the legislation. A key rule of statutory construction is that: “All consistent statutes which can stand together, if related to the same subject, shall be construed together, and with reference to whole system of which they form part, and shall be harmonized, and effect given to all, if this can consistently be done, so as to make the law consistent in all its parts and uniform in its application and results.”¹⁶ Therefore, in order to properly interpret section 399.15(c), it is instructive to look at all other related statutory sections, particularly those sections that cross reference 399.15(c). The primary example is section 399.15(d), which cross references section 399.15(c). Section 399.15(d) provides in part that cost limitations should be “set at a level that prevents disproportionate rate impacts.” The Cities believe that even though section 399.15(d) is not expressly applicable to POU’s, it should clearly be construed together with 399.15(c) and interpreted as applicable to POU’s.

Due to their unique history and current organization, preventing disproportionate rate impacts is particularly important for the Cities. The Cities were carved out of the service area of the Southern California Edison Company (“SCE”) and because they are so new, their costs of energy and related services are very close to SCE and in some cases exceed the SCE rates. The size difference between SCE and the Cities is so great, that SCE will have a significant advantage in developing and procuring eligible renewable resources. As a result, the ratepayers in the service territories of the Cities may be subject to rate increases disproportionate to ratepayers in the surrounding service areas. Such considerations will be essential to the Cities in developing and setting their cost limitations.

Within the broad discretion granted to POU’s in developing cost limitations, there may be novel approaches that would support the various renewable energy goals of California. One such important goal is the Governor’s goal of 12,000 MWs of localized renewable energy by 2020, as part of his *Clean Energy Jobs Plan*.¹⁷ The Cities may support both the RPS and the Governor’s goal by focusing on developing local renewable energy projects. The unique posture of the individual Cities means that it is essential to provide additional benefits to ratepayers by keeping the renewable energy expenditures within the relevant

¹⁵ Patrick McGreevy, *Gov. Brown Signs Law Requiring 33% of Energy Be Renewable by 2020*, Los Angeles Times, April 13, 2011, available at <http://articles.latimes.com/2011/apr/13/local/la-me-renewable-energy-20110413>.

¹⁶ *In re First Nat. Bank in Oakland*, 96 Cal. App. 107, 111 (1928) (citing *Cohn v. Isensee*, 45 Cal. App, 531, 537 (1920)).

¹⁷ *Clean Energy Jobs Plan*, available at http://www.jerrybrown.org/sites/default/files/6-15%20Clean_Energy%20Plan.pdf.

communities. This will not only lessen the impacts of increased rates, but will also help to combat the state's high unemployment rates, while providing local benefits. It is important that, as the Cities evaluate and develop their cost limitations, they develop procurement plans that focus on developing local renewable projects. It would be reasonable and consistent with the purposes of SB 2 (1X) for the Cities to adopt policies that favor using financial resources that would otherwise have been spent on tradable renewable energy credits ("RECs") imported from out of state to develop local renewable resource projects, even if such projects do not meet the energy (MWh) targets established under SB 2 (1X).

E. The governing boards of the Cities may rely on renewable energy credits to meet their RPS requirements.

Although the Cities are in the process of structuring a procurement process, it is highly unlikely that the Cities will be able to meet the targets in the first compliance period with anything other than tradable RECs.¹⁸ The Cities are in the unenviable position of having to compete with enormous market dominant utilities for the most economic renewable opportunities. The Cities, on average, are comparatively .05% of the load of SCE. There is little likelihood that this can be accomplished at all, or even if it could be accomplished it would be with great economic hardship to their customers. Although the Cities intend to act in good faith to meet the intent of the legislation, their ability to do so is very limited, particularly given the time constraints of the initial compliance periods. As a result, each of the cities will likely need to determine to what degree a condition for waiver of timely compliance exists. Alternatively, a city may find that partial compliance is possible subject to its adopted cost limitations.

An additional aspect of the flexible compliance mechanisms permitted by SB 2 (1X) is a governing board's ability to alter the procurement content requirements of section 399.16.¹⁹ While the procurement content categories established in section 399.16 do not direct a REC to be treated as belonging to any specific category on the basis of its nature as an unbundled resource, many RECs will be associated with out-of-state resources. As such, procurement of these out-of-state RECs would may subject to the strict limitations set out in section 399.16.²⁰ In recognition of the hardship that this requirement may impose, section 399.16(e) permits a retail seller to apply to the CPUC for a deviation from the procurement content category percentage requirements. As the governing board of each POU stands in the place of the CPUC under the structure of SB 2 (1X), it is clear that section 399.16(e) grants the governing boards of POU's with the discretion to similarly adjust the percentage requirements for the reasons provided by that section, including inadequate supply. Therefore, if the governing boards of the Cities determine that there is an inadequate supply of eligible renewable resources that fall within procurement content

¹⁸ Section 399.21 directs the CPUC to authorize the use of RECs by retail sellers.

¹⁹ Section 399.30(c)(3) directs the POU's to adopt procurement requirements consistent with section 399.16.

²⁰ See Cal. Pub. Util. Code § 399.16(c)(2). Subdivision (c)(2) limits the use of resources falling in category three to 25 percent in compliance period one, 15 percent in compliance period two, and 10 percent thereafter.

categories 1 or 2, the governing boards of the Cities could permit its POU to meet its RPS requirements through the purchase of category 3 RECs. Such a strategy is permissible because SB 2 (1X) allows the governing boards of the Cities to adopt measures which specify conditions under which timely compliance may be waived consistent with section 399.15(b). In particular, 399.15(b)(5)(B) provides that a City can demonstrate that an insufficient supply of eligible renewable energy resources is available to the City. In 399.15(b)(5)(B)(iv), part of the determination of whether compliance can be waived includes whether the City has “taken reasonable measures . . . to procure cost-effective distributed generation and allowable unbundled renewable energy credits.” These provisions, read together, mean that if a City determines there are not enough cost-effective renewable resources available to the City for compliance period 1, then it can substitute tradable RECs.

SB 2 (1X) provides another significant exemption for the smallest utilities. As discussed above in relation to cost limitations, SB 2 (1X) requires that the legislation be construed as a whole so that all the parts are consistent. This means that in order to adopt procurement requirements “consistent with” section 399.16, the Cities must also look to those statutes that are related to and cross reference section 399.16. The statute most applicable to the Cities is section 399.18, which provides an exemption from the procurement content category requirements of section 399.16 for electric corporations that have 30,000 or fewer customers and issued at least four solicitations for eligible energy resources prior to June 1, 2010. Just as section 399.15(d)’s direction to prevent disproportionate rate impacts is applicable to POUs, so too is section 399.18 applicable to POUs. Clearly the same policy rationales and justifications that would exempt small electric corporations from the procurement content category requirements of section 399.16, would equally apply to small POUs. Further, SB 2 (1X) includes no barrier to applying section 399.18 to POUs.²¹

III. CONCLUSION

The governing boards of the Cities intend to use good faith efforts to meet their obligations under the State’s new RPS mandates. They will consider and adopt cost limitations as allowed under the bill and will determine whether renewable resources are available which meet size, risk, and cost criteria, while meeting their own obligation to protect the financial interests of the Cities and their residents. In this regard, however, it should not be surprising that the determinations of the governing boards of the Cities may differ markedly from determinations made with respect to larger POUs and the retail sellers.

²¹ During the CEC Staff Meeting, an argument was raised that no additional exemptions could be provided under SB 2 (1X) because the legislature had included POU exemptions, specifically section 399.30(k). Such an argument is inapplicable to the discussion of section 399.18. Section 399.30(k) goes well beyond the application of the procurement content category rules and addresses the very specific and unique situation where a certain type of POU is fully or nearly fully resourced with ineligible hydro resources. The fact that the legislature provided an exemption to the “procurement” requirements for POUs in a very specific situation, does not POU governing boards cannot properly adopt procurement content rules “consistent with” section 399.16, including all relevant cross-referenced statutes.

This is allowed under SB 2 (1X) and is reasonable. The role of the CEC is limited to determining whether the Cities have met the procedures required by SB 2 (1X) and, if required, reviewing the record to determine whether the determinations of the governing boards are supported by the evidence.

Respectfully,

A handwritten signature in cursive script, appearing to read "L. Johnson".

Linda Johnson

Justin Wynne

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Attorneys at Law

March 30, 2012

California Energy Commission
Docket Office, MS-4
Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET

11-RPS-01

DATE MAR 30 2012

RECD. MAR 30 2012

Comments of the Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga and Victorville on 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations

I. INTRODUCTION

The Cities of Cerritos, Corona, Moreno Valley, Rancho Cucamonga, and Victorville (“Small POU Cities”) appreciate the opportunity to submit comments on the *33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations*, issued by the California Energy Commission (“CEC”), Energy Efficiency and Renewable Energy Division (CEC-300-2012-001-SD) (“Draft Staff Report”). As described in earlier comments,¹ the Small POU Cities are among the smallest of California’s publicly owned utilities (“POUs”). The Small POU Cities are also unique in that they were established in the last decade (in response to the uncertainty and volatility created by the 2000-2001 energy crisis). The small size and unique attributes of the Small POU Cities, combined with their late start in developing electric generation resources, make it unduly burdensome for the Small POU Cities to implement the new renewables portfolio standard (“RPS”) described under Senate Bill (“SB”) X1-2 in the same way as the larger, older utilities in California. Accordingly, and consistent with applicable administrative law principles, the CEC should consider and adopt meaningful alternatives to allow the Small POU Cities to implement SB X1-2 in a way that is less burdensome but equally effective, and that preserves the role ascribed in SB X1-2 to the Small POU Cities’ governing boards. As requested in the Draft Staff Report, these comments describe these alternatives.

The Small POU Cities appreciate the extensive work of the CEC staff on the Draft Staff Report and subsequent workshops and meetings. This effort is consistent with SB X1-2, which contemplates a cooperative regulatory framework since the CEC and POU governing boards have both been tasked with new regulatory responsibilities, some of which might overlap if the parties do not work together to assure appropriate allocation of responsibilities.

The Small POU Cities support the comments of the California Municipal Utilities Association (“CMUA”). Key among CMUA’s comments is that the CEC regulations should assure consistency with the basic statutory framework for POU, with the POU governing boards maintaining primary regulatory authority for their community utilities, subject to oversight by the CEC. This dual, cooperative framework is consistent with the express language of SB X1-2.

¹ *Comments of the Small POU Cities on 33 Percent Renewable Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper*, September 12, 2011, Docket No. 11-RPS-01 (“Small POU Cities September Comments”)

As further described below, the Small POU Cities believe that the CEC regulations should be revised to clarify that the POU governing boards should, in the first instance, interpret and apply the new RPS requirements and demonstrate how they can meet the good faith intent of the statute or show cause why they cannot. Among other things, this would assure consistency with the cooperative regulatory framework reflected in SB X1-2, while additionally promoting administrative efficiency by reducing duplicative and unnecessary processes. In short, the POU governing boards should have the first chance to interpret and act on the RPS requirements because this is consistent with SB X1-2 as a legal matter, and as a practical matter these elected bodies are closest to the challenges of operating the utilities and responding to the interests of the people living in the affected communities. California's open meeting laws, and added public disclosure required in SB X1-2, ensure that these requirements are addressed in an open, local context, unlike investor-owned utilities which do not have public processes except through the California Public Utilities Commission ("CPUC") in San Francisco.

The Small POU Cities' governing boards understand that they are obligated to take all necessary actions to comply in good faith with the new RPS requirements. As a first and important step, notwithstanding the fact that the CEC has yet to adopt regulations, the Small POU Cities' governing boards have all adopted RPS enforcement plans under SB X1-2 and submitted the plans to the CEC.

II. COMMENTS ON THE DRAFT STAFF REPORT

A. The Little Hoover Commission's findings support the adoption of a regulatory framework that gives substantial deference to the findings of the Small POU Cities' governing boards in their interpretation and implementation of SB X1-2.

A regulatory framework that leaves most of the interpretation and alternatives for compliance in the hands of the Small POU Cities' governing boards is consistent with the findings of the Little Hoover Commission in its recent report on improving California's rulemaking processes.² The Little Hoover Commission's findings were codified into law in January 2012 through the enactment of SB 617.³ There are several administrative best practices identified by the Little Hoover Commission and incorporated in SB 617 that are applicable to this proceeding, and in particular to the CEC's regulations applicable to the Small POU Cities. Principal among these best practices is the need to avoid duplication with other regulations and to determine necessity, that is, whether the regulations are needed to carry out the purpose of the law.⁴ The proposed CEC regulations are duplicating functions which are

² The Little Hoover Commission, or the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency tasked with promoting efficiency, economy and improved service in California state government operations. See Cal. Gov. Code §§ 8501-8508. See "Better Regulation: Improving California's Rulemaking Process," October 2011, Little Hoover Commission ("Little Hoover Report").

³ See Little Hoover Report at 44 ("The Commission's recommendations are consistent with SB 617 (Calderon and Pavley), passed by the Legislature with bipartisan support and signed into law, which calls for strengthening the Administrative Procedure Act and updating requirements for regulatory impact analysis.").

⁴ See Little Hoover Report at 10.

the responsibility of the POU governing boards and they are not necessary to carry out the purpose of SB X1-2. As further discussed below, the interpretation of the requirements of SB X1-2 and the determination of how those requirements are implemented in the resource plans of the Small POU Cities are within the authority of the Small POU Cities' governing boards. Accordingly, it would be duplicative and unnecessary for the CEC to also carry out these responsibilities. While a certain measure of oversight by the CEC is appropriate, the draft regulations contain too much duplication and should be revised.

B. The CEC has administrative authority to differentiate the Small POU Cities in the regulations.

SB 617 implements the recommendations of the Little Hoover Commission by requiring regulatory agencies to conduct economic analyses “to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner.”⁵ Since the CEC must consider less burdensome alternatives, it must also have the administrative authority to design alternatives into its regulations, and, in particular, to consider the relative compliance burdens on the very small POU. SB 617 supports arguments of the Small POU Cities that the CEC has the discretion to differentiate the Small POU Cities based on their size.⁶ The new process established by SB 617 requires the CEC to include in its final statement of reasons accompanying the adopted regulation “ b) an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses....”⁷ Consideration of small businesses and small governmental entities due to the disproportionate administrative costs they incur in complying with complex regulations is also a policy recognized at the Federal level and reflected in the Regulatory Flexibility Act.⁸ The policy reasons behind such statutes are well understood and broadly supported. In its first report on the state of small business in 1982, the Small Business Administration stated that the relative burden is much greater, because compliance costs cannot be spread out over larger quantities of output. Small business is at a competitive disadvantage because of the existence of efficiencies of scale in regulatory compliance.⁹

⁵ Cal. Gov. Code § 11347.3 (amended by SB 617)

⁶ See Small POU Cities September Comments at 2 (“Rulemaking bodies have a wide discretion in exercising the power to classify. As long as the rule works uniformly upon all persons in a class and the classification is based upon some natural or reasonable distinction, the classification is not invalid. Classifications will not be overturned unless plainly arbitrary.” Gen. Elec. Co. v. State Bd. Of Equalization, 111 Cal. App. 2d 180, 187 (1952)).

⁷ Cal. Gov. Code § 11346.2(b)(5)(B) (enacted by SB 617)

⁸ The Regulatory Flexibility Act (“RFA”) was enacted on September 19, 1980, and requires federal agencies to consider the impact of regulatory proposals on small entities and determine whether there are equally effective alternatives that would make the regulatory burden on small business more equitable. Pub. L. No. 96-354, 94 Stat. 1164 (1981), *amended by* Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified as amended at 5 U.S.C. §§ 601-612 (2000)).

⁹ U.S. Small Business Administration, “The State of Small Business: A Report Of The President” 13 (1982)

Regulations that provide no differentiation among the regulated entities, or at least deference to the governing boards with primary enforcement authority, despite the obvious differences among the entities, is simply not a reasonable application of administrative authority. The Small POU Cities respectfully request consideration of the following simpler and less burdensome alternatives by the CEC.

C. The CEC can limit the burden on the very small POU's by expressly acknowledging the authority of the very small POU's governing boards under SB X1-2.

The Small POU Cities appreciate the CEC's request for alternatives that could limit the compliance burden on the very small POU's (which includes the Small POU Cities).¹⁰ In Section D, below, the Small POU Cities suggest two alternatives that could be implemented by the CEC to achieve the stated purpose of limiting the burden on very small POU's. Before this, however, the Small POU Cities wish to stress the need for the CEC to expressly acknowledge in its final regulations the authority already vested in the very small POU's governing boards to reduce the impact of RPS compliance. Without assurance from the CEC on these key statutory provisions, very small POU's will unnecessarily be exposed to regulatory uncertainty, which would exacerbate, not limit, the burden on very small POU's.

The Draft Staff Report states as follows with respect to existing provisions in SB X1-2:

There are, however, provisions in [SB X1-2] that allow for the adoption of compliance measures, such as reasons for delay of timely compliance, cost limitations, and procurement category reductions. These measures may help reduce the impact of RPS compliance on POU's that would otherwise encounter significant impacts.¹¹

What is missing from this statement, and which is needed for regulatory certainty, is an acknowledgement by the CEC that these existing statutory provisions may be implemented by the very small POU's governing boards without unnecessary second-guessing by the CEC. Below, the Small POU Cities provide a description of two provisions in SB X1-2 and how the very small POU's governing boards may implement these provisions in a manner to reduce the impact of RPS compliance. The Small POU Cities respectfully request that the final CEC regulations include clear statements that determinations of the very small POU's governing boards in this regard will not, absent extraordinary circumstances, be subjected to second-guessing by the CEC.

¹⁰ See Attachment A to the Draft Staff Report; Section C.1. ("Are there any additional alternatives that are available and that the Energy Commission should consider to limit the burden on very small POU's?").

¹¹ Attachment A to the Draft Staff Report; Section C.

1. The governing boards of the very small POU's have authority to allow 100% reliance on renewable energy credits.

In previous comments, the Small POU Cities described the rights of their governing boards to alter the procurement content requirements of Section 399.16.¹² Section 399.16(e) permits a retail seller to apply to the CPUC for a deviation from the procurement content category percentage requirements. Since the governing boards of the Small POU Cities stand in the place of the CPUC under the structure of SB X1-2, it is clear that Section 399.16(e) grants the governing boards of the Small POU Cities the discretion to similarly adjust the percentage requirements for the reasons provided by that section, including inadequate supply of the nature and type fit for the very small POU's (i.e., small, incremental portions of resources or contracts). The CEC should expressly acknowledge the governing boards' authority in this regard.

In previous comments, the Small POU Cities also stated that the governing boards of the very small POU's may look to Section 399.18, together with Section 399.16, as authority for their determination that their respective POU's may rely 100% on renewable energy credits.¹³ Section 399.18, which cross-references Section 399.16, provides an exemption from the procurement content category requirements of section 399.16 for the very small investor-owned utilities.¹⁴ Because of the inter-relation between Section 399.16 and Section 399.18, Section 399.18 is rightly interpreted as also applying to the very small POU's. Section 399.30(c)(3) directs POU's to adopt "procurement requirements consistent with section 399.16." The rules of statutory construction provide that provisions in statutes, if related to the same subject, should be construed together and harmonized.¹⁵ A reasonable application of this principle would be to look not only to Section 399.16 but also to those provisions in the RPS statutory scheme that reference Section 399.16. One key provision referencing Section 399.16 is Section 399.18. Moreover, application of Section 399.18 is very similar to and consistent with the application of Section 399.15(e) (discussed in the first paragraph of this section), which also allows a deviation from the procurement content category percentage requirements. Accordingly, as a legal matter it is reasonable to apply Section 399.18 as a basis on which the very small POU's' governing boards may determine that a deviation from the procurement content category requirements of section 399.16 is appropriate.

Additionally, as a policy matter, the same policy rationale and justification that would exempt small investor-owned utilities from the procurement content category requirements of section 399.16, would equally apply to the very small POU's. There is no other basis or justification for the special treatment of the small investor-owned utilities in SB X1-2 except their small size.

¹² Small POU Cities September Comments at 6. Unless otherwise noted, all further statutory references are to the California Public Utilities Code.

¹³ See Small POU Cities September Comments at 7.

¹⁴ The relevance of the cross-referencing to Section 399.16 was also previously discussed by the Small POU Cities. (See Small POU Cities September Comments at 7.)

¹⁵ See, e.g., In re First Nat. Bank in Oakland, 96 Cal. App. 107, 111 (1928).

This is particularly important since special consideration for small entities is now required under the Administrative Procedures Act, which specifically requires that the CEC justify its reasons for rejecting proposed alternatives that would lessen the adverse economic impact on small entities.¹⁶ Accordingly, the CEC should expressly acknowledge the authority of the very small POU's governing boards to apply Section 399.18 in this manner.

2. The governing boards of the very Small POU's have authority to apply the cost limitation provision in a manner that allows procurement to be apportioned among the three portfolio content categories.

The Draft Staff Report acknowledges that the cost limitation provision in SB X1-2 can "reduce the impact of RPS compliance on POU's that would otherwise encounter significant impacts."¹⁷ The Small POU Cities agree, and request the CEC to expressly acknowledge the authority of the very small POU's governing boards to apply the cost limitation provision in a variety of manners. One manner being considered by the Small POU Cities is to use the cost limitation provision to first set a dollar amount that may be spent on products within the three procurement content categories. The Small City would first forecast retail sales for each year of the compliance period and determine the estimated procurement quantity requirement for the period. The Small City would then apportion procurement among the three portfolio content categories to meet its procurement quantity requirement without exceeding the established cost limitation value for the compliance period. In effect, the cost limitation provision would be used in a manner similar to Section 399.16(e), described above. So, for example, instead of determining that inadequate supply required deviation from the procurement content category percentage requirements, the governing board would determine that application of the cost limitation required deviation from the percentage requirements applicable to the procurement content categories. As currently drafted, Sections 3206(a)(4)(B) and (C) would require complex calculations for reduction of compliance obligations in each of the content procurement categories, instead of simply allowing the Small City to apply its available funds among the content procurement categories until it reaches its cost limitations. In its final regulations, the CEC should expressly acknowledge the authority of the very small POU's governing boards to flexibly apply the cost limitation provision in this manner.

D. The Small POU Cities have compliance alternatives which are consistent with the intent of SB X1-2 and less burdensome than the draft regulation proposed by the CEC.

1. The CEC can design its procedures for enforcement under Section 399.30(n) to exempt the Small POU Cities from a finding of failure to comply due to cost and the de minimis contribution of the Small POU Cities to California's RPS goals.

Section 399.30(n) provides the basis for the CEC's enforcement authority and provides discretion on the part of the CEC as to whether a violation is noticed and ultimately referred to

¹⁶ See SB 617 (16)(b).

¹⁷ Attachment A to the Draft Staff Report; Section C.

the California Air Resources Board (“ARB”). The Small POU Cities have previously stated that the CEC has relatively broad authority to make reasonable distinctions in its enforcement rules on the basis of the size of the POU.¹⁸ As such, the Small POU Cities believe that the CEC can design its enforcement regulations to exempt very small POU from a finding of non-compliance if, among other things, the very small POU use good faith efforts to meet the RPS requirements. The CEC has the authority to differentiate the Small POU Cities based on their size and other factors. As described in the Small POU Cities’ opening comments,¹⁹ the Small POU Cities, on average, have annual retail sales of approximately 85,000 MWhs, well below the 200,000 MWhs threshold established by the ARB for partial exemption under the Renewable Electricity Standard.²⁰ The ARB found that the compliance costs of the small POU are at least twice that of other utilities.²¹ It is likely significantly more than that for the Small POU Cities since they were not even in operation until 2003 and 2004, and most other POU and investor-owned utilities have already met the goals of the first compliance period.

The CEC could require reporting on the very small POU’s good faith compliance efforts as part of the regulations, but without imposing the financial risk associated with potential referral to the ARB for penalties. This would provide the very small POU with more flexibility in the event they do not achieve the amount of resources matching the procurement content categories on the schedule described in SB X1-2. Such a result would preserve the intent of SB X1-2 without imposing administratively challenging regulations and risky procurement requirements on the very small POU.

2. The CEC can adjust the starting point for the Small POU Cities to reflect that they were formed out of SCE’s service territory and their customers have been paying the cost of existing renewable resources for many years through SCE rates and exit fees.

A key distinguishing feature of the Small POU Cities relevant to this proceeding is that all the Small POU Cities entered into agreements with SCE which required the cities to pay so-called exit fees.²² A portion of those exit fees was attributable to the above-market costs of SCE’s renewable resources. When the Small POU Cities’ electric utility divisions were formed, SCE was well on its way to meeting the now required renewable resource goals. Through their

¹⁸ See Small POU September Comments at 2 (citing Gen. Elec. Co. v. State Bd. of Equalization, 111 Cal. App. 2d 180, 187 (1952)).

¹⁹ *Opening Comments of the Cities of Cerritos, Corona, Moreno Valley and Victorville On the Renewables Portfolio Standard Regulations*, July 8, 2011, Docket # 03- VII-5RPS-1078.

²⁰ California Environmental Protection Agency, Air Resources Board, Proposed Regulation for a California Renewable Electricity Standard, Staff Report: Initial Statement of Reasons, June, 2010, at VII-5 (“The analysis shows that retail sellers that qualify for the partial exemption are so small that they do not have the staffing or budget to absorb the administrative burden of compliance with a 33 percent renewables requirement. Requiring these entities to spend additional funds to procure renewable energy or RECs would create a disproportionate use of resources relative to the environmental benefits.”).

²¹ *Id.* at ES7

²² See, e.g., CPUC Resolution E-4256.

payment of exit fees, the Small POU Cities contributed to the cost of these resources, at least for resources included within SCE's generation mix as of 2004.

The governing boards of the Small POU Cities should be able to assume that their RPS obligation starts where SCE's stops. For example, since SCE had a generation mix in 2004 that reflected an RPS percentage of approximately 15%, the obligation of the Small POU Cities would start at 5% in the 2013-2016 compliance period, and increase proportionately in subsequent compliance periods. This is a reasonable alternative, and one that the CEC should consider as part of its final regulations. Moreover, this is a reasonable alternative that could be considered by the Small POU Cities' governing boards and adopted as part of their procurement plans.

E. The Small POU Cities will have a disproportionate economic impact resulting from administrative costs of compliance with the draft regulations.

Attachment B of the Draft Staff Report requests information from the POU's on economic impacts of the new rules for the 33 Percent Renewables Portfolio Standard as proposed in the staff draft regulations. The Small POU Cities are in the process of gathering the information requested in Attachment B. While the Small POU Cities have not completed their investigation, the following two points can be made at this juncture. First, unmitigated implementation of the RPS requirement, and associated compliance costs, will result in a significant, disproportionate rate impact for the Small POU Cities. This is particularly true for the first compliance period, since (as noted previously) the Small POU Cities are trying to overcome their late start (2003 and 2004) and their early contribution to SCE's renewable resources through the exit fee payment. Second, unmitigated application of the CEC's extensive regulatory and reporting requirements will result in a significant, disproportionate burden on the Small POU Cities. Even trying to respond to the request in the Staff Report to forecast and determine the administrative costs of compliance with the regulation is a significant burden on the staff of the Small POU Cities. This is true because, on average, the Small POU Cities only have two full-time equivalent administrative employees, and a significant burden would be placed on these employees to fully review, implement and monitor the draft regulations, including the reporting requirements and revisions to the draft regulations.

The Small POU Cities request that the CEC use the extensive data already available and used for years to support differentiation of small businesses in regulatory proceedings to support a similar differentiation for the Small POU Cities in this proceeding. Such data is substantiated in several studies by the Small Business Administration ("SBA") and used to support continued differentiation in regulatory treatment of small businesses at the Federal level and in most states. The SBA study confirmed the following:

America's smallest firms bear a disproportionately large share of regulatory costs. The most recent study indicates that firms with fewer than twenty employees spend \$7,647 per employee each year to comply with federal rules, while companies with 500 or more employees spend \$5,282 per employee. This research, which updates similar 1995 and 2001 reports, suggests that small business shoulder a forty-five

percent greater regulatory burden per employee than their large business competitors.²³

This data clearly supports creating less burdensome regulations for the Small POU Cities, and the Small POU Cities ask that such data be considered as the CEC works to revise its proposed regulations.

III. CONCLUSION

The Small POU Cities appreciate the efforts of CEC staff to make themselves available to representatives of the Small POU Cities. The small size and unique attributes of the Small POU Cities make it unduly burdensome for the Small POU Cities to implement the new RPS in the same way as the larger, older utilities in California. As a result, reasonable accommodations and alternatives are required. The current draft of the CEC's proposed regulations does not include reasonable alternatives, nor does it reflect the cooperative regulatory framework in SB X1-2 with respect to the roles of POU governing boards and the CEC. Accordingly, the CEC should revise its proposed regulations to reasonable accommodations and alternatives. Moreover, the CEC should revise its proposed regulations to clearly acknowledge the discretion provided in SB X1-2 for the governing boards of the Small POU Cities to interpret, apply and act in good faith to meet the new RPS requirements.

Thank you for your consideration of these comments.

Respectfully,



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²³ W. Mark Crain, *The Impact Of Regulatory Costs On Small Firms* 5 (2005), available at <http://www.sba.gov/advo/research/rs264tot.pdf> (written for the Office of Advocacy, U.S. Small Business Administration), as quoted in Holman, Keith W. (2006). "[The Regulatory Flexibility Act at 25: Is the Law Achieving its Goal?](#)". *Fordham Urb. L.J.* (33): 1119.