

**CALIFORNIA ENERGY COMMISSION**

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**Initial Study and Negative Declaration for Modification  
of Regulations Specifying Enforcement Procedures for  
the Renewables Portfolio Standard for Local Publicly  
Owned Electric Utilities**

Docket Number 16-RPS-03

Lead Agency

**California Energy Commission**

December 2020

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# Negative Declaration

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Pursuant to Title 14, California Code of Regulations, sections 15070 and 15071, and pursuant to the California Energy Commission's Rules of Practice and Procedure (Cal. Code Regs., Title 20, section 1101 et seq.), the California Energy Commission does prepare, make, declare, and publish this Negative Declaration for the Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

## **Project Name:**

This project is a statewide rulemaking proceeding titled Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, California Energy Commission Docket Number 16-RPS-03.

## **Lead Agency:**

California Energy Commission (CEC).

## **Project Location:**

The proposed regulations will apply to all local publicly owned electric utilities as defined in Public Utilities Code section 224.3 within the State of California.

## **Brief Project Description:**

The California Energy Commission proposes to adopt modifications to its existing regulations establishing enforcement procedures for the Renewables Portfolio Standard for local publicly owned electric utilities pursuant to Senate Bill (SB) 350 (Stats. 2015, ch. 547, sec. 24), SB 1393 (Stats. 2016, ch. 677), SB 100 (Stats. 2018, ch. 312, sec. 4), and SB 1110 (Stats. 2018, ch. 605).

## **Finding:**

An Initial Study, attached to this Negative Declaration, was prepared to assess the project's potential effects on the environment and the significance of those effects. Based on the information and analysis in the Initial Study, the California Energy Commission finds that there is no substantial evidence, in light of the whole record before the California Energy Commission, that the project may have a significant adverse effect on the environment. As a result, the California Energy Commission finds that the project will result in no significant adverse impact. The Initial Study analysis provides the basis to support adoption of the finding and the Negative Declaration.

## **Information and Comments:**

Questions and comments regarding the Negative Declaration and the Initial Study may be addressed to:

Gregory Chin

California Energy Commission  
1516 Ninth Street, MS-45  
Sacramento, CA 95814  
Phone: (916) 653-5285  
Email: [gregory.chin@energy.ca.gov](mailto:gregory.chin@energy.ca.gov)

For further information on the project or for access to documents listed in the Negative Declaration or Initial Study, please visit the [California Energy Commission's website](https://www.energy.ca.gov/portfolio/pou_rulemaking/) at [https://www.energy.ca.gov/portfolio/pou\\_rulemaking/](https://www.energy.ca.gov/portfolio/pou_rulemaking/) or contact Gregory Chin by email at [gregory.chin@energy.ca.gov](mailto:gregory.chin@energy.ca.gov) or by phone at (916) 653-5285.

**Lead Agency Determination:**

- The California Energy Commission finds that the project WILL NOT have a significant effect on the environment, and this NEGATIVE DECLARATION was prepared.
- The California Energy Commission finds that although the project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- The California Energy Commission finds that the project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- The California Energy Commission finds that the project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- The California Energy Commission finds that although the project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier ENVIRONMENTAL IMPACT REPORT or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier ENVIRONMENTAL IMPACT REPORT or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the project, nothing further is required.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Drew Bohan  
Printed Name

Executive Director  
Title

# Initial Study

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## Project Summary

**1. Project Title:**

Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

**2. Lead Agency Name and Address:**

California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**3. Contact Person and Phone Number and Email Address:**

Gregory Chin, California Energy Commission Specialist, Renewable Energy Division  
Phone: (916) 653-5285  
Email: [gregory.chin@energy.ca.gov](mailto:gregory.chin@energy.ca.gov)

**4. Project Location:**

The proposed regulations apply to all local publicly owned electric utilities, as defined in Public Utilities Code section 224.3. These utilities include the following entities:

- Municipalities or municipal corporations operating as public utilities furnishing electric service as provided in Public Utilities Code section 10001;
- Municipal utility districts furnishing electric service formed pursuant to Public Utilities Code section 11501, et seq.;
- Public utility districts furnishing electric service formed pursuant to Public Utilities Code section 15501, et seq.;
- Irrigation districts furnishing electric service formed pursuant to Water Code section 20500, et seq.;
- Joint powers authorities that include one or more of the above agencies and furnish electric service over their own electric distribution system or over that of one of their members.

**5. Project Sponsor's Name and Address:**

California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**6. General Plan Designation and Zoning:**

Not applicable

**7. Description of Project:**

See "Project Description" discussed below.

**8. Surrounding Land Uses and Setting:**

Not applicable.

**9. Other Public Agencies Whose Approval Is Required:**

No other public agency approvals are required other than the California Energy Commission.

**10. Consultations with California Native American tribes traditionally and culturally affiliated with the project area:**

The California Energy Commission provided letters inviting consultation on the proposed regulations, per Public Resources Code section 21080.3.1, to California Native American tribes that are on the Native American Heritage Commission's CEQA Tribal Consultation List. Seven tribes responded to the California Energy Commission letter. Of these seven tribes, six were satisfied with the initial letter and did not request consultation. One tribe requested consultation. California Energy Commission staff began consultation with this tribe on May 27, 2020.

## **Environmental Review**

The California Environmental Quality Act (CEQA) (Public Resources Code section 21000, et seq., California Code of Regulations, Title 14, section 15000, et seq.) requires that the California Energy Commission (CEC) conduct an assessment of the potential environmental impacts of a project over which it has discretionary approval authority, and to take that assessment into consideration before approving the project.

## **Project Review**

The CEC will conduct a hearing on December 22, 2020, to consider adopting the project, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. At this adoption hearing all parties will have an opportunity to comment on the Initial Study and the project. The CEC will consider the project, staff's analysis, and any other evidence presented in the proceedings to determine whether to approve or deny the project.

## **Project Description**

### **Introduction**

The CEC proposes to modify existing regulations establishing procedures for the enforcement of the Renewables Portfolio Standard (RPS) for local publicly owned electric utilities (POUs)<sup>1</sup>

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<sup>1</sup> POU or Local publicly owned electric utility means a local publicly owned electric utility as defined by Public Utilities Code section 224.3.

under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The proposed regulations will implement, interpret, and make specific several provisions under Senate Bill (SB) 350 (Stats. 2015, ch. 547, sec. 24), SB 1393 (Stats. 2016, ch. 677), SB 100 (Stats. 2018, ch. 312, sec. 4), SB 1110 (Stats. 2018, ch. 605), and clarify existing regulatory provisions and reporting requirements.

This rulemaking will update the RPS program for POU's to implement changes to RPS procurement requirements, optional compliance measures, reporting requirements, and special exemptions and exclusions. The rulemaking also updates other aspects of the program to facilitate implementation and improve clarity.

## **Background and Purpose**

Established in 2002, California's RPS establishes increasingly progressive renewable energy procurement requirements for the state's electricity load-serving entities, which include retail sellers of electricity and POU's. To meet the RPS procurement requirements to date, load-serving entities must generally demonstrate that they procured specified types and quantities of electricity products from eligible renewable energy resources. The requirement on the quantity of electricity products to be procured is referred to as the procurement target and is set as a percentage of the load-serving entity's retail sales of electricity as specified in the RPS. The requirement on the type of electricity products to be procured is referred to as the portfolio balance requirement and is based on the percentage of specified types of electricity products, which are differentiated based on product content, electricity delivery characteristics, and contractual arrangements as specified in the law. Compliance with the RPS procurement requirements is evaluated over multiyear compliance periods, where the procurement in each of the intervening years of the compliance period reflects reasonable progress in meeting the specified procurement target by the end of the compliance period. The RPS includes specific exemptions and exclusions for certain types of procurements, and also establishes optional compliance measures through which a load-serving entity's procurement deficits may be excused.

The CEC's responsibilities under the RPS include overseeing compliance and adopting enforcement regulations for POU's.

The CEC's *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (RPS POU Regulations) were adopted in 2013 pursuant to Public Utilities Code section 399.30, as enacted by SB X1-2 (Stats. 2011, 1st Ex Sess., ch. 1). The RPS POU Regulations are set forth in the California Code of Regulations, Title 20, sections 1240 and 3200 – 3208. Public Utilities Code section 399.30 (n)(1) directs the CEC to adopt regulations specifying procedures for the enforcement of the RPS for POU's and requires that the regulations include a public process under which the CEC may issue a notice of violation against a POU for failure to comply with the RPS, and for referral of violations to the California Air Resources Board (CARB) for determination of penalties. The RPS POU Regulations establish the rules and procedures the CEC will use to assess a POU's procurement actions and

determine whether those actions meet the RPS procurement requirements. The regulations require POU's to submit various information and reports to the CEC so the CEC may verify and determine compliance with the RPS, and, if appropriate, issue a notice of violation for a POU's failure to comply and refer the violation to CARB for potential penalties.

In 2015, the CEC adopted amendments to the RPS POU Regulations to implement statutory changes required by SB 591 (Stats. 2013, ch. 520) and to make clarifications to existing provisions in the regulations. Since the adoption of these amendments in 2015, four separate bills have been enacted that make statutory changes to the RPS affecting POU's. These bills are SB 350, SB 1393, SB 100, and SB 1110. The proposed regulations implement the statutory changes required by these bills as summarized below:

- SB 350: Establishes new multiyear compliance periods beginning on and after January 1, 2021, and new procurement targets for the final year of each compliance period, culminating in a RPS procurement requirement of 50 percent of retail sales by 2030; establishes a new RPS procurement requirement, referred to as the long-term procurement requirement, which requires at least 65 percent of procurement counted toward the RPS requirements to come from contracts of 10 years or more in duration, ownership, or ownership agreements, beginning in 2021; revises requirements for accruing and applying excess procurement beginning January 1, 2021; establishes requirements through which POU's with voluntary green pricing programs or shared renewable generation programs may reduce their RPS retail sales by the amount of qualifying generation served to participating customers; revises requirements for establishing cost limitations and conditions for delaying timely compliance; establishes partial procurement target exemptions for POU's with qualifying large hydroelectric generation and unavoidable coal-fired contracts, respectively, by allowing a qualifying POU to reduce its RPS procurement requirements by a specified amount under certain conditions; and modifies existing criteria in Public Utilities Code section 399.18 by which an electrical corporation or its successor may be exempt from an RPS procurement requirement.
- SB 1393: Modifies requirements for the partial procurement target exemption established for large hydroelectric generation by SB 591 and revises POU reporting requirements related to the public goods charge and to RPS procurement plans.
- SB 100: Accelerates and increases the final-year RPS procurement requirements to 60 percent of retail sales by 2030, and requires no less than an average of 60 percent for each subsequent multiyear compliance period; modifies the requirements for the partial procurement target exemption established by SB 350 for qualifying large hydroelectric generation; and repeals the partial procurement target exemption for hydroelectric generation established by SB 591 and amended by SB 1393.
- SB 1110: Establishes a special exemption for generation from a qualifying gas-fired power plant that is owned by and serves only one POU, is associated with the POU's outstanding public indebtedness, and satisfies other specified requirements and conditions.

The project modifies the existing RPS POU Regulations. The proposed regulations implement the new RPS procurement requirements for the compliance periods between 2021 and 2030, establish the soft procurement targets for the intervening years of the compliance periods to demonstrate reasonable progress in meeting the RPS procurement target for the compliance periods, and establish three-year compliance periods beginning after 2030, specified in the law. The proposed regulations also define requirements for 10-year contracts for purposes of satisfying the long-term procurement requirement and specify how the CEC will enforce compliance with the requirement. In addition, the proposed regulations implement the statutory changes to requirements for excess procurement, the retail sales reduction for qualifying generation from voluntary green pricing or shared renewable generation programs, cost limitation and delay of timely compliance optional compliance measures, the special exemptions for large hydroelectric generation, coal-fired generation, and gas-fired generation, respectively, and reporting requirements.

In addition to implementing these statutory changes, the proposed regulations include revisions to clarify existing regulatory provisions based on implementation experience and to streamline reporting. These clarifications address: (i) the calculations of the RPS procurement target and portfolio balance requirement; (ii) the reporting requirements and reporting process; (iii) the definitions of procurement contract and ownership agreement execution, start, and end dates; (iv) how additional procurement resulting from amendments to certain contracts is classified for purposes of the portfolio balance requirement; (v) the requirements for a POU to determine that specific conditions delayed timely compliance; (vi) the process for issuing a Notice of Violation to CARB and the affected POU.

The proposed regulations relevant to this CEQA review are contained in:

California Energy Commission. *Express Terms*, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. May 2020. California Code of Regulations, Title 20, Division 2, Chapter 13, sections 3200 through 3208, and Title 20, Division 2, Chapter 2, Article 5, section 1240. Docket Number 2016-RPS-03. TN #232930-3. Available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=232930-3&DocumentContentId=65372>.

The broad objective of this rulemaking is to modify the regulations to implement new and revised statutory requirements under SB 350, SB 1393, SB 100, and SB 1110, which made changes to RPS procurement requirements, excess procurement, optional compliance measures, special exemptions and exclusions, and reporting, as described previously, and to revise references to Public Utilities Code sections that were renumbered by SB 350, SB 1393, and SB 100. The rulemaking also will clarify existing regulatory provisions and reporting requirements to ensure clarity and streamline the reporting process. Finally, the CEC proposes non-substantive grammatical and numbering changes for clarity.

The benefits anticipated from this regulatory action are improved direction and guidance on how the CEC will interpret, apply and enforce the RPS, which will enable POUs to plan procurement of renewable electricity to meet the RPS requirements, contribute to the state's accomplishment of its clean energy and climate goals, and help realize the intended benefits of the RPS.

Specifically, POUs will now have better guidance on how compliance with the long-term procurement requirement and the RPS procurement targets for compliance periods after 2020 will be enforced. POUs will have updated rules implementing the requirements for accrual and use of excess procurement, use of a qualifying green pricing or shared renewable generation program to adjust retail sales, and use of the delay of timely compliance and cost limitation measures. In addition, POUs will have clear rules for RPS procurement target exemptions for qualifying large hydroelectric generation, unavoidable long-term coal contracts, and qualifying gas-fired generation.

Clarifying the requirements in the regulations will result in a more uniform and consistent application of the RPS to POUs. This in turn will help promote the underlying benefits of the RPS declared in Public Utilities Code section 399.11 (b). These benefits include:

- Displacing fossil fuel consumption within the state.
- Adding new electrical generating facilities in the western interconnection.
- Reducing air pollution.
- Meeting the state's climate change goals by reducing greenhouse gas (GHG) emissions associated with electricity generation.
- Promoting stable electricity rates.
- Meeting the state's need for a diversified and balanced portfolio.
- Assisting with meeting resource adequacy requirements.
- Contributing to the safe and reliable operation of the electrical grid.
- Implementing the state's transmission and land use planning activities related to development of eligible renewable energy resources.

Under SB 350, SB 1393, SB 100, and SB 1110, POUs are subject to new statutory requirements, including requirements for increasing their procurements of electricity products from RPS-eligible electrical generation facilities. As a result of these new statutory requirements, there may be a need for new RPS-eligible electrical generation facilities or the continued operation of existing RPS-eligible electrical generation facilities. However, the development and continued operation of these electrical generation facilities results from the statutory requirements, not the CEC's actions in adopting the proposed modifications to existing regulations. The development and continued operation of these electrical generation facilities may also be influenced by factors unrelated to the proposed regulations and outside the CEC's control, such as facility financing, the availability of procurement contracts, and the requirements and conditions imposed by governmental entities with permitting authority over the electrical generation facilities.

As discussed in the document titled *Appendix A: Economic and Fiscal Impact Assessment of Modifications to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, the proposed modifications to the regulations will not result in the creation or elimination of any jobs within California. No new businesses will be created, and neither will any existing business be eliminated by the proposed modifications to the regulations. The proposed modifications will not expand any existing businesses doing businesses in California and there will be no direct benefits from the proposed modifications to the health and welfare of California residents, to worker safety, or

to the state’s environment. However, the proposed regulations implement changes in law that are intended to reduce GHG emissions, potentially influencing some local communities in positive ways depending on the operation of the electrical system.

### Environmental Factors Potentially Affected

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Agriculture and Forestry Resources	<input type="checkbox"/>	Air Quality
<input type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Energy
<input type="checkbox"/>	Geology / Soils	<input type="checkbox"/>	Greenhouse Gas Emissions	<input type="checkbox"/>	Hazards and Hazardous Materials
<input type="checkbox"/>	Hydrology / Water Quality	<input type="checkbox"/>	Land Use / Planning	<input type="checkbox"/>	Mineral Resources
<input type="checkbox"/>	Noise	<input type="checkbox"/>	Population / Housing	<input type="checkbox"/>	Public Services
<input type="checkbox"/>	Recreation	<input type="checkbox"/>	Transportation	<input type="checkbox"/>	Tribal Cultural Resources
<input type="checkbox"/>	Utilities / Service Systems	<input type="checkbox"/>	Wildfire	<input type="checkbox"/>	Mandatory Findings of Significance

No boxes are checked because no environmental factors in Table 1 would be potentially affected by the project.

### Evaluation of Environmental Impacts

**Table 1** lists specific potential issues for each of the environmental factors assessed.

**Table 1: Specific Potential Issues**

Issues	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p><u>I. AESTHETICS.</u> Except as provided in Public Resources Code section 21099, would the project:</p>				
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) In non-urbanized area, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?				X
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?				X
<p>COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on aesthetics.</p>				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>II. <u>AGRICULTURE AND FORESTRY RESOURCES.</u> In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</p>				
<p>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</p>				X
<p>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</p>				X
<p>c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?</p>				X
<p>d) Result in the loss of forest land or conversion of forest land to non-forest use?</p>				X
<p>e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?</p>				X

<b>Issues</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
<p>COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on agriculture and forestry resources.</p>				

<b>Issues</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
<p><u>III. AIR QUALITY.</u> Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:</p>				
a) Conflict with or obstruct implementation of the applicable air quality plan?				X
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard?				X
c) Expose sensitive receptors to substantial pollutant concentrations?				X
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?				X
<p>COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact related to air quality.</p>				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>IV. BIOLOGICAL RESOURCES.</u> Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on biological resources.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>V. CULTURAL RESOURCES.</u> Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource pursuant to in section 15064.5?				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5?				X
c) Disturb any human remains, including those interred outside formal cemeteries?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on cultural resources.				

<b>Issues</b>	<b>Potentially Significant Impact</b>	<b>Less than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
<u>VI. Energy.</u> Would the project:				
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation?				X
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?				X
<p>COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on energy. As discussed in the Project Description section of this Initial Study, POUs are subject to new statutory requirements under SB 350, SB 1393, SB 100, and SB 1110, including requirements for increasing their procurements of electricity products from RPS-eligible electrical generation facilities. As a result of these new statutory requirements, there may be a need for new RPS-eligible electrical generation facilities or the continued operation of existing RPS-eligible electrical generation facilities. However, the development and continued operation of these electrical generation facilities results from the statutory requirements, not the CEC's project of adopting modifications to the existing regulations. The development and continued operation of these electrical generation facilities may also be influenced by factors outside the CEC's control and unrelated to the proposed regulations, such as facility financing, the availability of procurement contracts, and the requirements and conditions imposed by governmental entities with permitting authority over the electrical generation facilities.</p>				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>VII. GEOLOGY AND SOILS.</u> Would the project:				
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				X
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
ii) Strong seismic ground shaking?				X
iii) Seismic-related ground failure, including liquefaction?				X

iv) Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?				X
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?				X
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				X
f) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on geology and soils.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>VIII. GREENHOUSE GAS EMISSIONS.</u> Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?				X
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on greenhouse gas emissions.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>IX. HAZARDS AND HAZARDOUS MATERIALS.</u> Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?				X
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X

g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?				X
<p>COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on or be exposed to hazards and hazardous materials.</p>				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>X. HYDROLOGY AND WATER QUALITY.</u> Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?				X
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?				X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				X
(i) result in substantial erosion or siltation on- or off-site;				X
(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;				X
(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or				X
(iv) impede or redirect flood flows?				X
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?				X

e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?				X
<p>COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the hydrology and water quality issues listed above.</p>				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XI. LAND USE AND PLANNING.</u> Would the project:				
a) Physically divide an established community?				X
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?				X
COMMENT: The project, to adopt modifications to regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the land use and planning issues listed above.				
<u>XII. MINERAL RESOURCES.</u> Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on mineral resources.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XIII. NOISE.</u> Would the project result in:				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
b) Generation of excessive groundborne vibration or groundborne noise levels?				X
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the issues related to noise as listed above.				
<u>XIV. POPULATION AND HOUSING.</u> Would the project:				
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?				X

COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on population and housing.

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XV. PUBLIC SERVICES.</u>				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				X
Fire protection?				X
Police protection?				X
Schools?				X
Parks?				X
Other public facilities?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on public services.				
<u>XVI. RECREATION.</u>				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?				X

COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on recreation.

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XVII. TRANSPORTATION.</u> Would the project:				
a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle and pedestrian facilities?				X
b) Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?				X
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X
d) Result in inadequate emergency access?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the transportation and traffic issues listed above.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XVIII. TRIBAL CULTURAL RESOURCES.</u>				
a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				X
i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources. Code section 5020.1(k), or				X
ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore cause no substantial change in the significance of a tribal cultural resource or have an impact on the specific concerns listed above.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XIX. UTILITIES AND SERVICE SYSTEMS.</u> Would the project:				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?				X
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?				X
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the providers' existing commitments?				X
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?				X
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the utilities and service systems listed above.				

Issues	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
<u>XX. WILDFIRE.</u> If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?				X
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?				X
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?				X
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?				X
COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the wildfire issues listed above.				

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XXI. MANDATORY FINDINGS OF SIGNIFICANCE.</u>				
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				X
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?				X

COMMENT: The project, to adopt modifications to existing regulations establishing enforcement rules and procedures for the RPS, is primarily an administrative process to ensure compliance with RPS procurement requirements and goals already set by the Legislature. It will not result in physical impacts and will therefore have no adverse impact on the environment, including cumulative effects. No potential exists for any adverse impacts on any animal or human populations, and none of the impacts are cumulatively considerable. The project acts to implement existing laws that require POUs to increase the amount of electricity products procured from eligible renewable energy resources (e.g. wind, solar, geothermal) over time, which will reduce GHG emissions. The project may, depending on the operation of the electrical system, indirectly result in a reduction in the amount of electricity generated from fossil fuels within the state and the associated environmental and GHG impacts, and result in an improvement in some communities' air quality by reducing the burning of fossil fuels for power generation purposes. Broadly, the objectives of the proposed regulations include reducing GHG emissions associated with the electricity sources serving California.

Source: 2020 CEQA Handbook, Appendix G

# References

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- California Energy Commission. *Express Terms*, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. May 2020. Docket Number 16-RPS-03. TN #232930-3. Available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=232930-3&DocumentContentId=65372>.
- California Energy Commission. *Initial Statement of Reasons (ISOR)*, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. May 2020. Docket Number 16-RPS-03. TN #232930-1. Available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=232930-1&DocumentContentId=65370>.
- California Energy Commission. *Notice of Proposed Action (NOPA)*, Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. May 2020. Docket Number 16-RPS-03. TN #232930-2. Available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=232930-2&DocumentContentId=65371>.
- California Energy Commission. *Appendix A: Economic and Fiscal Impact Assessment of Modifications to Regulations Specifying Enforcement of the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. March 2020. Docket Number 16-RPS-03. TN #232930-5. Available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=232930-5&DocumentContentId=65374>.

Proposed third 15-day language appears as red strikethrough of italic double underline (~~*example*~~) for deletions of second 15-day language, red strikethrough of bold double underline (~~**example**~~) for deletions of initial 15-day language, red strikethrough of underline (~~example~~) for deletions of the 45-day express terms, red strikethrough (~~example~~) for deletions of existing language, and red double underline (~~example~~) for additions.

Proposed second 15-day language appears as blue italic double strikethrough of bold double underline (~~*example*~~) for deletions of initial 15-day language, blue italic double strikethrough of underline (~~*example*~~) for deletions of the 45-day express terms, blue italic double strikethrough (~~*example*~~) for deletions of existing language, and blue italic double underline (~~*example*~~) for additions.

Proposed initial 15-day language appears as bold double strikethrough of underline (~~**example**~~) for deletions of 45-day express terms, bold double strikethrough (~~**example**~~) for deletions of existing language, and bold double underline (~~**example**~~) for additions. Existing regulatory language appears as plain text. Original proposed additions to 45-day express terms appear in underline (~~example~~) and proposed deletions appear in strikethrough (~~example~~).

## **Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

### **California Code of Regulations Title 20. Public Utilities and Energy Division 2. State Energy Resources Conservation and Development Commission**

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#### **Chapter 13. Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

##### **Section 3200 – Scope**

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

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

##### **Section 3201 – Definitions**

The following definitions apply to this chapter:

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

- (b) **"Balancing authority"** means a balancing authority as defined in Public Utilities Code section 399.12 (b).
- (c) **"Balancing authority area"** means a balancing authority area as defined in Public Utilities Code section 399.12 (c).
- (d) **"Baseline"** means the initial RPS procurement of a POU that will form the basis of that POU's annual procurement targets.
- (e) **"Bundled"** means an electricity product that, when procured by the POU claiming the electricity product to satisfy its RPS procurement requirements, includes both the electricity and the associated renewable energy credits from an eligible renewable energy resource. For example, if the POU claiming an electricity product owns the associated eligible renewable energy resource, then all electricity products, including those associated with electricity consumed onsite, may be considered bundled electricity products.
- (f) **"California balancing authority"** means a balancing authority primarily located in California with more than 50 percent of its end-use electric load physically located within the political boundaries of California. This includes balancing authority areas operated by the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California, Imperial Irrigation District, and Turlock Irrigation District.
- (g) **"Commission"** means the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.
- (h) **"Compliance period"** means the compliance period as defined in Public Utilities Code section 399.30 (b)(e) or the compliance period established by the Commission pursuant to Public Utilities Code section 399.30 (c).
- (i) **"Compliance report"** means the report that each POU files with the Commission ~~by July 1 of the calendar year~~ following the end of a compliance period as specified in section 3207.
- (j) **"Contract end date"** means the last date that a POU is deemed to have procured electricity products from the counterparty to the contract. For example, if a contract requires the counterparty to supply the POU with electricity products from July 1, 2020, through January 1, 2025, the contract end date is January 1, 2025.
- (k) **"Contract execution date"** means the date that a contract is signed or approved through other action by the last party to sign **the contract** or approve **it** through other action-~~the contract.~~
- (l) **"Contract start date"** means the first date after the contract is executed that a POU is deemed to have procured electricity products from the counterparty to the contract. For example, if a contract is executed on January 1, 2020, and requires the counterparty to supply the POU with electricity products starting on July 1, 2020, the contract start date is July 1, 2020.
- (j)(m) **"Electricity product"** means either:

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

(2) An unbundled renewable energy credit.

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

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

~~(m)~~(p) **"Historic carryover"** means a POU's procurement that satisfies the following criteria: 1) the procurement is for electricity and the associated renewable energy credit generated in 2004-2010 by an eligible renewable energy resource that met the Commission's RPS eligibility requirements in effect when the original procurement contract or ownership agreement was executed by the POU, 2) the original contract or ownership agreement was executed by the POU prior to June 1, 2010, and 3) the procurement is in excess of the sum of the 2004 – 2010 annual procurement targets defined in section 3206 (a)(5)(D) and was not applied to the RPS of another state or to a voluntary claim.

~~(q)~~ **"Joint powers agency" or "joint powers authority"** means an entity formed and created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code).

~~(r)~~ **"Long-term procurement requirement"** refers to the minimum amount of procurement from contracts of 10 years or more in duration, ownership, or ownership agreements, required by Public Utilities Code section 399.13 (b).

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

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

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

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

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

- (v) **"Ownership agreement execution date"** means the date that the ownership agreement is signed or approved through other action by the last party to execute the ownership agreement or, if there is no ownership agreement with a third party, the date that the facility first generates electricity products. If the facility is not an eligible renewable **energy** resource when the ownership agreement is executed or when the facility first generates electricity products, the execution date is the date upon which the facility may be considered an eligible renewable energy resource because it is utilizing renewable fuels or resources sufficient for it to qualify as an eligible renewable energy resource ~~that a renewable fuel or eligible renewable energy resource is procured for and utilized by the facility, thereby allowing the facility to be deemed an eligible renewable energy resource.~~
- (q)(w) **"Portfolio balance requirement"** refers to the portfolio content category minimum requirement and maximum limit requirements defined in Public Utilities Code section 399.16.
- (r)(x) **"Portfolio content category"** refers to one of three categories of electricity products procured from an eligible renewable energy resource, as specified in section 3203.
- (s)(y) **"POU"** or **"Local publicly owned electric utility"** means a local publicly owned electric utility as defined by Public Utilities Code section 224.3.
- (t)(z) **"Procure"** means to acquire electricity products from eligible renewable energy resources, either directly from the eligible renewable energy resource or from a third party, through executed contracts or ownership agreements.
- (u)(aa) **"Renewable electrical generation facility"** means a facility as defined in Public Resources Code section 25741(a).
- (v)(bb) **"Renewable energy credit"** or **"REC"** means a certificate of proof, as defined in Public Utilities Code section 399.12 (h), associated with the generation of electricity from an eligible renewable energy resource.
- (w)(cc) **"Renewables Portfolio Standard"** or **"RPS"** has the same meaning as defined in Public Utilities Code section 399.12 (i).
- (x)(dd) **"RPS-certified facility"** means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission's RPS Guidelines, or that the Commission has granted limited RPS certification in place for the duration of that facility's contract or ownership agreement term pursuant to the Commission's RPS Guidelines.
- (y)(ee) **"RPS Guidelines"** means the guidelines adopted by the Commission pursuant to Public Resources Code section 25747 (a) to implement the RPS.
- (z)(ff) **"RPS procurement requirements"** refers to ~~both~~ the portfolio balance requirement, and the RPS procurement target, and, beginning January 1, 2021, to the long-term procurement requirement with which a POU must comply.

- ~~(aa)~~(gg) **"RPS procurement target"** means the specified percentage of retail sales that a POU must procure of electricity products from eligible renewable energy resources for each compliance period ~~as defined in Public Utilities Code section 399.30 (c). For POU's that meet the criteria listed in Public Utilities Code section 399.30 (j), the procurement target is the annual specified percentage of the portion of electricity demand not met by the POU's qualifying hydroelectric generation, or the soft target for that year, whichever is less, that must be procured from eligible renewable energy resources.~~
- ~~(bb)~~(hh) **"Resale" or "resold"** means the sale from any entity to a POU of part or all of the electricity products procured by the entity through an executed procurement contract, as opposed to an ownership agreement.
- ~~(cc)~~(ii) **"Retail sales"** means sales of electricity by a POU to end-use customers and their tenants, measured in MWh. This does not include energy consumption by a POU, electricity used by a POU for its water pumping, or electricity produced for onsite consumption (self-generation).
- ~~(dd)~~(jj) **"Retire"** means to claim a renewable energy credit in the tracking system established by the Commission pursuant to Public Utilities Code section 399.25 (c) and thereby commit the renewable energy credit to be used for compliance with the RPS, except as provided in section 3204 (b)(9).
- ~~(ee)~~(kk) **"Soft target"** means an amount equivalent to the percentage of retail sales for a single year within a compliance period that is used to calculate the RPS procurement target for that compliance period. For example, the soft target for 2014 is equal to 20 percent of retail sales for that year.
- ~~(ff)~~(ll) **"Unbundled REC"** means a REC from an eligible renewable energy resource that is not procured as part of the same contract or ownership agreement with the underlying energy from that eligible renewable energy resource; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.
- ~~(gg)~~(mm) **"Western Electricity Coordinating Council" or "WECC"** means the electricity coordinating council as defined in Public Utilities Code section 399.12 (k). WECC is part of the North American Electric Reliability Corporation and the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection serving all or part of the 14 western states and portions of Mexico (in northern Baja California) and Canada (in British Columbia and Alberta).
- ~~(hh)~~(nn) **"Western Renewable Energy Generation Information System" or "WREGIS"** refers to the independent, renewable energy tracking system implemented for the region covered by the Western Electricity Coordinating Council.

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

### **Section 3202 – Qualifying Electricity Products**

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

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

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

(B) Procurement will be included in the calculation of the portfolio balance requirements as defined in section 3204 (c), unless the procurement is retired by a POU that meets the criteria of section 3204 ~~(a)(7)(b)(3)~~, 3204 ~~(a)(8)(b)(4)~~, or 3204 ~~(a)(9)(b)(5)~~.

(C) Procurement must be classified as long-term or short-term in accordance with section 3204 (d).

(D) Procurement will be included in the calculation of the long-term procurement requirement as defined in section 3204 (d) starting with the compliance period beginning January 1, 2021, except for a POU that elects for voluntary early compliance with the long-term procurement requirement pursuant to section 3206 (a)(1)(G).

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

(A) Except as provided in ~~section 3202 (a)(2)(B) and (a)(2)(C) paragraphs (B) and (C)~~, the electricity product shall count in full toward the RPS procurement requirements, subject to the following:

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

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

3. Electricity products associated with contracts of less than 10 years in accordance with section 3206 (a)(1)(C)4. will not be subtracted when calculating excess procurement in accordance with section 3206 (a)(1)(C).

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

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

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

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

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

(C) Procurement must be classified as long-term or short-term in accordance with section 3204 (d).

(D) Procurement will be included in the calculation of the long-term procurement requirement as defined in section 3204 (d) starting with the compliance period beginning January 1, 2021, except for a POU that elects for voluntary early compliance pursuant to section 3206 (a)(1)(G).

~~(C)~~(E) If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract, or substitute a different eligible renewable energy resource, only the MWhs or resources procured prior to June 1, 2010, shall be considered to meet the criteria of this section 3202 (a)(3) for the term of the contract executed prior to June 1, 2010. The remaining procurement, or any electricity products procured after the end of the original contract term, must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).

(b) If any electricity products procured pursuant to a contract or ownership agreement executed prior to June 1, 2010, are resold on or after June 1, 2010, and the resale is not

explicitly included in the original contract or ownership agreement terms, the electricity products must be classified in a portfolio content category and follow the portfolio balance requirements of section 3204 (c), unless the procurement is retired by a POU that meets the criteria of section 3204 (a)(7)(b)(3), section 3204 (a)(8)(b)(4) or section 3204 (a)(9)(b)(5).

- (c) A POU may not use a REC associated with electricity products to meet its RPS procurement requirements unless it is retired within 36 months from the initial month of the generation of the associated electricity. For example, a POU can retire a REC associated with electricity generated in February 2011 no later than February 28, 2014, to claim the REC toward the POU's RPS procurement requirements. ~~RECs may not be retired for purposes of the RPS procurement requirements of a compliance period if that compliance period begins after the date of retirement.~~
- (d) RECs may not be retired for purposes of the RPS procurement requirements of a compliance period if that compliance period begins after the date of retirement. For example, a POU may not retire a REC in 2020 for purposes of satisfying the POU's RPS procurement requirements for the compliance period beginning January 1, 2021, or any subsequent compliance period, unless the REC was accrued as excess procurement in accordance with the requirements of section 3206 (a)(1).
- ~~(d)~~(e) A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date of generation of the electricity associated with that REC. For example, a POU may not retire a REC associated with electricity generated in April 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.
- ~~(f)~~(e) A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date the POU procured that REC. For example, a POU may not retire a REC associated with electricity generated in November 2013 that the POU procured in February 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.

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

### **Section 3203 – Portfolio Content Categories**

#### (a) Portfolio Content Category 1

- (1) Portfolio Content Category 1 electricity products must be procured bundled to be classified as Portfolio Content Category 1, and the POU may not resell the underlying electricity from the electricity product back to the eligible renewable energy resource from which the electricity product was procured. The electricity products must be generated by an eligible renewable energy resource that is interconnected to a transmission network within the WECC service territory. For purposes of this section

3203, the first point of interconnection to the WECC transmission grid is the substation or other facility where generation tie lines from the eligible renewable energy resource interconnect to the network transmission grid. Portfolio Content Category 1 electricity products must also meet one of the following criteria:

- (A) Electricity products must be generated by an eligible renewable energy resource that has its first point of interconnection within the metered boundaries of a California balancing authority area.
  - (B) Electricity products must be generated by an eligible renewable energy resource that has its first point of interconnection to an electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area. For purposes of this section 3203, the first point of interconnection to an electricity distribution system is within the service area boundaries of a utility distribution company.
  - (C) Electricity products from the eligible renewable energy resource with a first point of interconnection outside the metered boundaries of a California balancing authority must be scheduled into a California balancing authority without substituting electricity from another source. For purposes of this section 3203, electricity generated by the eligible renewable energy resource must be scheduled into a California balancing authority on an hourly or subhourly basis, and the POU's governing board or other authority, as delegated by the POU governing board, must have approved an agreement, before the electricity is generated, to schedule the electricity from the eligible renewable energy resource into the California balancing authority on an hourly or subhourly basis. If there is a difference between the amount of electricity generated within an hour and the amount of electricity scheduled into a California balancing authority within that same hour, only the lesser of the two amounts shall be classified as Portfolio Content Category 1.
  - (D) Electricity products must be subject to an agreement between a California balancing authority and the balancing authority in which the eligible renewable energy resource is located, executed before the product is generated, to dynamically transfer electricity from the eligible renewable energy resource into the California balancing authority area. For purposes of this section 3203, electricity generated by the eligible renewable energy resource shall be scheduled into a California balancing authority area on an hourly or subhourly basis.
- (2) Electricity products originally qualifying in Portfolio Content Category 1 and resold must meet the following criteria to remain in Portfolio Content Category 1:
- (A) The original contract for procurement of the electricity products meets one of the criteria in section 3203 (a)(1)(A) – (D).
  - (B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.

- (C) The electricity and associated RECs must be transferred by the resale contract to the ultimate buyer, and the electricity must be transferred in real time.
  - (D) For those electricity products that satisfy section 3203 (a)(1)(C), the original hourly or subhourly schedule is maintained, and the criteria of section 3203 (a)(2)(A) – (C) are met.
- (3) Electricity products originally qualifying in Portfolio Content Category 1 and resold that do not meet the criteria of section 3203 (a)(2)(A) – (D) shall not be counted in Portfolio Content Category 1.
- (b) Portfolio Content Category 2
- (1) Portfolio Content Category 2 electricity products must be generated by an eligible renewable energy resource that is interconnected to a transmission network within the WECC service territory, and the electricity must be matched with incremental electricity that is scheduled into a California balancing authority.
  - (2) Portfolio Content Category 2 electricity products must be procured bundled and must meet all of the following criteria:
    - (A) The first point of interconnection to the WECC transmission grid for both the eligible renewable energy resource and the resource providing the incremental electricity must be located outside the metered boundaries of a California balancing authority area.
    - (B) The incremental electricity used to match the electricity from the eligible renewable energy resource must be incremental to the POU. For purposes of this section 3203, “incremental electricity” means electricity that is generated by a resource located outside the metered boundaries of a California balancing authority area and that is not in the portfolio of the POU claiming the electricity products for RPS compliance prior to the date the contract or ownership agreement for the electricity products from the eligible renewable energy resource, with which the incremental electricity is being matched, is executed by the POU or other authority, as delegated by the POU governing board.
    - (C) The contract or ownership agreement for the incremental electricity is executed by the governing board or other authority, as delegated by the POU governing board, at the same time or after the contract or ownership agreement for the electricity products from the eligible renewable energy resource is executed.
    - (D) The incremental electricity must be scheduled into the California balancing authority within the same calendar year as the electricity from the eligible renewable energy resource is generated.
    - (E) The electricity from the eligible renewable energy resource must be available to be procured by the POU and may not be sold back to that resource.

- (3) Electricity products originally qualifying in Portfolio Content Category 2 and resold must meet the following criteria to remain in Portfolio Content Category 2:
  - (A) The original contract for procurement of the electricity products meets the criteria of section 3203 (b)(2)(A) – (E).
  - (B) The resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.
  - (C) The resale contract transfers the original arrangement for incremental electricity, including the source and quantity for the incremental electricity.
  - (D) The resale contract retains the scheduling of the incremental electricity into the California balancing authority as set out in the original transaction.
  - (E) The transaction provides incremental electricity for the POU claiming the transaction for RPS compliance.
  - (F) The incremental electricity is scheduled into the California balancing authority.
- (4) Electricity products originally qualifying in Portfolio Content Category 2 and resold that do not meet the criteria above must be counted in Portfolio Content Category 3.

(c) Portfolio Content Category 3

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

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

**Section 3204 – RPS Procurement Requirements**

(a) RPS procurement targets for each compliance period:

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

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

$EP_X =$  Electricity products retired for the specified year  $X$ ; this may include excess procurement and historic carryover that the POU has chosen to apply to the compliance period containing year  $X$

$RS_X =$  ~~Total retail sales~~ Retail sales made by the POU for the specified year  $X$

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in section 3204 (c)(1)(A)(5) toward its RPS procurement target for this period.

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

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

No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in section 3204 (c)(2)(A)(6) toward its RPS procurement target for this period.

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

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

$EP_X =$  Electricity products applied to the specified year  $X$  toward the RPS procurement target for the compliance period containing year  $X$ . This may include electricity products retired for and applied to year  $X$ , subject to the Portfolio Content Category 3 limit calculated in section 3204 (c), and excess procurement pursuant to section 3206 (a)(1) and historic carryover pursuant to section 3206 (a)(5) that the POU has applied to year  $X$ .

$RS_X =$  ~~Total retail sales~~ Retail sales made by the POU for the specified year  $X$

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

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

(4) For the compliance period beginning January 1, 2021, and ending December 31, 2024, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 35.75 percent of its 2021 retail sales, 38.50 percent of its 2022 retail sales, 41.25 percent of its 2023 retail sales, and 44.00 percent of its 2024 retail sales. The numerical expression of this requirement is:

$$\underline{(EP_{2021} + EP_{2022} + EP_{2023} + EP_{2024}) \geq 0.3575 (RS_{2021}) + 0.3850 (RS_{2022}) + 0.4125 (RS_{2023}) + 0.4400 (RS_{2024})}$$

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

(5) For the compliance period beginning January 1, 2025, and ending December 31, 2027, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 46.00 percent of its 2025 retail sales, 50.00 percent of its 2026 retail sales, and 52.00 percent of its 2027 retail sales. The numerical expression of this requirement is:

$$\underline{EP_{2025} + EP_{2026} + EP_{2027} \geq 0.4600(RS_{2025}) + 0.5000(RS_{2026}) + 0.5200(RS_{2027})}$$

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

(6) For the compliance period beginning January 1, 2028, and ending December 31, 2030, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 54.67 percent of its 2028 retail sales, 57.33 percent of its 2029 retail sales, and 60.00 percent of its 2030 retail sales. The numerical expression of this requirement is:

$$\underline{EP_{2028} + EP_{2029} + EP_{2030} \geq 0.5467(RS_{2028}) + 0.5733(RS_{2029}) + 0.6000(RS_{2030})}$$

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

(7) Compliance periods beginning on and after January 1, 2031, shall be three years in length starting on January 1 and ending on December 31. For each compliance period beginning on or after January 1, 2031, a POU shall demonstrate it has procured electricity products within the compliance period sufficient to meet or exceed an average of 60.00 percent of the POU's retail sales over the three calendar years of the compliance period. The numerical expression of this requirement is:

$$\underline{EP_{x1} + EP_{x2} + EP_{x3} \geq 0.6000 (RS_{x1}) + 0.6000 (RS_{x2}) + 0.6000 (RS_{x3})}$$

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

(b) Exemptions and Adjustments

~~(5)~~(1) For a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code), the percentage of ~~total~~ retail sales, upon which the RPS procurement targets in section 3204 (a)(1)-~~(7)~~(4) are calculated, shall be based on that POU's average annual retail sales over the seven years preceding the end of each year within that compliance period. (For example, for the compliance period ending December 31, 2013, the retail sales for 2011 shall equal the average annual retail sales for January 1, 2005 – December 31, 2011, the retail sales for 2012 shall equal the average annual retail sales for January 1, 2006 – December 31, 2012, and the retail sales for 2013 shall equal the average annual retail sales for January 1, 2007 – December 31, 2013.) If the POU has not furnished electric service for the seven years preceding the end of a compliance period, then the calculation shall be based on average annual retail sales over the number of completed years during which the authority has provided electric service.

~~(6)~~(2) Notwithstanding section 3204 (a)(1) – ~~(7)~~(4), ~~or~~ section 3204 (c)(1)-~~(3)~~(9), or section 3204 (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (g) shall be deemed to be in compliance with the RPS procurement requirements ~~this section.~~

(A) A POU shall demonstrate that it meets the criteria listed in section 399.30 (g) by providing the Commission documentation showing the POU receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386). The documentation shall include a copy of any written notice filed with the United States Secretary of the Interior or the Western

Area Power Administration declaring the POU's intent to exercise its preference rights under the Trinity River Diversion Act and any integrated resource plan filed with the Western Area Power Administration confirming the POU's election to receive all of its electricity pursuant to its preference rights, and any updates or amendments to those written notices and integrated resource plans. The POU shall initially submit documentation to the Commission within 30 calendar days of the effective date of these regulations. Thereafter, the POU shall submit to the Commission a copy of any new or updated written notices or integrated resource plans filed with the United States Secretary of the Interior or the Western Area Power Administration. Copies of such notices and plans shall be submitted to the Commission within 30 calendar days of the date the notices and plans are filed with the United States Secretary of the Interior or the Western Area Power Administration. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (g).

~~(7)(3)~~ Notwithstanding section 3204 (a)(1) – ~~(7)(4)~~, ~~or section 3204 (c)(1)-(3)(9), or section 3204 (d)~~, a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall be deemed to be in compliance with the RPS procurement requirements ~~this section 3204~~ for a given calendar year if all of the POU's electricity demand in that calendar year is satisfied with its qualifying hydroelectric generation or if the POU meets the requirements of section 3204 (b)(3)(D) ~~paragraph (D)~~.

(A) For purposes of this section 3204 ~~(b)(3)(a)(7)~~, "qualifying hydroelectric generation" is generation from a facility that meets the following criteria:

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

(B) For purposes of this section 3204 ~~(b)(3)(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 twenty years preceding each compliance period from qualifying hydroelectric generation. The POU shall initially submit documentation for the twenty years immediately preceding January 1, 2017 by March 31, 2017. New documentation shall be submitted within 90 calendar days of the end of each subsequent compliance period.

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

1. The portion of the POU's electricity demand unsatisfied by the POU's qualifying hydroelectric generation.
2. The soft target listed in section 3204 (a)(1) – ~~(7)(4)~~ corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual electricity demand.

~~(8)(4)~~ A POU that meets the criteria of Public Utilities Code section 399.30 (h) shall not be subject to the requirements in section 3204 (c)(1)-~~(3)(9)~~. A POU shall demonstrate that it meets the criteria listed in Public Utilities Code section 399.30 (h) by providing the Commission documentation showing the POU was in existence on or before January 1, 2009, that it provides retail electric service to 15,000 or fewer customer accounts in California, and that it is interconnected to a balancing authority primarily located outside California but within the WECC.

~~(9)(5)~~ A POU that meets the criteria of Public Utilities Code section 399.18 shall not be subject to the requirements in section 3204 (c)(1)-~~(3)(9)~~. A POU shall demonstrate that it meets these criteria by providing the Commission documentation showing that the POU is a successor to an electrical corporation that had 1,000 or fewer customer accounts in California as of January 1, 2010, and was not interconnected to any transmission system or to the Independent System Operator as of January 1, 2010, and continues to meet these criteria during the applicable compliance period.

~~(10)(6)~~ Notwithstanding section 3204 (a)(2)(1) – (3)(4), from January 1, 2014, through December 31, 2018, a POU that receives greater than 50 percent of its annual retail sales from its qualifying hydroelectric generation that is not an eligible renewable energy resource may reduce the amount of eligible renewable energy resources it must procure to satisfy the RPS procurement target for a compliance period. ~~beginning on January 1, 2014, a POU that meets the criteria listed in Public Utilities Code section 399.30 (k) shall not be required to procure additional electricity products for a given compliance period in excess of either the portion of its retail sales not supplied by qualifying hydroelectric generation or the POU's cost limitation adopted pursuant to section 3206 (a)(3).~~

(A) For purposes of this section 3204 ~~(b)(6)(a)(10)~~, "qualifying hydroelectric generation" is generation from a facility that meets the following criteria:

1. The facility is owned solely and operated by the POU as of 1967.
2. The facility serves a POU with a distribution system demand of less than 150 megawatts.
3. The facility was involved in a contract in which an electrical corporation received the benefit of the electric generation through June 2014, at which time the benefit reverted back to the ownership and control of the POU. The POU is not

required to apply the electric generation from the facility toward its own load to meet this criterion.

4. The facility has a maximum penstock flow capacity of no more than 3,200 cubic feet per second and includes a regulating reservoir with a small hydroelectric generation facility producing fewer than 20 megawatts with a maximum penstock flow capacity of no more than 3,000 cubic feet per second.
5. The facility generation does not result from an increase in the amount of water stored by a dam because the dam is enlarged or otherwise modified after December 31, 2012.
6. For the compliance period beginning January 1, 2014, ending December 31, 2016, the facility is not an eligible renewable energy resource.
7. For the compliance period beginning January 1, 2014, ending December 31, 2016, qualifying hydroelectric generation does not include that portion of the hydroelectric generation that satisfies the criteria of section 399.12.5 (b) of the Public Utilities Code, and with respect to that portion of the generation, the facility is an RPS-certified facility.

(B) For the compliance period beginning January 1, 2014, ending December 31, 2016, a POU that receives greater than 50 percent of its annual retail sales from its qualifying hydroelectric generation shall not be required to procure additional electricity products for the compliance period in excess of either the portion of its retail sales not supplied by qualifying hydroelectric generation or the POU's cost limitation adopted pursuant to section 3206 (a)(3).

~~(B)~~ 1. A POU shall demonstrate that it receives greater than 50 percent of its annual retail sales from qualifying hydroelectric generation ~~meets the criteria listed in Public Utilities Code section 399.30 (k)~~ by providing the Commission documentation showing that the annual average qualifying hydroelectric generation produced in the twenty years preceding the each compliance period beginning January 1, 2014, or the entire generating history of the qualifying hydroelectric generation facility, whichever is less, is greater than 50 percent of the POU's retail sales for the year preceding the that compliance period. The documentation shall identify the amount of any hydroelectric generation that resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. The POU shall initially submit documentation for the twenty years immediately preceding January 1, 2014, or the entire generating history of the qualifying hydroelectric generation facility, within 30 calendar days of the effective date of these regulations.

~~(C)~~ 2. If a POU that receives greater than 50 percent of its annual retail sales from its qualifying hydroelectric generation ~~meeting the criteria listed in Public Utilities~~

~~Code section 399.30 (k)~~ has retail sales unsatisfied by its qualifying hydroelectric generation for the compliance period beginning January 1, 2014, ending December 31, 2016, in a compliance period, the POU shall procure electricity products equal to the lesser of the following for the compliance period:

~~1.i.~~ The portion of the POU's retail sales unsatisfied by the POU's qualifying hydroelectric generation.

~~2.ii.~~ The target listed in section 3204 (a)(2).~~section 3204 (a)(1) — (4) for that compliance period.~~

~~iii.~~ The quantity that may be procured in accordance with the POU's adopted cost limitation pursuant to section 3206 (a)(3).

(C) Between January 1, 2017, and December 31, 2018, a POU that receives greater than 50 percent of its annual retail sales from its qualifying hydroelectric generation in 2017 or 2018 shall procure electricity products equal to the lesser of the following for the relevant year of the compliance period beginning January 1, 2017, ending December 31, 2020:

1. The portion of the POU's retail sales unsatisfied by the POU's qualifying hydroelectric generation.

2. The soft target listed in section 3204 (a)(3) for that year of the compliance period.

3. The quantity that may be procured in accordance with the POU's adopted cost limitation pursuant to section 3206 (a)(3).

(D) A POU that receives greater than 50 percent of its annual retail sales from its qualifying hydroelectric generation ~~meets the criteria of Public Utilities Code section 399.30 (k)~~ shall be subject to the requirements in section 3204 (c)(1)-(3)(9).

(7) Notwithstanding section 3204 (a)(2)-(3), between January 1, 2016, and December 31, 2018, a POU that receives more than 50 percent of its annual retail sales from large hydroelectric generation during a given year of a compliance period is not required to procure electricity products that exceed the lesser of the portion of the POU's retail sales unsatisfied by the POU's large hydroelectric generation or the soft target for the relevant year of the compliance period.

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

1. The facility is not an eligible renewable energy resource pursuant to Public Utilities Code section 399.12 (e).

2. The generation is not incremental generation that results from efficiency improvements to a large hydroelectric generation facility eligible for the RPS

pursuant to Public Utilities Code section 399.12.5 (b), and with respect to that incremental generation, the facility is an RPS-certified facility.

3. The facility providing electricity to the POU is owned by:
    - i. The federal government as part of the federal Central Valley Project; or
    - ii. A joint powers agency.
  4. The generation is procured by a POU under an existing agreement effective as of January 1, 2015, or from an extension or renewal of that agreement.
    - i. For purposes of this section 3204 (b)(7), an extension or renewal of an agreement between a POU and a joint powers agency includes an amendment that renews or extends the existing agreement as contemplated under the administration of the agreement effective as of January 1, 2015.
    - ii. In the event that an extension or renewal of an agreement between a POU and a joint powers agency increases the percentage allocated to the POU, only generation procured under the renewal or extension up to the maximum allocation under the terms of the existing agreement shall count as large hydroelectric generation.
- (B) Any generation that does not meet the criteria of section 3204 (b)(7)(A) or that is not applied to the POU's retail sales shall be subtracted from the POU's large hydroelectric generation for purposes of determining whether a POU receives greater than 50 percent of its retail sales from large hydroelectric generation and calculating the procurement requirement exemption in ~~section 3204 (b)(7)(D) paragraph (D)~~.
- (C) A POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code), shall use its annual retail sales, not the average retail sales calculated in section 3204 (b)(1), for purposes of determining whether ~~the a~~-POU receives greater than 50 percent of its retail sales from large hydroelectric generation and calculating the procurement requirement exemption in ~~section 3204 (b)(7)(D) paragraph (D)~~.
- (D) If a POU receives greater than 50 percent of its retail sales from its large hydroelectric generation in any given year between January 1, 2016, and December 31, 2018, the POU shall procure electricity products equal to the lesser of the following for the relevant year:
1. The portion of the POU's retail sales unsatisfied by the POU's large hydroelectric generation.
  2. The soft target listed in section 3204 (a)(2) or (a)(3) for the intervening year of the relevant compliance period.

(E) A POU that qualifies for the procurement requirement exemption under this section 3204 (b)(7) shall be subject to the requirements in section 3204 (c)(1)-(3), unless the POU also meets the criteria of section 3204 (b)(4) or (b)(5).

(8) Notwithstanding section 3204 (a)(3)-(6), from January 1, 2019, through December 31, 2030, a POU that receives more than 40 percent of its annual retail sales from large hydroelectric generation during a given year of a compliance period is not required to procure electricity products that exceed the lesser of the portion of the POU's retail sales unsatisfied by the POU's large hydroelectric generation, or the soft target for the relevant year of the compliance period.

(A) For purposes of this section 3204 (b)(8), "large hydroelectric generation" meets the definition in Public Utilities Code section 399.30 (k)(1), subject to the following:

1. The generation is not incremental generation that results from efficiency improvements to a large hydroelectric generation facility eligible for the RPS pursuant to Public Utilities Code section 399.12.5 (b).
2. The generation is procured by a POU under an ownership agreement or contract in effect as of January 1, 2018. Procurement from an extension or renewal of that agreement shall not be eligible to count as large hydroelectric generation for the purposes of this section 3204 (b)(8) unless the agreement was in effect on January 1, 2015, between the POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project.
  - i. For purposes of this section 3204 (b)(8), an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project includes an amendment that renews or extends the existing agreement as contemplated under the administration of the agreement in effect on January 1, 2015, or included in the Western Area Power Administration's Power Marketing Plan.
  - ii. In the event that an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project increases the percentage allocated to the POU, only generation procured under the renewal or extension up to the maximum allocation under the terms of the agreement in effect on January 1, 2015, shall count as large hydroelectric generation.

(B) Any generation that does not meet the criteria of section 3204 (b)(8)(A) or that is not applied to the POU's retail sales must be subtracted from the POU's large hydroelectric generation for purposes of determining whether ~~the a~~-POU receives greater than 40 percent of its retail sales from large hydroelectric generation and calculating the procurement requirement exemption in [section 3204 \(b\)\(8\)\(D\)](#). ~~paragraph (D)~~.

- (C) A POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code), shall use its annual retail sales, not the average retail sales calculated in section 3204 (b)(1), for purposes of determining whether a POU receives greater than 40 percent of its retail sales from large hydroelectric generation and calculating the procurement requirement exemption in [section 3204 \(b\)\(8\)\(D\).paragraph \(D\)](#).
- (D) If a POU receives greater than 40 percent of its retail sales from large hydroelectric generation in any given year within a compliance period, the POU shall procure electricity products equal to the lesser of the following for the relevant year of the compliance period:
1. The portion of the POU's retail sales unsatisfied by the POU's large hydroelectric generation.
  2. The soft target listed in section 3204 (a)(3)-(7) for that the intervening year of the relevant compliance period.
- (E) A POU that qualifies for the procurement requirement exemption under this section 3204 (b)(8) shall be subject to the requirements in section 3204 (c)(1)-(3), unless the POU also meets the criteria of section 3204 (b)(4) or (b)(5), and subject to the requirements in section 3204 (d).
- (9) Beginning January 1, 2014, a POU may exclude from its retail sales the MWhs generated by an eligible renewable energy resource that is credited to customers participating in the POU's voluntary green pricing or shared renewable generation program.
- (A) For purposes of this [section 3204 \(b\)\(9\)subparagraph](#), a "voluntary green pricing or shared renewable generation program" refers to a program through which a participating customer of the POU may elect to have some or all of its retail sales needs satisfied with electricity products procured by the POU from specified eligible renewable energy resources or specified types of eligible renewable energy resources.
- (B) A POU may exclude from its retail sales the electricity products credited to a participating customer in a voluntary green pricing or shared renewable generation program if all of following requirements are met:
1. The electricity products are generated by an RPS-certified facility.
  2. The electricity products satisfy the criteria of Portfolio Content Category 1, as specified in section 3203 (a). Electricity products that meet the criteria of section 3202 (a)(2) may be excluded if they also satisfy the criteria of Portfolio Content Category 1.

i. For POU's that meet the criteria of section 3204 (b)(4), bundled electricity products may be used if generated by eligible renewable energy resources with a first point of interconnection within the metered boundaries of the balancing authority area in which the POU is located or scheduled into the balancing authority area in which the POU is located without substituting electricity from another source.

3. The RECs associated with the electricity products are retired in a WREGIS subaccount designated for the benefit of participating customers. These RECs shall not be counted toward compliance with the POU's RPS procurement requirements and shall not be further sold, transferred, or otherwise monetized for any purpose.

i. For purposes of this section 3204 (b)(9), "monetized" means to earn revenue or **financial** value from the RECs that are retired in a WREGIS subaccount designated for the benefit of participating customers, other than the revenue earned through the tariff or subscription for the voluntary green pricing or shared renewable generation program.

4. To the extent possible, the POU sought to procure the electricity products from RPS-certified facilities that are located in a California balancing authority area.

i. For POU's that meet the criteria of section 3204 (b)(4), the POU's must seek to procure the electricity products from RPS-certified facilities that are located in the balancing authority in which the POU is located.

(C) For the purposes of calculating the RPS procurement requirements, a POU that qualifies for the retail sales exclusion under this section 3204 (b)(9) for a given year may **exclude from its retail sales for that year** ~~substitute its retail sales after excluding~~ the **quantity of** electricity products that meet the criteria of ~~section 3204 (b)(9)(B) paragraph (B)~~ **in place of its total retail sales for that year.**

(10) Notwithstanding section 3204 (a)(4), for the compliance period beginning January 1, 2021, and ending December 31, 2024, a POU that has qualifying procurement of coal-fired generation may reduce the amount of eligible renewable energy resources it must procure to satisfy the RPS procurement target, subject to the following:

(A) For the purpose of this section 3204 (b)(10), qualifying procurement of coal-fired generation means coal-fired generation that is procured pursuant to "unavoidable long-term contracts and ownership agreements" that satisfy the criteria of Public Utilities Code section 399.30 (l)(1)(A).

(B) The POU must demonstrate in its renewable energy resources procurement plan adopted pursuant to section 3205 all of the following:

1. The POU has an obligation for qualifying procurement of coal-fired generation. Coal-fired generation means electricity generated by a power plant that is located outside California using coal as the fuel source.
2. The qualifying procurement of coal-fired generation is procured by the POU pursuant to a contract or ownership agreement exceeding 10 years in duration that was originally executed by the POU before June 1, 2010, and that was not subsequently modified to result in an extension of the duration of the contract or ownership agreement or result in an increase in the total quantities of electricity delivered to the POU during any compliance period.
3. The POU cannot cancel or divest itself from the qualifying procurement of coal-fired generation without incurring a significant economic harm to its retail customers that cannot be mitigated through the resale of the generation or the facility, transfer of the generation or facility to another entity, early closure of the facility, or other feasible measures.

(C) The POU may reduce its RPS procurement target for the compliance period to the greater of the following two quantities:

1. The quantity that would allow the POU's total procurement of electricity products from eligible renewable energy resources during the compliance period, when combined with its qualifying procurement of coal-fired generation during the compliance period, to not exceed the POU's ~~total~~ retail sales during the compliance period. The numerical expression for this procurement quantity is:

$$\underline{(EP_{2021} + EP_{2022} + EP_{2023} + EP_{2024}) = (RS_{2021} + RS_{2022} + RS_{2023} + RS_{2024}) - QP}$$

*EP<sub>x</sub> = Electricity products applied to the specified year X toward the RPS procurement target. This may include electricity products retired for and applied to year X, subject to the Portfolio Content Category 3 limit calculated in section 3204 (c), and excess procurement pursuant to section 3206 (a)(1) and historic carryover pursuant to section 3206 (a)(5) that the POU has applied to year X*

*RS<sub>x</sub> = ~~Total retail sales~~ Retail sales made by the POU for the specified year X*

*QP = Total amount of qualifying procurement of coal-fired generation for the compliance period.*

2. The quantity that would allow the POU's total procurement of electricity products from eligible renewable energy resources during the compliance period to average 33 percent of the POU's retail sales for the compliance period. The numerical expression for this procurement quantity is:

$$\frac{(EP_{2021} + EP_{2022} + EP_{2023} + EP_{2024})}{4} = \frac{0.3300 (RS_{2021}) + 0.3300 (RS_{2022}) + 0.3300 (RS_{2023}) + 0.3300 (RS_{2024})}{4}$$

(D) The procurement target for the compliance period beginning January 1, 2021, for a qualifying POU, will be calculated using the actual retail sales as reported in accordance with section 3207 (c) and the quantity of qualifying procurement of coal-fired generation as reported in accordance with section 3207 (l).

(11) Notwithstanding section 3204 (a)(5)-(7), a POU that owns a qualifying gas-fired power plant may reduce the amount of eligible renewable energy resources that it procures for a compliance period beginning January 1, 2025, subject to the following:

(A) For purposes of this section 3204 (b)(11), "qualifying gas-fired power plant" is a facility that satisfies the criteria of Public Utilities Code section 399.33 (a).

(B) The qualifying gas-fired power plant must be operating at or below a 20 percent capacity factor on an annual average ~~during each year of~~ the compliance period in order to reduce the RPS procurement target for the compliance period.

1. For purposes of this ~~section 3204 (b)(11)(B) paragraph~~, the capacity factor on an annual average during the compliance period is calculated as the total annual generation produced by the power plant divided by the total annual generation the power plant could have produced ~~that year each year of the compliance period~~ if it had operated at nameplate capacity for the entire year.

**The numerical expression to determine capacity factor on an annual average during the compliance period is:**

$$\frac{(G_{X1} \div C_{X1}) + (G_{X2} \div C_{X2}) + (G_{X3} \div C_{X3})}{3}$$

~~**The numerical expression for capacity factor on an annual average is:**~~

~~$$G_x \div C_x$$~~

*G<sub>x</sub> = Quantity of generation from a gas-fired power plant for year X of the compliance period*

~~*C<sub>x</sub> = Quantity of generation that the gas-fired power plant could have produced for year X if it had operated at nameplate capacity for the entire year*~~

- (C) Additional procurement of eligible renewable energy resources or zero-carbon resources resulted in the power plant operating at, or below, a 20 percent capacity factor on an annual average ~~during each year of~~ the compliance period.
- (D) The POU has attempted to mitigate against the reduction of generation to below 20 percent of the qualifying gas-fired power plant's total capacity by attempting to sell the power plant or attempting to sell the generation from the power plant to the extent it is practicable and does not result in resource shuffling. For purposes of this subdivision, "resource shuffling" is defined in Chapter 1 (commencing with Section 95800) of Division 3 of Title 17 of the California Code of Regulations.
- (E) The POU has procured eligible renewable energy resources equal to 45 percent of its retail sales by December 31, 2027, 50 percent by 2030, and 50 percent for each three-year multiyear compliance period thereafter, and reasonable progress in each of the intervening years of these compliance periods.

The numerical expression of this requirement for the compliance period beginning January 1, 2025, ending December 31, 2027, is:

$$\underline{(EP_{2025} + EP_{2026} + EP_{2027}) = 0.4167 (RS_{2025}) + 0.4333 (RS_{2026}) + 0.4500 (RS_{2027})}$$

The numerical expression of this requirement for the compliance period beginning January 1, 2028, ending December 31, 2030, is:

$$\underline{(EP_{2028} + EP_{2029} + EP_{2030}) = 0.4667 (RS_{2028}) + 0.4833 (RS_{2029}) + 0.5000 (RS_{2030})}$$

The numerical expression of this requirement for the three-year compliance period beginning January 1, 2031, and subsequent three-year compliance periods is:

$$\underline{(EP_{X1} + EP_{X2} + EP_{X3}) = 0.5000 (RS_{X2}) + 0.5000 (RS_{X2}) + 0.5000 (RS_{X2})}$$

*EP<sub>X</sub> = Electricity products applied to the specified year X toward the RPS procurement target for the compliance period containing year X. This may include electricity products retired for and applied to year X, subject to the Portfolio Content Category 3 limit calculated in section 3204 (c), and excess procurement pursuant to section 3206 (a)(1) and historic carryover pursuant to section 3206 (a)(5) that the POU has applied to year X.*

*RS<sub>X</sub> = ~~Total retail sales~~ Retail sales made by the POU for the specified year X*

- (F) A POU that satisfies the conditions of ~~section 3204 (b)(11)(B)-(D) paragraphs (B)-(D)~~ may reduce its procurement target for the compliance period calculated in section 3204 (a) by the difference between the gas-fired power plant's actual generation for the compliance period and the amount of generation it could have produced if it had

operated at a 20 percent ~~operating~~ capacity factor on an annual average during each year of the compliance period.

(G) The reduction of the procurement target will be calculated using the quantity of qualifying gas-fired generation as reported in accordance with section 3207 (m).

(H) This procurement requirement reduction shall be available only until December 31 of the calendar year during which the qualifying gas-fired power plant's original term of bonded indebtedness expires.

(I) A POU must notify the Commission no later than April 1, 2019, of its intent to act pursuant to this exemption.

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

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

(1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, ~~not less than 50 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).~~

The numerical expression of this requirement is:

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

*PCC1<sub>x</sub> = Electricity products retired and applied to the RPS procurement target for compliance period X that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)*

*POST<sub>x</sub> = Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance period X*

(A) No more than 25 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this requirement is:

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

*PCC3<sub>x</sub> = Electricity products retired and applied toward the RPS procurement target for compliance period X that must meet the criteria of section 3202 (a)*

*POST<sub>x</sub> = Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance period X*

(B) Not less than 50 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

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

*PCC1<sub>x</sub> = Electricity products retired and applied to the RPS procurement target for compliance period X that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)*

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

The numerical expression of this requirement is:

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

(A) No more than 15 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this requirement is:

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

(B) Not less than 65 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

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

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

The numerical expression of this requirement is:

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

- (A) No more than 10 percent of electricity products that meet the criteria of section 3202 (a)(1) applied toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (c).

The numerical expression of this limit is:

$$PCC3_x \leq 0.10 \times (RPS_{I,x} - PRE_x)$$

*PCC3<sub>x</sub> = The maximum portion of electricity products applied toward the RPS procurement target for compliance period X that meets the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in section 3203 (c)*

*RPS<sub>I,x</sub> = The RPS procurement target calculated in section 3204 (a) for compliance period X or, if less than the target, the sum of electricity products retired for compliance period X and excess procurement pursuant to section 3206 (a)(1) or historic carryover pursuant to section 3206 (a)(5) that the POU has applied toward the target*

*PRE<sub>x</sub> = The portion of electricity products applied toward the RPS procurement target for compliance period X that meets the criteria of section 3202 (a)(2) or (a)(3) or is historic carryover pursuant to section 3206 (a)(5)*

- (B) Not less than 75 percent of electricity products that meet the criteria of section 3202 (a)(1) and applied toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

$$PCC1_x \geq 0.75 \times (RPS_x - PRE_x)$$

*PCC1<sub>x</sub> = The minimum portion of electricity products applied toward the RPS procurement target for compliance period X that must meet the criteria of*

section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)

RPS<sub>x</sub> = The RPS procurement target calculated in section 3204 (a) for compliance period X or, if less than the target, the sum of electricity products retired for compliance period X and excess procurement pursuant to section 3206 (a)(1) or historic carryover pursuant to section 3206 (a)(5) that the POU has applied toward the target, subject to the Portfolio Content Category 3 limit for compliance period X

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

The numerical expression of this requirement is:

$$PCC1_y \geq 0.75 \times (POST_y)$$

*PCC1<sub>y</sub> = Electricity products retired and applied toward the RPS procurement target for compliance year Y that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)*

*POST<sub>y</sub> = Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance year Y*

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

The numerical expression of this requirement is:

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

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

The numerical expression of this requirement is:

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

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

The numerical expression of this requirement is:

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

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

The numerical expression of this requirement is:

$$PCC3_y \leq 0.10 \times (POST_y)$$

*PCC3<sub>y</sub> = Electricity products retired and applied toward the RPS procurement target for compliance year Y that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in section 3203 (c)*

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

(d) Long-term procurement requirement

- (1) For the compliance period beginning January 1, 2021, and each compliance period thereafter, at least 65 percent of the electricity products applied toward the RPS procurement target shall be from long-term procurement. The numerical expression of this requirement is:

$$LT_x = 0.65 (RPS_x)$$

*LT<sub>x</sub> = Electricity products applied toward the RPS procurement target for compliance period X that must meet the criteria of long-term procurement provided in [section 3204 \(d\)\(2\) paragraph \(2\)](#)*

*RPS<sub>x</sub> = The RPS procurement target calculated in section 3204 (a) for compliance period X or, if less than the target, the sum of electricity products retired and any excess procurement pursuant to section 3206 (a)(1) or historic carryover pursuant to section 3206 (a)(5) that the POU has applied to the target, subject to the Portfolio Content Category 3 limit for compliance period X*

- (A) For a POU qualifying for a special exemption or adjustment in accordance with section 3204 (b), the 65 percent requirement will be assessed on the quantity of electricity products necessary to satisfy the RPS procurement target resulting from the exemption or adjustment.
- (2) Electricity products will be classified as long-term or short-term based on the contracts, ownership, or ownership agreements through which they are procured. For the purpose of this [section 3204 \(d\) subdivision](#), long-term procurement refers to procurement from long-term contracts, ownership, or ownership agreements, subject to the following:
- (A) A long-term contract is defined as a **POU's contract to procure a nonzero quantity of electricity products from an RPS-certified facility for a duration of at least 10 continuous years, consistent with section 3204 (d)(2)(B) and (C), and includes contracts as specified in subparagraphs 1. and 2., demonstrating a POU's commitment to procure electricity products from an RPS-certified facility for a duration of at least 10 continuous years, except as specified in subparagraphs 1-3.(i)-(iii):**
- ~~1. A long-term contract includes a contract between a joint powers agency and a POU, if the joint powers agency has executed a contract on behalf of the POU that by a joint powers agency on behalf of the POU with an RPS-certified facility, if the contract by the joint powers agency otherwise meets the requirements of a long-term contract and the POU or joint powers agency on the POU's behalf can provide documentation demonstrating this:~~
- ~~2. A long-term contract includes a resale agreement between POU's, whereby a retail seller or POU sells a portion of the electricity products procured under a long-term contract with one or more RPS-certified facilities to a second POU, regardless of the duration of the resale agreement, if the contract executed by the retail seller or first POU otherwise meets the requirements of a long-term contract and the second POU, or another party on the second POU's behalf, can provide documentation demonstrating this. A long-term contract also includes a contract between POU's, whereby a POU sells a portion of electricity products procured through its ownership or ownership agreement of an RPS-certified facility, regardless of the duration of the contract, if one or both POU's can provide~~

documentation demonstrating the first POU's ownership of the RPS-certified facility;

~~3. Except as provided in paragraphs (i) and (ii), a long-term contract includes a contract between a POU and a third party only if the contract between the POU and third party has a duration of at least 10 continuous years and the POU can provide documentation showing that the third party's underlying procurement agreement(s) with the RPS-certified facilities supplying the procured electricity are contracts with duration(s) of at least 10 continuous years, ownership, or ownership agreements.~~

(B) A long-term contract includes the following contract structures:

1. A long-term contract includes a A jointly negotiated contract to procure electricity products from one or more RPS-certified facilities, if the procurement duration for each facility is at least 10 continuous years and each POU procures electricity products for at least 10 continuous years. For purposes of this subdivision, a jointly negotiated contract includes the following:

i. A joint contract executed by at least two POUs with the RPS-certified facility.

ii. A contract executed by a joint powers agency or third party supplier acting on behalf of at least two POUs with the RPS-certified facility, if all participating POUs are identified in the contract with the facility or in a correlated agreement with the joint powers agency or third party supplier.

iii. Separate contracts executed by two or more POUs with the same RPS-certified facility, where each of the separate contracts, as originally executed, expressly identifies the other POU(s) and specifies the ability of the identified POUs to adjust their relative share of the output of the RPS-certified facility to the other POU(s). If the separate contracts are amended to expressly identify the other POU and specify the ability of the POUs to adjust their relative share of the output of the RPS-certified facility, the contract shall be considered long-term only if each POU's procurement duration from the date of the contract amendment is at least 10 continuous years.

~~2.3~~ A long-term contract includes a A POU's contract or resale agreement with a joint powers agency or third-party supplier, including a retail seller, if both of the following are satisfied:

i. The POU's contract or resale agreement with the joint powers agency or third-party supplier has a duration of at least 10 continuous years.

ii. The RPS-certified facility or facilities supplying the electricity products in the long-term contract are owned by the joint powers agency or third-party supplier or are subject to a long-term contract with a remaining duration of at least 10 continuous years, and the

**POU, or the joint powers agency or third-party supplier or other party on the POU's behalf, can submit documentation demonstrating this.**

~~3. A POU may be required to provide additional information to the Commission, as provided in section 3207 (c)(5), to demonstrate that a long-term contract represents a long-term procurement commitment with an RPS-certified facility consistent with Public Utilities Code section 399.13 (b), including information that demonstrates how the long-term contract supports the financing and development of new eligible renewable energy resources, major capital investments in existing eligible renewable energy resources, or long-term planning and market stability.~~

3. A POU's contract or resale agreement with a third-party supplier where, over the contract term, the electricity products provided can change from one bundled portfolio content category to a different bundled portfolio content category or from one bundled portfolio content category to multiple bundled portfolio content categories, or from multiple bundled portfolio content categories to fewer bundled portfolio content categories, as long as the contract satisfies all other applicable requirements of this section.

4. Notwithstanding section 3204 (d)(2)(C), a POU's ownership agreement or a contract between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project, including an extension or renewal of a contract between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project that renews or extends the existing contract as contemplated under the administration of the contract in effect on January 1, 2015, or included in the Western Area Power Administration's Power Marketing Plan.

(C) Long-term contracts executed on or after July 1, 2020, shall additionally satisfy the requirements of section 3204 (d)(2)(C)1.-3. Contracts executed prior to July 1, 2020, are not required to meet the requirements of section 3204 (d)(2)(C)1. – 3. for the term of the contract in effect as of July 1, 2020. With the exception of extensions or renewals of contracts meeting the criteria of section 3204 (d)(2)(B)4., contracts executed prior to July 1, 2020, that are amended on or after July 1, 2020, where the amendment modifies the duration, quantity, pricing, or other provision that materially relates to the contract's classification as long-term, shall additionally satisfy all of the requirements of section 3204 (d)(2)(C)1. – 3.

1. Reasonably consistent contracted-for quantities. For purposes of this section 3204 (d)(2)(C), for a POU subject to the provisions of Public Utilities Code section 9621, the POU's contract and any associated underlying contract(s) shall specify reasonably consistent procurement quantities over the term of the contract, as provided in section 3204 (d)(2)(C)1.i.- v.:

- i. For a contract that specifies the contracted-for quantities on an annual basis, the contracted-for annual quantities vary no more than 33 percent above or below the average annual quantity for the entire contract term, except as provided in section 3204 (d)(2)(C)1.iv. If the POU has contracted for a share of facility output, the variation shall be assessed based on differences in the contracted-for share.
- ii. Notwithstanding section 3204 (d)(2)(C)1.i., for a contract to procure only electricity products meeting the criteria of Portfolio Content Category 3, reasonably consistent procurement quantities means the average contracted-for procurement quantities vary by no more than 33 percent between any two adjacent compliance periods, except as provided in section 3204 (d)(2)(C)1.iv.
- iii. For long-term contracts meeting the criteria of section 3204 (d)(2)(B)1., the aggregate quantities in a jointly negotiated contract shall be the basis for assessing reasonably consistent contracted-for quantities.
- iv. Notwithstanding section 3204 (d)(2)(C)1.i.-ii., reasonably consistent contracted-for quantities include procurement quantities that vary by more than 33 percent, or procurement quantities specified on a compliance period basis, if the POU demonstrates the contract represents a procurement commitment consistent with the purposes of the long-term procurement requirement. This demonstration shall be satisfied if a POU shows that the contracted-for procurement quantities are associated with one of the following:
  - I. At the time of contract execution, the eligible renewable energy resource is already committed to a different entity during the individual year(s) in which the variation exceeds 33 percent and the POU's commitment supports the development of a new eligible renewable energy resource or the improvement of an existing eligible renewable energy resource.
  - II. At the time of contract execution, the POU had identified a forecasted reduction in retail sales associated with the anticipated loss of specific customer accounts or local industry or the POU had identified a forecasted increase in generation from other eligible renewable energy resources that will achieve commercial operation during the contract term.
  - III. The variation during the individual year(s) is associated with expected maintenance, repair, construction, or other modification of the eligible renewable energy resource.

IV. The variation is associated with anticipated transmission constraints.

V. The variation is associated with the POU taking over the share or purchases from another buyer for the same eligible renewable energy resource when that other buyer's contract term ends.

VI. The variation is only associated with the POU procuring increasing quantities or shares from the same eligible renewable energy resource over the term of the contract.

VII. The POU otherwise demonstrates that the variation supports the financing of the new eligible renewable energy resource or improvements of the existing eligible renewable energy resource, or is otherwise consistent with the purposes of the long-term procurement requirement.

v. Notwithstanding the requirements specified in section 3204 (d)(2)(A)-(C), a contract that specifies a contracted-for quantity of zero during any year of the initial 10-year term of a long-term contract may still qualify as long-term if the POU demonstrates that the contract meets one of the conditions specified in section 3204 (d)(2)(C)1.iv. and the contract term includes at least 10 total years with nonzero contracted-for procurement quantities. Under such circumstances, the "first 10 continuous years of the contract term" in section 3204 (d)(2)(C)2. and (d)(2)(C)3. shall refer to the first 10 years of the contract with nonzero contracted-for procurement quantities.

2. No-cost, early termination. The contract does not include early termination provisions that allow the purchasing entity to unilaterally terminate the contract without cause and without incurring a penalty, fee or other form of liquidated damages under the contract during the first 10 continuous years of the contract term, except as specified in section 3204 (d)(2)(C)2.i.-ii.

i. The early termination provisions prohibited by this section 3204 (d)(2)(C)2. do not preclude the purchasing entity from terminating the contract because of, or including early termination provisions concerning, any the following:

I. The seller's default or other nonperformance under the contract.

II. A force majeure event that prevents the seller from performing its obligations or complying with a condition of the contract. A force majeure event includes any act or occurrence that delays or prevents the seller from timely performing an obligation under the contract or complying with a conditions required under the

contract if such act or event is beyond the reasonable control of and without fault or negligence of the seller.

III. Mutual agreement of the purchasing entity and seller.

IV. A facility associated with the contract ceases to be an eligible renewable energy resource, ceases to comply with the Emissions Performance Standard pursuant to section 2903 (b), ceases to provide environmental attributes, or ceases to provide resource adequacy attributes due to the occurrence of a change in law, and in any of these circumstances the seller is unable to remedy the loss of any of these attributes as such obligation is limited under the terms of the contract.

V. The Commission determines that a facility associated with the contract does not qualify as an eligible renewable energy resource for reasons other than a change in law.

VI. A change in ownership of the seller.

VII. Facilitating a sale of the eligible renewable energy resource under the contract to the purchasing POU.

ii. This section 3204 (d)(2)(C)2. does not prohibit early termination provisions where the purchasing POU submits information to the Commission that demonstrates the contract, notwithstanding any early termination provisions, secures a procurement commitment of at least 10 continuous years for the POU consistent with the purposes of the long-term procurement requirement, including supporting long-term planning and market stability, and investments in the development of new eligible renewable energy resources or improvements to existing eligible renewable energy resources.

3. Notwithstanding section 3204 (d)(2)(C)1. and (C)2., a long-term contract does not include a contract that contains no specified output share or quantities of procurement or minimum pricing terms, such that the express intent of the parties to the contract is to individually negotiate the price and quantity terms in any year within the first 10 continuous years of the contract term, and neither party has an obligation to procure or sell any quantity during any such individual year.

(D)(B) A short-term contract is defined as a contract to procure electricity products for a duration of fewer than 10 continuous years **or a contract that does not meet the criteria of, except as provided in** section 3204 (d)(2)(A)-(C). Paragraph (A):

(E)(C) The duration of a contract shall be measured from the contract start date until the contract end date, except as specified in section 3204 (d)(2)(E)1.-3paragraphs **1.-3. (i) - (iii)**. **The duration shall be deemed continuous if the contract**

specifies nonzero procurement quantities on an annual or compliance period basis, or a combination of both, for the contract term, except as provided in section 3204 (d)(2)(C)1.v. The contract start date may occur before, on, or after January 1, 2021.

1. If electricity products are procured under a long-term contract that has been amended to extend the end date of the contract, the electricity products procured under the amendment shall be classified as long-term, except as provided in ~~section 3204 (d)(2)(L) paragraph (J)(H).~~
2. If electricity products are procured under a short-term contract that has been amended to extend the end date of the contract, the duration of the amended contract will be measured from the amendment execution date until the amendment end date. If the amended contract **duration is at least 10 continuous years and the amended contract otherwise satisfies the requirements of a long-term contract, provides a commitment to procure electricity products for a duration of at least 10 continuous years,** procurement from the amended contract shall be classified as long-term as of the month and year of the amendment execution date.
3. If electricity products are procured under a long-term contract that has been amended or terminated early such that **the contract duration is no longer at least 10 continuous years, the contract no longer provides a commitment to procure electricity products for a duration of at least 10 continuous years,** only the electricity products procured prior to the amendment execution date or termination notice may be classified as long-term.

~~(F)(D)~~ Procurement from an ownership agreement shall be classified as long-term, unless the agreement specifies that the ownership duration is for a period of less than 10 continuous years. Procurement from an ownership agreement that specifies the ownership duration is for a period of fewer than 10 continuous years shall be classified as short-term.

~~(G)(E)~~ Electricity products procured in excess of the quantity that the POU is obligated to procure under **is specified in a long-term contract shall be treated as a new agreement for the additional quantities, classified as short-term,** except where the additional quantities are from the same RPS-certified facility or facilities and where the potential for the POU to procure the additional quantities is identified in the long-term contract, in which case the additional quantities shall be treated as part of the long-term contract. Additional quantities that are treated as part of the long-term contract pursuant to this section 3204 (d)(2)(G) shall not be used to adjust the annual average quantity of the contract for purposes of section 3204 (d)(2)(C)1.

~~(H)(E)(E)~~ Electricity products classified as Portfolio Content Category 2 under the requirements of section 3203 (b) shall count toward the long-term procurement requirement of this section 3204 (d) if the electricity products are procured under a long-term contract subject to ~~section 3204 (d)(2)(A)-(C) paragraph (A)~~ or an ownership agreement subject to ~~section 3204 (d)(2)(E) paragraph (D)(B)~~, even if the matching incremental electricity is not associated with a long-term contract or an ownership agreement.

~~(I)(G)~~ **Notwithstanding the requirements for underlying contracts in section 3204 (d)(2)(A)-(C) paragraphs (A) and (B), electricity products classified as Portfolio Content Category 3 under the requirements of section 3203 (c) shall be classified as long-term, subject to the maximum limit for Portfolio Content Category 3 calculated in section 3204 (c), if the POU procures them through a contract that has a duration of at least 10 continuous years and the POU's own contract meets the requirements of section 3204 (d)(2)(A)-(C), or the POU procures the electricity products through its ownership or ownership agreement.**

~~(J)(H)(F)~~ Electricity products that meet the criteria of section 3202 (a)(2) or historic carryover pursuant to section 3206 (a)(5) shall be classified as long-term without regard to the requirements of ~~section 3204 (d)(2)(A)-(G) paragraphs (A)-(C)~~.

~~(K)(I)(G)~~ Excess procurement that was accrued in accordance with the requirements of section 3206 (a)(1)(C) or section 3206 (a)(1)(I) ~~3.(3)~~ and applied to the RPS procurement target for a compliance period beginning on or after January 1, 2021, shall be classified as long-term without regard to the requirements of ~~section 3204 (d)(2)(A)-(G) paragraphs (A)-(C)~~.

~~(L)(J)(H)~~ For purposes of this section 3204 (d), amendments, assignments, or modifications of long-term contracts or ownership agreements other than as specified in ~~section 3204 (d)(2)(E) paragraph (B)~~ will be treated as follows:

1. Amendments or modifications that increase the expected quantities or allocation of generation under the original contract or ownership agreement resulting from efficiency improvements **or an expansion of** ~~to~~ the RPS-certified facility generating the procured electricity products shall be treated as part of the original long-term contract or ownership agreement.

~~i. For purposes of this subdivision, "efficiency improvements" refers to improvements that allow an RPS-certified facility to make more efficient use of its existing RPS-eligible resource or fuel, improve the efficiency of the facility equipment or operations, and/or allow for more efficient use of the facility's generation. Efficiency improvements do not include routine maintenance or capacity additions resulting from an expansion of the facility.~~

2. Amendments or modifications that result in an increase in expected quantities or allocation of generation due to contractual changes **other than those provided in section 3204 (d)(2)(L)1. paragraph (J)1.** ~~or to the addition of new capacity, other than an increase in nameplate capacity resulting from an efficiency improvement,~~ shall be treated as new agreements for the increase in expected quantities or allocation of generation, unless the increase was specified in the original long-term contract or ownership agreement.

3. Amendments or modifications that substitute a different *eligible* renewable energy resource ~~or fuel~~ **other than as specified in the original contract or ownership agreement** shall be treated as new agreements for procurement of generation associated with the substitute *eligible renewable energy* resource ~~or fuel~~ **unless the following conditions are satisfied:**

**i. The original long-term contract or ownership agreement specifies the ability to add or substitute *eligible renewable energy* resources ~~or fuels~~.**

**ii. Any *eligible renewable energy* resources added to or substituted in the long-term contract or ownership agreement are owned by the seller or are subject to a long-term contract in its original term or an extension that has a *remaining* duration of at least 10 continuous years.**

*iii. Notwithstanding section 3204 (d)(2)(L)3.i-ii. ~~(d)(2)(J)3.i-ii.~~ replacement energy procured from another RPS-certified facility, as allowed by the original long-term contract, shall be considered part of the original long-term contract if the POU can submit information demonstrating that the need for replacement energy occurred because the RPS-certified facility specified in the original long-term contract ~~did not was unable to~~ perform as the contract required.*

**I. For purposes of this section 3204 (d)(2)(L)3.iii., "replacement energy" means electricity products provided by a seller to a POU pursuant to the terms of a long-term contract to offset the failure of an RPS-certified facility to provide the amount of electricity products otherwise guaranteed under the contract. Replacement energy does not include energy provided to offset a failure of the seller to provide the guaranteed electricity products due to the sale of the guaranteed electricity products to another entity.**

4. Amendments, assignments, or modifications of a jointly negotiated long-term contract **or joint ownership agreement** ~~to that~~ reallocate electricity products among the ~~contract~~ *identified joint* parties ~~to the joint negotiations or joint ownership agreement~~ shall be treated as part of the original long-term contract **or ownership agreement**. *For purposes of the subparagraph, "jointly negotiated contracts" include contracts jointly negotiated by multiple POU's*

~~and/or by joint powers authorities on behalf of POU's if the POU can show its contract resulted from joint negotiations.~~

5. Assignments of long-term contracts, whereby a ~~retail seller or~~ **retail seller or** POU assigns the remaining portion of its procurement obligations under a long-term contract to a second POU, shall be treated as ~~part of the original a~~ long-term contract, provided the assignment maintains the commitment ~~by the retail seller or first POU~~ to procure the same type and quantity electricity products from the RPS-certified facility and the duration of the assignment is at least 10 years for the remaining duration of the original contract.

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

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Sections 399.13, 399.16, 399.18, and 399.30, and 399.33, Public Utilities Code.

## **Section 3205 – Procurement Plans and Enforcement Programs**

(a) Renewable Energy Resources Procurement Plan

- (1) Within 60 calendar days of the effective date of these regulations, each POU shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS procurement requirements for each compliance period. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption. A POU that has previously adopted a renewable resources procurement plan before the effective date of these regulations does not need to adopt a new renewable energy resources procurement plan and submit the plan to the Commission if no changes are made to the plan after the effective date of these regulations.
- (2) A POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS targets annually. The renewable energy resources procurement plan shall additionally provide a forecast of the qualifying hydroelectric generation expected to meet the POU's forecasted annual electricity demand. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption.
- (3) Each POU shall provide the following notice regarding new or updated renewable energy resources procurement plans:

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

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

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

(b) Enforcement Program

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

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

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

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

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

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

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

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

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

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

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

## **Section 3206 – Optional Compliance Measures**

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

(1) Excess procurement

(A) A POU may adopt rules permitting the POU to apply excess procurement accrued in one compliance period to a subsequent compliance period, as specified in section 3206 (a)(1)(B)-(H) paragraphs (B) — (H) (D) and subject to the following limitations:

(B) Excess procurement may be accrued in a compliance period only if the POU has applied sufficient electricity products to satisfy its RPS procurement requirements of the compliance period. A POU that applies an optional compliance measure described in section 3206 (a)(2)-(4) to satisfy its RPS procurement requirements of the compliance period may not accrue excess procurement for that compliance period.

(C) Excess procurement accrual will be subject to the following limitations for the compliance periods beginning January 1, 2011, through December 31, 2020, except as specified in section 3206 (a)(1)(G):

1. Electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are classified in Portfolio Content Category 3 may not be accrued ~~counted~~ as excess procurement.
2. Electricity products that meet the criteria of section 3202 (a)(1) and that exceed the maximum limit for Portfolio Content Category 3 for the compliance period, as specified in section 3204 (c), must be subtracted from the calculation of accrued excess procurement.
3. Electricity products procured under contracts of less than 10 years in duration in accordance with ~~section 3206 (a)(1)(C)4. subparagraph 4 below~~ shall be subtracted from the calculation of accrued excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2). ~~If electricity products are procured under a contract that has been amended to extend the term, the duration of the amended contract will be calculated from the original contract execution date to the amended contract end date. If electricity products are procured under a contract of less than 10 years in duration that has been amended to extend the total term to at least 10 years in duration, then electricity products generated as of the month and year in which the contract amendment occurs will be eligible to qualify as excess procurement.~~
4. For purposes of calculating accrued excess procurement for the compliance periods beginning January 1, 2011, through December 31, 2020, except as specified in section 3206 (a)(1)(G), if electricity products are procured under a contract that has been amended to extend the term, the duration of the amended contract will be calculated from the original contract execution date to the amended contract end date. If electricity products are procured under a contract of less than 10 years in duration that has been amended to extend the total term to at least 10 years in duration, then electricity products generated as of the month and year in which the contract amendment occurs will be eligible to qualify as excess procurement.

(D) Excess procurement accrual will be subject to the following limitations for the compliance periods beginning on or after January 1, 2021, except as specified in section 3206 (a)(1)(G):

1. Electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are classified in Portfolio Content Category 2 or Portfolio Content Category 3, may not be accrued as excess procurement.
2. Electricity products that meet the criteria of section 3202 (a)(1) and that exceed the maximum limit for Portfolio Content Category 3 for the compliance period, as specified in section 3204 (c), must be subtracted from the calculation of accrued excess procurement.

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

~~(F)(C)~~ Electricity products qualifying accrued as excess procurement may be applied toward any future compliance periods, except as specified below: including compliance years following 2020:

1. Electricity products accrued in accordance with section 3206 (a)(1)(C) that are classified in Portfolio Content Category 2 may not be applied toward the RPS procurement requirements of a compliance period beginning on or after January 1, 2028.

~~(G)~~ Notwithstanding section 3206 (b), a A POU may adopt rules pursuant to this section 3206 (a)(1) no later than 30 days after the effective date of these regulations, permitting the POU to make an election for voluntary early compliance with section 3204 (d) for the compliance period beginning January 1, 2017, in order for the provisions of section 3206 (a)(1)(C) to take effect beginning January 1, 2017. The provisions of section 3206 (a)(1)(C) shall take effect beginning January 1, 2017, only if the POU makes an election pursuant to its adopted rules and satisfies the requirements of section 3204 (d) for that compliance period.

~~(H)(D)~~ Excess procurement accrued in a compliance period shall be calculated as follows:

1. The numerical expression of the excess procurement accrual permitted for compliance periods beginning January 1, 2011, through December 31, 2016, is: the compliance period ending December 31, 2013, is:

$$\text{Excess Procurement} = (EP_{2011-2013}) - (RPS_{2011-2013} + S3_{2011-2013} + STC_{2011-2013})$$

$$\text{Excess Procurement} = EP_x - (RPS_x - B_x) - (S3_x + STC_x)$$

*EP<sub>x</sub> = Electricity products retired and applied toward the RPS procurement target for the compliance period X*

*RPS<sub>x</sub> = The RPS procurement target calculated in section 3204 (a) for compliance period X or, if greater than the target, the amount of electricity products applied toward the target. This may include electricity products retired for compliance period X, excess procurement accrued in a prior compliance period, or historic carryover pursuant to section 3206 (a)(5), that the POU has applied toward the target.*

$B_x$  = Any excess procurement accrued in a prior compliance period or historic carryover pursuant to section 3206 (a)(5) that the POU applied toward the RPS procurement target calculated in section 3204 (a) for compliance period  $X$

$S3_x$  = Any remaining retired electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and the definition of Portfolio Content Category 3

~~$S3_x$  = Retired PCC 3 RECs that meet the criteria of section 3202 (a)(1) in excess of the maximum calculated in section 3204 (c) for compliance period  $X$~~

~~$STC_x$  = All Any remaining retired electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and are associated with contracts less than 10 years in duration in accordance with section 3206 (a)(1)(C)4. and are retired and applied toward the RPS procurement target for compliance period  $X$~~

2. The numerical expression of the excess procurement accrual permitted for the compliance period beginning January 1, 2017 through December 31, 2020, is either:
  - i. The same equation as specified above in section 3206 (a)(1)(H)1. for compliance periods ending before January 1, 2017, or
  - ii. For POUs that qualify for and elect to use section 3206 (a)(1)(G), the same equation as specified below in section 3206 (a)(1)(H)3. for compliance periods beginning on or after January 1, 2021.
3. The numerical expression of the excess procurement accrual permitted for the compliance periods beginning January 1, 2021, is either:

$$\underline{Excess\ Procurement} = EP_x - (RPS_x - B_x) - (S3_x + S2_x)$$

$S2_x$  = Any remaining retired electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3) and the definition of Portfolio Content Category 2

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

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

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

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

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

$$\text{Excess Procurement} = (EP_y) - (RPS_y + S3_y + STC_y)$$

*EP<sub>y</sub> = Electricity products retired and applied toward the RPS procurement target for the compliance year Y*

*RPS<sub>y</sub> = The RPS procurement target calculated in section 3204 (a) for compliance year Y*

*S3<sub>y</sub> = Retired PCC-3 RECs that meet the criteria of section 3202 (a)(1) in excess of the maximum calculated in section 3204 (c) for compliance year Y*

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

(E)(I) Notwithstanding section 3206 (a)(1)(A)-(H)(D), a POU that meets the criteria of section 3204 (a)(8)(b)(4) or section 3204 (a)(9)(b)(5) may adopt rules permitting the POU to apply excess procurement accrued in one compliance period to a subsequent compliance period, subject to the following limitations.

1. Unbundled RECs that do not meet the criteria of section 3202 (a)(2) may not be accrued counted as excess procurement. Electricity products that exceed the maximum limit for unbundled RECs specified in paragraph 5 must be subtracted from the calculation of excess procurement.
2. For the compliance periods between January 1, 2011, through December 31, 2020, except as specified in section 3206 (a)(1)(I)3., electricity Electricity products procured under contracts of less than 10 years in duration in accordance with section 3206 (a)(1)(C)4. shall be subtracted from the calculation of accrued excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2).

3. Notwithstanding section 3206 (b), a POU may adopt rules no later than 30 days after the effective date of these regulations permitting the POU to make an election for voluntary early compliance with section 3204 (d) for the compliance period beginning January 1, 2017, in order to use the calculation for accrued excess procurement in section 3206 (a)(1)(I)6.iii. for the compliance period beginning January 1, 2017. A POU may use the calculation in section 3206 (a)(1)(I)6.iii. for the compliance period beginning January 1, 2017, only if the POU makes an election pursuant to its adopted rules and satisfies the requirements of section 3204 (d) for that compliance period.
- 3.4. A POU that opts to allow the application of excess procurement as part of its renewable energy resources procurement plan or enforcement program may begin accruing excess procurement no earlier than January 1, 2011.
- 4.5. Electricity products accrued ~~qualifying~~ as excess procurement may be applied toward any future compliance periods, ~~including compliance years following 2020.~~
- 5.6. Excess procurement accrued in a compliance period shall be calculated as follows:
- i. The numerical expression of the excess procurement permitted to be accrued for compliance periods beginning January 1, 2011, through December 31, 2016, is as follows: ~~the compliance period ending December 31, 2013, is:~~

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

$$\text{Excess Procurement} = (EP_X) - (RPS_X - B_X) - (UR_X + STC_X)$$

*EP<sub>X</sub> = Electricity products retired for compliance period X*

*RPS<sub>X</sub> = The RPS procurement target calculated in section 3204 (a) for compliance period X or, if greater than the target, the amount of electricity products applied toward the target. This may include electricity products retired for compliance period X, excess procurement accrued in a prior compliance period, or historic carryover pursuant to section 3206 (a)(5), that the POU has applied toward the target.*

*B<sub>X</sub> = Any excess procurement accrued in a prior compliance period or historic carryover pursuant to section 3206 (a)(5) that the POU applied toward the RPS procurement target calculated in section 3204 (a) for compliance period X*

$UR_x$  = Any remaining electricity products retired for compliance period X that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), and the definition of unbundled

~~$UR_{2014-2013}$  = Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2013, that exceed an amount equal to 25 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.~~

- ii. The numerical expression of the excess procurement permitted for the compliance period beginning January 1, 2017, through December 31, 2020, is either:
  - a. The same equation as specified above in section 3206(a)(1)(I)6.i. for compliance periods ending before January 1, 2017, or
  - b. For POUs that adopt rules and elect to use section 3206 (a)(1)(I)3., the same equation as specified below in section 3206 (a)(1)(I)6.iii.
- iii. The numerical expression of the excess procurement permitted for the compliance periods beginning January 1, 2021, except as specified in section 3206 (a)(1)(I)3. is:

$$\underline{Excess\ Procurement} = (EP_x) - (RPS_x - B_x) - UR_x$$

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

$$\underline{Excess\ Procurement} = (EP_{2014-2016}) - (RPS_{2014-2016} + UR_{2014-2016} + STC_{2014-2016})$$

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

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

$$\text{Excess Procurement} = (EP_{2017-2020}) - (RPS_{2017-2020} + UR_{2017-2020} + STC_{2017-2020})$$

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

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

$$\text{Excess Procurement} = (EP_Y) - (RPS_Y + UR_Y + STC_Y)$$

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

(2) Delay of timely compliance

- (A) A POU may adopt rules permitting the POU to ~~determine~~ make a finding that conditions beyond the control of the POU exist to delay the timely compliance with RPS procurement requirements, as defined in section 3204. Such a finding shall be limited. ~~The POU's adopted rules shall limit the determination to one or more of the following causes for delay specified in [section 3206 \(a\)\(2\)\(A\)1.-4. paragraphs 1.-4. below.](#) and The POU's determination shall include information showing demonstrate that the POU would have met its RPS procurement requirements but for the cause of delay.~~

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

POU that owns transmission or has transmission rights ~~may~~ shall include in its determination information showing how the inadequate transmission capacity delayed timely compliance and find that:

- i. The POU has undertaken all reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of its expectation for cost recovery.
  - ii. The POU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.
2. Permitting, interconnection, or other circumstances have delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. The POU must include in its determination information showing how the permitting, interconnection, or other circumstances caused delayed projects or insufficient supply and also find that:
- i. The POU prudently managed portfolio risks, including, but not limited to, holding solicitations for RPS-eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.
  - ii. The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.
  - iii. If the cause for delay or insufficient supply was foreseeable, the POU procured an appropriate minimum margin of procurement above the level necessary to comply with the RPS to compensate for foreseeable delays or insufficient supply. The POU's determination shall identify the minimum margin of procurement that the POU deemed appropriate to compensate for foreseeable delays or insufficient supply.
  - iv. The POU had taken reasonable measures to procure cost-effective distributed generation and allowable unbundled RECs.
3. Unanticipated curtailment of eligible renewable energy resources, if the delay of timely compliance would not result in an increase in greenhouse gas emissions was necessary to address the needs of a balancing authority. The POU's determination shall include information showing that unanticipated curtailment of eligible renewable energy resources delayed timely compliance and did not result in an increase in greenhouse gas emissions.

4. Unanticipated increase in retail sales due to transportation electrification. For purposes of this ~~section 3206 (a)(2)(A)4.paragraph~~, "transportation electrification" is defined in Public Utilities Code section 237.5. The POU's determination shall include information showing that it considered the following:

- i. Whether transportation electrification significantly exceeded forecasts in the POU's service territory based on the best and most recently available information available to the POU. Transportation electrification forecasts may include, but are not limited to, information filed with the State Air Resources Board, the Commission, or another state agency, forecasts in the POU's integrated resource plan developed pursuant to Public Utilities Code section 9621, or other forecasts developed or approved by the POU.
- ii. Whether the POU has taken reasonable measures to procure sufficient resources to account for unanticipated increases in retail sales due to transportation electrification.

(3) Cost limitations

(A) A POU may adopt rules for cost limitations on the procurement expenditures used to comply with its RPS procurement requirements.

(B) Adopted cost limitation rules shall be set at a level that the POU has determined will prevent disproportionate rate impacts. Such cost limitation rules shall ensure that:

- ~~1. The limitation is set at a level that prevents disproportionate rate impacts.~~
- ~~2. The costs of all procurement credited toward achieving the RPS are counted toward the limitation.~~
- ~~3. Procurement expenditures do not include any indirect expenses including, without limitation, imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any POU owned hydroelectric facilities.~~

(C) ~~In adopting cost limitation rules, the POU shall rely on all of the following:~~

- ~~1. The most recent renewables energy resources procurement plan.~~
- ~~2. Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.~~
- ~~3. The potential that some planned resource additions may be delayed or canceled.~~

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

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

cost limitation. Such actions may include, but are not limited to, refraining from entering into new contracts or constructing facilities for eligible renewable energy resources beyond the quantity that can be procured within the cost limitation.

(4) Portfolio balance requirement reduction

- (A) A POU may adopt rules that allow for the reduction of the portfolio balance requirement for Portfolio Content Category 1 for a specific compliance period consistent with Public Utilities Code section 399.16 (e).
- (B) The need to reduce the portfolio balance requirements for Portfolio Content Category 1 must have resulted because of conditions beyond the control of the POU as provided in section 3206 (a)(2).
- (C) A reduction of the portfolio balance requirement for Portfolio Content Category 1 below 65 percent for any compliance period after December 31, 2016, will not be considered consistent with Public Utilities Code section 399.16 (e).
- (D) A POU that reduces its portfolio balance requirements for Portfolio Content Category 1 must adopt these changes at a publicly noticed meeting, ~~providing at least 10 calendar days advance notice to the Commission,~~ and must include this information in an updated renewable energy resources procurement plan submitted to the Commission. The notice to consider the portfolio balance requirement reduction and the procurement plan must include the following information:
  - 1. The compliance period for which the reduction may be adopted.
  - 2. The level to which the POU has reduced the requirement.
  - 3. ~~The reason or reasons the POU has proposed for adopting the reduction.~~
  - 4.3. An explanation of how the needed reduction resulted from conditions beyond the control of the POU as provided in section 3206 (a)(2).

(5) Historic Carryover

- (A) A POU may adopt rules that allow for procurement generated before January 1, 2011, that meets the criteria of section 3202 (a)(2), that is in excess of the sum of the 2004 – 2010 annual procurement targets defined in section 3206 (a)(5)(D) and that was not applied to the RPS of another state or to a voluntary claim, to be applied to the POU's RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period.
- (B) The historic carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010. Both the historic carryover and the procurement applied to the POU's annual procurement targets must be from eligible renewable energy resources that were RPS-eligible under the rules in place for retail sellers at the time of execution of the contract or ownership agreement, except that the generation from such resources need not be tracked in the Western Renewable

Energy Generation Information System. If the contract or ownership agreement is executed prior to April 21, 2004, the procurement must be from resources that were RPS-eligible under the rules in the RPS Guidelines in place as of April 21, 2004.

(C) Historic carryover shall be calculated by subtracting procurement generated between January 1, 2004, and December 31, 2010, in an amount that is equal to the sum of the 2004 – 2010 annual procurement targets defined in section 3206 (a)(5)(D) and the amount of procurement that was sold, claimed for a voluntary program, or claimed for compliance with the RPS of another state, from the total procurement generated during that same period. If a POU was not in existence as of January 1, 2004, historic carryover shall be calculated based on procurement generated between the first full calendar year during which the POU became operational and December 31, 2010.

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

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

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

*EP<sub>x</sub> = Electricity products procured and retired and applied toward the RPS procurement target for the specified year X*

*RS<sub>x</sub> = ~~Total retail sales~~ Retail sales made by the POU for the specified year X*

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

- (E) A POU that adopts rules allowing for the use of historic carryover shall submit all applicable procurement claims for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations, annual procurement target calculations, and any other pertinent documentation to the Commission within 90 calendar days after the effective date of these regulations. All applicable procurement claims must be retired and reported to the Commission within 90 calendar days after the effective date of these regulations to qualify as historic carryover.
- (b) Rules adopted under this section 3206 shall be in place and described in a POU's renewable energy resources procurement plan or enforcement program for a given compliance period if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements. The Commission may, when hearing a complaint against a POU under section 1240, consider the date of adoption of any rules adopted pursuant to this section that the POU relied upon to satisfy or delay its RPS procurement requirements.
- (c) Any rule or rule revision adopted under this section 3206 shall be submitted to the Commission within 30 calendar days after adoption. The rule or rule revision shall be submitted along with all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision.
- (d) A POU may request the Executive Director of the Commission to review any rule or rule revision adopted under this section 3206 to determine its consistency with the requirements of Public Utilities Code section 399.30. The Executive Director shall make a determination, to the extent reasonably possible, within 120 days of receipt of a complete request for review. A complete request for review shall include the rule or rule revision and all reports, analyses, findings, and any other information upon which the POU relied in adopting the rule or rule revision. The Executive Director may request additional information from the POU or solicit information from the public to make a determination. Failure of the Executive Director to make such determination within 120 days of receipt of the complete request for review shall not be deemed a determination that such rule or rule revision is consistent with the requirements of Public Utilities Code section 399.30.
- (e) A POU may apply an optional compliance measure in section 3206 (a)(2) or 3206 (a)(3) to satisfy or delay a portion or the entirety of a shortfall in meeting its RPS requirements under section 3204. A POU may also attribute different amounts comprising said shortfall to the cost limitation adopted in accordance with section 3206 (a)(3) or to one or more conditions of the delay of timely compliance adopted in accordance with section 3206 (a)(2).
- (f) A POU may apply a portfolio balance requirement reduction as described in section 3206 (a)(4) to meet a portion or the entirety of a shortfall in meeting its portfolio balance requirement under section 3204 (c). A POU may also attribute different amounts comprising said shortfall to one or more conditions of the portfolio balance requirement reduction adopted in accordance with section 3206 (a)(4).

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

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

### **Section 3207 – Compliance Reporting for POU's**

- (a) Each POU shall submit the following reports to the Commission as required by this section.
- (b) Within 90 calendar days after the effective date of these regulations, any POU that has adopted rules allowing for historic carryover, in accordance with section 3206 (a)(5), shall submit documentation to the Commission including all applicable procurement claims by RPS-certified facility and generation month for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations used to determine the amount of historic carryover claimed, annual procurement target calculations for 2004-2010, and any other pertinent documentation necessary.
- (c) ~~By September 1, 2013, or 30 calendar days after the effective date of these regulations, whichever is later, and by~~ By July 1 of each year thereafter, each POU shall submit an annual report to the Commission that includes the information in section 3207 (c)(1)-(4) paragraphs (1) – (4) below for the prior calendar year. ~~The report submitted in 2013 shall include information required by paragraphs (1) – (4) below for both the 2011 and 2012 calendar years.~~ The format for the annual report shall be specified by the Commission, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Commission. If the annual report refers to information provided to the Commission through existing reports, the annual report shall reference the information by identifying the name, submittal date, and page number of the existing report. The annual report shall include an attestation, signed by an authorized agent of the POU, affirming that the information provided in the report is true and correct.
- (1) POU identifying information, including: POU name, contact name, mailing address, phone number, and email address.
- ~~(A) POU name, contact name, mailing address, phone number, and e-mail address.~~
- ~~(B) Year the POU was established.~~
- ~~(C) Number of end use retail customer accounts in California.~~

- (2) RPS annual ~~progress~~ procurement information for the prior calendar year, including:
- (A) Amount of ~~total~~ retail sales to end-use customers, in MWh, and projected retail sales for the current compliance period.
  - (B) Amount of procured electricity products retired, in MWh, and total projected electricity products retired for the current compliance period.
  - (C) WREGIS compliance report for procurement claims in the prior calendar year. For any procurement claims not tracked through WREGIS as permitted by the RPS Guidelines, the POU shall report procurement claims using the process specified in the RPS Guidelines. ~~interim tracking system established by the Commission prior to the implementation of WREGIS.~~
  - (D) An initial, nonbinding classification of retired electricity products qualifying for each portfolio content category or qualifying to count in full in accordance with section 3202 (a)(2).
  - (E) An initial, nonbinding classification of retired electricity products qualifying as long-term or short-term in accordance with section 3204 (d).
  - (E)(F) ~~A description of~~ Information and supporting contract documentation for each of the eligible renewable energy resources with which the POU has executed contracts or ownership agreements during the prior year, including but not limited to the contracted amount of MWh or the contracted percentage of the resource's total output, if applicable; ~~the contracted amount of MWh as a percentage of retail sales;~~ resource fuel type;; the execution date of the procurement contract or ownership agreement;; the contract or ownership agreement start date; the duration of the procurement contract or ownership agreement in accordance with section 3204 (d); the anticipated portfolio content category classification(s) for the electricity products procured through the contract or ownership agreement; the anticipated long-term or short-term classification for the electricity products procured through the contract or ownership agreement; the seller's name, if the resource is not owned by the POU;; ~~a summary of the procurement contract or ownership agreement, the operational status of the resource, the date the resource came on line, the date the resource came on line using a renewable fuel or technology, if different, the date on which procurement of electricity products begins, if different, RPS certification status, the county, state, and country in which the resource is located, and a summary of the resource names and identification numbers;~~ and for long-term contracts, information on how the contract meets the requirements of section 3204 (d), including the associated page numbers in the contract where the terms can be located, subject to section 3207 (c)(2)(F)1.-2.
1. Upon request from Commission staff, a POU with a long-term contract pursuant to section 3204 (d)(2)(B)2. shall submit documentation showing that the underlying contract(s) meet the requirements of section 3204

(d)(2)(A)-(C). For contracts executed prior to July 1, 2020, this documentation may include excerpted contract information, an attestation by the third-party supplier regarding the underlying contract duration or ownership of the RPS-certified facility or facilities, or both.

2. Documentation demonstrating a long-term contract meets the requirements of section 3204 (d)(2)(A)-(C) may be submitted directly to the Commission by the third-party supplier or another party on the POU's behalf. The documentation may include an attestation by the POU that the contract with the RPS-certified facility or facilities meets the requirements of section 3204 (d)(2)(A)-(C). An attestation may be submitted only if the POU possesses records to support the accuracy of the information to which it attests and the POU agrees to make such records available to the Commission upon request in the event of an audit or investigation.

~~(F)(G)~~ Documentation demonstrating the portfolio content category classification and long-term or short-term classification claimed for all of the POU's procured electricity products during the prior year. This documentation may include contract information, if not previously submitted; interconnection agreements;~~;~~ NERC e-Tag data;~~;~~ scheduling agreements;~~;~~ and firming and shaping agreements, ~~and electricity product contract information.~~

~~1. Documentation demonstrating a long-term contract meets the requirements of section 3204 (d)(2)(A) 2. or (A)3. may be submitted directly to the CEC by the third-party supplier or another party on the POU's behalf and with its agreement. Any such documentation shall be binding on the POU with respect to any related portfolio content category classification or long-term or short-term classification.~~

~~(H) A description An explanation of any modifications to long-term contracts, ownership, or ownership agreements previously reviewed and evaluated by the Commission from which a POU intends to claim long-term procurement, including, but not limited to, changes to contract duration, procurement quantities, addition or substitution of resources or fuel, reallocation between parties of a jointly negotiated contract, and efficiency improvements or facility expansions that change procured generation. The POU's explanation shall include documentation supporting the modifications.~~

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

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

interconnection, or other circumstances that have delayed the procurement from eligible renewable energy resources, unanticipated curtailment of a contracted or owned eligible renewable energy resource, an unanticipated increase in retail sales due to transportation electrification, and higher-than-expected costs for the procurement or development of eligible renewable energy resources.

~~(D)~~ A description of the energy consumption by the POU, including any electricity used by the POU for water pumping, or any other electricity procured by the POU for purposes other than supplying its retail sales. The description shall include the purpose of this consumption, the annual amount in MWh associated with the consumption or other end-use, and whether the consumption or other end-use was excluded from the POU's retail sales. ~~the annual amount in MWh being satisfied with electricity products.~~

- (3) Actions taken by the POU demonstrating reasonable progress toward meeting its RPS procurement requirements. The information reported shall include, but not be limited to, a discussion of the following actions taken by the POU during the prior calendar year:
- (A) Solicitations released to solicit bid for contracts to procure electricity products from eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
  - (B) Solicitations released to solicit bid for ownership agreements for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
  - (C) Actions taken to develop eligible renewable energy resources to satisfy the POU's RPS procurement requirements, including initiating environmental studies, completing environmental studies, acquiring interests in land for facility siting or transmission, filing applications for facility or transmission siting permits, and receiving approval for facility or transmission siting permits.
  - (D) Interconnection requests filed for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
  - (E) Interconnection agreements negotiated and executed for eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
  - (F) Transmission-related agreements negotiated and executed to transmit electricity products procured from eligible renewable energy resources to satisfy the POU's RPS procurement requirements.
  - (G) Other planning activities to procure electricity products from eligible renewable energy resources.
- (4) In addition to the information specified in ~~subparagraphs section 3207~~ section 3207 (c)(3)(A) – (G), the POU shall include a description of all actions planned by the POU in the current calendar year to demonstrate progress toward achieving the POU's RPS procurement

requirements. The description of actions planned shall include, but not be limited to, a discussion of activities specified in subparagraphs section 3207 (c)(3)(A) – (G).

(5) Review of long-term contracts

(A) Voluntary requests for early review

1. A POU may request the Executive Director of the Commission to review a contract to determine if the contract qualifies as a long-term contract pursuant to the requirements of section 3204 (d)(2)(A)-(C), subject to section 3207 (c)(5)(A)1.i.-ii.

i. Requests shall be limited to contracts executed on or after July 1, 2020, which on their face require additional information or justification to establish that the contracts meet the requirements of section 3204 (d)(2)(C). For purposes of this section 3207 (c)(5)(A), a contract includes both a contract that has been fully executed by the parties and a contract that has been fully negotiated by the contracting parties but not formally approved by the governing board of the POU, as may be necessary. Contracts that on their face meet the requirements of having reasonably consistent contracted-for quantities, no zero-cost early termination clauses, and defined output share or quantities of procurement and minimum pricing terms, as set forth in sections 3204 (d)(2)(C)1.i.-iii., 3204 (d)(2)(C)2., and 3204 (d)(2)(C)3. respectively, shall not be eligible for voluntary early review.

ii. Requests shall be limited to contracts that were not previously reported to the Commission during the annual reporting process pursuant to this section 3207 (c).

2. A complete request for review shall include the following:

i. A complete copy of the contract. The request shall also include any relevant underlying contract(s).

ii. A description of the contract terms corresponding to each of the long-term contract requirements and the associated page number(s) in the contract where the terms can be located.

iii. An explanation of how the POU has determined that the contract meets the requirements for classification as long-term.

iv. Any other information necessary to assess the long-term nature of the contract.

3. The Executive Director may establish a voluntary review request form to facilitate the contract review process.

4. To the extent possible, the Executive Director, or his or her designee, shall issue the determination within ninety (90) days of submission of a complete request by the POU. Failure to meet the 90-day deadline does not constitute a determination that the contract qualifies as long-term.

5. The Executive Director, or his or her designee, may request additional information from the POU, if necessary, to determine if the contract meets the requirements of section 3204 (d)(2)(A)-(C).

(B) Annual and compliance period review of long-term contract classification

1. Contracts reported to the Commission for reporting years ending on or prior to December 31, 2019, and reported to the Commission prior to December 31, 2020

i. During the annual reporting for the reporting year ending December 31, 2020, or within 30 days of the effective date of these regulations, whichever is later, each POU shall identify the long-term or short-term classification for all contracts previously reported to the Commission pursuant to section 3207 (c). Commission staff shall verify all contract claims specific to the long-term procurement requirements during the review process to verify procurement claims for the compliance period ending December 31, 2020.

2. Contracts reported to the Commission for reporting years after December 31, 2020

i. Following the POU submittal of new and amended contract information and supporting documentation during the annual report process specified in section 3207 (c), Commission staff will verify the information provided and review the supporting documentation submitted. To the extent possible, staff shall complete all reviews and notify the POU of the verification status within 365 days of the annual submittal of complete information and supporting documentation.

(C) A POU may request reconsideration of an Executive Director determination under section 3207 (c)(5)(A) or a staff determination under section 3207 (c)(5)(B) by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231 – 1232.5.

1. If the long-term contract determination was made solely by staff under section 3207 (c)(5)(B), the petition for reconsideration shall be filed with and processed by the Executive Director in a manner consistent with section 1232.

2. If the long-term contract determination was made by the Executive Director, or his or her designee, under section 3207 (c)(5)(A) or in conjunction with staff under section 3207 (c)(5)(B), the petition for reconsideration shall be filed with

the Executive Director, who shall submit the request to the Commission Chair for review in a manner consistent with section 1232.5.

(A) Following the submittal of annual reports specified in section 3207 (c), Commission staff shall review each contract identified as long term with the supporting information submitted in the annual report to determine if the contract provides a long term procurement commitment as required by section 3204 (d)(2)(A). The review will consider, but is not limited to, the following:

1. Consistency of quantities and deliveries specified in the contract. The POU may be required to explain contract provisions specifying procurement quantities that vary over the term of the contract and provide additional justification demonstrating that the contract provides a long term procurement commitment consistent with the purposes of the long term procurement requirement.
2. Completeness and specificity of procurement terms. The POU may be required to provide additional explanation for any quantity, term or delivery provisions that are not clearly defined or are subject to renegotiation prior to the end of the contract term.
3. Identification of RPS certified facilities supplying electricity products in the contract.
4. Anticipated portfolio content category classification or designation as meeting the criteria of section 3202 (a)(2) for electricity products procured through the contract.

(B) Commission staff may request additional information and documentation as needed to complete its review.

(C) Upon completion of its review, Commission staff shall notify the POU of its determination whether the contract meets the definition of a long term contract based on the submitted information.

(D) A contract that Commission staff determines is not consistent with the definition of a long term contract shall be classified as a short term contract for purposes of assessing a POU's compliance with the long term procurement requirement.

(E) A POU may request the Commission to reconsider staff's determination that its contract does not meet the definition of a long term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231—1232.5.

(F) A POU's procurement claims for electricity products procured through a contract that is determined to meet the definition of a long term contract shall be subject to verification by the Commission.

- (d) The Commission shall verify a POU's procurement claims for each compliance period following the process in the RPS Guidelines. Within 90 days of the POU's receipt of the Commission's draft verification results, the POU shall submit a compliance report that provides the following information for the applicable compliance period: By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, each POU shall submit to the Commission a compliance report that addresses the reporting requirements of section 3207 (c) and the following information for the preceding compliance period:
- ~~(1) Classification per RPS certified facility of the amount of procurement qualifying for each portfolio content category and procurement that shall count in full in accordance with section 3202 (a)(2).~~
- ~~(2)(1) The POU's RPS procurement target for the compliance period, in MWh.~~
- ~~(3) The amount of excess procurement, in MWh, from previous compliance periods, if any, and historic carryover, if any, that the POU is applying to the compliance period.~~
- ~~(4)(2) The amount of draft verified procurement retired, in MWh, for the compliance period that the POU wishes to claim applies toward the RPS procurement requirements target for the compliance period. The POU shall report the amount of draft verified procurement applied from each portfolio content category or meeting the criteria of section 3202 (a)(2). For each portfolio content category, the POU shall additionally report the amount from each category that is classified as long-term or short-term. for calculating the portfolio balance requirements.~~
- (3) The amount of excess procurement, in MWh, accrued in previous compliance periods, if any, and historic carryover, if any, that the POU is applying to the RPS procurement target for the compliance period. The POU shall report the amount of excess procurement applied from each portfolio content category or that meets the criteria of section 3202 (a)(2) or historic carryover. For each portfolio content category, the POU shall additionally report the amount that is classified as long-term or short-term.
- ~~(5)(4) The amount of excess procurement, in MWh, accrued for the compliance period, if any, that may be applied toward future compliance periods, as determined by applying the calculation in section 3206 (a)(1)(H)(D) or section 3206 (a)(1)(I)6.(E), as applicable. The POU shall report the amount of accrued excess procurement from each portfolio content category or meeting the criteria of section 3202 (a)(2). For each portfolio content category, the POU shall ~~additionally additional~~ report the amount that is classified as long-term or short-term.~~
- (A) For the ~~compliance annual~~ report submitted July 1, 2021, or within 30 days of the effective date of these regulations, whichever is later, a POU that adopted rules permitting it to make a voluntary early compliance election pursuant to section 3206 (a)(1)(G) or section 3206 (a)(1)(I)3. shall report on any election made in accordance with its adopted rules.

~~(6)~~(5) If a POU's compliance report indicates that the POU's RPS procurement requirements were not met, the POU shall submit copies of its renewable energy resource procurement plan(s) and enforcement program(s) in effect during the compliance period, if not previously submitted to the Commission, and provide documentation to justify the application of any optional compliance measures adopted by the POU in accordance with section 3206. The documentation shall include all reports, analyses, proposed findings, and any other information upon which the POU relied in applying the measure, as well as the amount of the shortfall each optional compliance measure is intended to satisfy. The POU shall also submit an updated enforcement program and/or procurement plan that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU's shortfall.

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

1. The dollar amount corresponding to the POU's adopted cost limitation rules for the compliance period.
2. The procurement expenditures made by the POU for the compliance period in accordance with its cost limitation rules.
3. An explanation of how the POU evaluated its cost limitation rules.
4. An explanation of how the POU's adopted cost limitation rules prevent a disproportionate rate impact.

**i. For a POU that is required to adopt an Integrated Resource Plan pursuant to Public Utilities Code section 9621, the POU's explanation shall address any differences relating to the cost and supply of eligible renewable energy resources and anticipated rate impacts used in its most recently adopted Integrated Resource Plan.**

5. An estimate of the total cost for the POU to procure sufficient electricity products to meet its RPS procurement requirements and an explanation of the factors considered in this estimate.
6. Actions taken in response to the POU's projected or actual RPS expenditures meeting or exceeding the cost limitation and/or in response to the POU's evaluation of its cost limitation rules.

(B) If a POU applies adopted rules for delaying of timely compliance, the POU shall also report:

1. A description of the cause for delay and information showing that the cause for delay is allowed under section 3206 (a)(2).
2. The estimated amount of RPS-eligible generation, in MWh, that would have been procured by the POU but for the cause of delay, and an explanation of the factors considered in this estimate.
3. If the cause for delay was allowed under section 3206 (a)(2)(A)1., the POU shall provide information showing:
  - i. The POU owns transmission or has transmission rights.
  - ii. The reasonable measures that the POU undertook under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of the POU's expectation for cost recovery.
  - iii. The reasonable operational measures that the POU undertook to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.
4. If the cause for delay was allowed under section 3206 (a)(2)(A)2., the POU shall also provide information showing:
  - i. The POU prudently managed its portfolio risks, including a description of solicitations held and the anticipated MWh from viable projects that the POU relied upon to achieve RPS procurement requirements.
  - ii. The POU's attempts to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.
  - iii. Whether the cause of delay or insufficient supply could have been foreseen by the POU.
  - iv. If the delay or insufficient supply was foreseeable, the POU's efforts to compensate for the delay or insufficient supply.
  - v. The reasonable measures the POU took to procure cost-effective distributed generation and allowable unbundled RECs.
5. If the cause for delay was allowed under section 3206 (a)(2)(A)3., the POU shall also provide information showing that the curtailment event was unanticipated, the expected amount of eligible renewable energy generation attributed to the unanticipated curtailment event, whether the unanticipated curtailment events

resulted in an increase in greenhouse gas emissions, and factors the POU relied upon in making this determination.

6. If the cause for delay was allowed under section 3206 (a)(2)(A)4., the POU shall also provide information showing its forecasted amount of retail sales due to transportation electrification for the compliance period, the amount of actual retail sales attributed to transportation electrification for the compliance period, and how the POU considered the requirements of section 3206 (a)(2)(A)4.i-ii when determining that the unanticipated increase in retail sales prevented timely compliance.

(C) If a POU applies a portfolio balance requirement reduction measure, the POU shall also report:

1. The level to which the portfolio balance requirement for Portfolio Content Category 1 was reduced.

2. How the need to reduce the portfolio balance requirements for Portfolio Content Category 1 resulted because of conditions beyond the POU's control, as provided in section 3206 (a)(2).

(6) A POU may request a time extension of the compliance report due date following the process in the RPS Guidelines.

(e) Notwithstanding section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (g) shall submit to the Commission documentation as specified in section 3204 ~~(a)(6)(b)(2)~~.

(f) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall annually submit to the Commission, by the deadline for annual reports specified in section 3207 (c), documentation demonstrating that the POU provides electric services to a local government that is both a city and county of the state; and that the POU receives greater than 67 percent of its electricity sources to meet its electricity demands on an annual basis from qualified hydroelectric facilities as defined in section 3204 ~~(a)(7)(b)(3)~~. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (j). A POU that meets the criteria listed in Public Utilities Code section 399.30 (j) must additionally submit its total electricity demand and documentation of its annual qualifying hydroelectric generation, and provide evidence that any electricity demands unsatisfied by its qualifying hydroelectric generation in any given year are met with procurement from eligible renewable energy resources, including renewable energy credits.

(g) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria listed in Public Utilities Code section 399.30 (h) shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c) for the final year of each compliance period ~~the compliance reports specified in section 3207 (d)~~,

documentation demonstrating that the POU provides retail electric service to 15,000 or fewer customer accounts in California, and that it is interconnected to a balancing authority primarily located outside California but within WECC. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (h).

(h) In addition to the applicable reporting requirements in section 3207 (a) – (d), a POU that meets the criteria of section 3204 (b)(6)(B) or (C) shall report as follows: ~~meets the criteria listed in Public Utilities Code section 399.30 (k) shall submit to the Commission,~~

(1) A POU that meets the criteria specified in section 3204 (b)(6)(B) for the compliance period beginning January 1, 2014, shall submit by July 1, 2017, by the deadline for the compliance reports specified in section 3207 (d), the following information: documentation demonstrating that the average annual qualifying hydroelectric generation as defined in section 3204 (b)(6)(A)(a)(10) in the twenty years preceding the each-compliance period, or the entire generating history of the qualifying hydroelectric generation facility, whichever is less, is greater than 50 percent of the POU's retail sales for the year preceding that compliance period. The POU must additionally submit documentation to identify the amounts of qualifying hydroelectric generation produced during the compliance period, qualifying hydroelectric generation procured by the POU during the compliance period, and any generation during the compliance period that would have qualified as qualifying hydroelectric generation as defined in section 3204 (b)(6)(A)(a)(10), except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in section 3204 (b)(6)(B) ~~Public Utilities Code section 399.30 (k)~~ and to determine the amounts of any generation that qualifies as qualifying hydroelectric generation, or that would have qualified as qualifying hydroelectric generation, except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012. Additionally, the Commission may request additional documentation if necessary to determine whether any amount reported as qualifying hydroelectric generation includes incremental generation as a result of efficiency improvements to a large hydroelectric generation facility eligible for the RPS in accordance with Public Utilities Code section 399.12.5 (b).

(2) A POU that meets the criteria specified in section 3204 (b)(6)(C) for a given reporting year between January 1, 2017, through December 31, 2018, shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c), or within 30 days of the effective date of these regulations, whichever is later, the following:

(A) The amount of generation that meets the definition of qualifying hydroelectric generation in section 3204 (b)(6)(A) for the reporting year.

- (B) Any additional documentation requested by the Commission if necessary to determine whether the POU meets the criteria of section 3204 (b)(6)(C) and to determine the amounts of any generation that is or would have been qualifying hydroelectric generation, except that it resulted from an increase in the amount of water stored by a dam, because the dam was enlarged or otherwise modified after December 31, 2012.
- (i) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that meets the criteria specified in section 3204 (b)(7) for a given reporting year between January 1, 2016, through December 31, 2018, shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c), ~~or within 30 days of the effective date of these regulations, whichever is later,~~ the following:
- (1) The amount of generation, in MWh, that the POU procured for the reporting year from large hydroelectric generation as defined in section 3204 (b)(7)(A).
  - (2) Information showing that the amount of large hydroelectric generation, as defined in section 3204 (b)(7)(A), procured for the reporting year is greater than 50 percent of the POU's retail sales for the reporting year.
  - (3) Any and all agreements for large hydroelectric generation meeting the criteria of section 3204 (b)(7)(A), including any renewals or extensions of the agreements.
  - (4) A narrative explaining how the generation reported in ~~section 3207 (i)(1) paragraph (1)~~ satisfies the requirements of large hydroelectric generation provided in section 3204 (b)(7)(A).
    - (A) If the agreements effective January 1, 2015, or renewals or extensions of those agreements, include generation that does not meet the definition of large hydroelectric generation provided in section 3204 (b)(7)(A), the POU's narrative shall demonstrate that only generation meeting the definition of large hydroelectric generation in section 3204 (b)(7)(A) is reported in ~~section 3207 (i)(1) paragraph (1)~~.
  - (5) Annual retail sales for the reporting year, for a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code).
  - (6) Any additional documentation requested by the Commission necessary to determine whether the POU meets the criteria specified in section 3204 (b)(7) and to determine the amount of generation that qualifies as large hydroelectric generation as defined in section 3204 (b)(7)(A).
- (j) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that meets the criteria specified in section 3204 (b)(8) for any given reporting year between January 1, 2019, and December 31, 2030, shall submit to the Commission, by the deadline

for annual reports specified in section 3207 (c), or within 30 days of the effective date of these regulations, whichever is later, the following:

- (1) The amount of generation, in MWh, that the POU procured for the reporting year from large hydroelectric generation as defined in section 3204 (b)(8)(A).
  - (2) Information showing that the amount of large hydroelectric generation, as defined in section 3204 (b)(8), procured for the reporting year is greater than 40 percent of the POU's retail sales for the reporting year.
  - (3) Any and all agreements for large hydroelectric generation meeting the criteria of section 3204 (b)(8)(A), including any amendments, extensions, or renewals of the agreements.
  - (4) A narrative explaining how the generation reported in ~~section 3207 (j)(1) paragraph (1)~~ satisfies the requirements of large hydroelectric generation provided in section 3204 (b)(8)(A) and whether there have been any changes to the agreements, renewals, and extensions, including, but not limited to, changes in ownership, changes in contract quantity or allocation percentage, or planned incremental efficiency upgrades to the hydroelectric facilities.
    - (A) If the agreements, renewals, or extensions include generation that does not meet the definition of large hydroelectric generation in section 3204 (b)(8)(A), the narrative shall include documentation demonstrating that only generation meeting the definition of large hydroelectric generation in section 3204 (b)(8)(A) is reported in ~~section 3207 (j)(1) paragraph (1)~~.
  - (5) Annual retail sales for the reporting year, for a POU that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 [commencing with section 20500] of the Water Code).
  - (6) Any additional documentation requested by the Commission necessary to determine whether the POU meets the criteria specified in section 3204 (b)(8) and to determine the amount of generation that qualifies as large hydroelectric generation as defined in section 3204 (b)(8)(A).
- (k) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that elects to exclude from its ~~total~~ retail sales the eligible renewable energy resources credited to participating customers in the POU's voluntary green pricing or shared renewable generation program in accordance with section 3204 (b)(9), shall report the following information annually by the deadline for annual reports specified in section 3207 (c), or within 30 days of the effective date of these regulations, whichever is later:
- (1) A description of the POU's voluntary green pricing or shared renewable generation program.

- (2) The total number of kilowatt-hours, reported to the nearest MWh, of electricity products from eligible renewable energy resources procured for the reporting year that were credited to participating customers in accordance with the requirements of section 3204 (b)(9).
- (3) Documentation, including WREGIS reports, demonstrating that the RECs associated with the qualifying electricity products provided under the POU's voluntary green pricing or shared renewable generation program were retired in a WREGIS subaccount designated for the benefit of the participating customers and were not further transferred, sold, or monetized.
- (4) The total quantity of qualifying electricity products, in MWhs, procured by the POU and excluded from its annual retail sales.
- (5) Documentation demonstrating that the RECs associated with the qualifying electricity products excluded from the POU's retail sales were procured from eligible renewable energy resources and meet the criteria in section 3203 (a), except as provided in section 3204 (b)(9)(B)2.i.
- (6) A description of how the POU sought to procure, to the extent possible, the qualifying electricity products excluded from the POU's retail sales from eligible renewable energy resources located within a California balancing authority area, except as provided in section 3204 (b)(9)(B)4.i. This description shall include an explanation of the factors the POU considered and measures it took in seeking to procure within a California balancing authority area, and the POU's procurement decision outcomes.
- (l) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that meets the criteria of section 3204 (b)(10) shall submit to the Commission, by July 1, 2025, the following information:

  - (1) The total quantity, in MWh, of qualifying procurement of coal-fired generation procured by the POU during the compliance period beginning January 1, 2021.
  - (2) A copy of the POU's procurement contract or ownership agreement for the qualifying procurement of coal-fired generation.
  - (3) A copy of the POU's renewable energy resources procurement plan, if not previously provided to the Commission, demonstrating that the POU met the requirements of section 3204 (b)(10)(B).
- (m) In addition to the applicable reporting requirements in section 3207 (a)-(d), starting with the compliance period beginning January 1, 2025, a POU that reduces its procurement target pursuant to section 3204 (b)(11) shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c) for the final year of each compliance period, the following information:

  - (1) The quantity, in MWh, of generation from a qualifying gas-fired power plant for each year of the compliance period.

- (2) Documentation demonstrating that the qualifying gas-fired power plant meets the criteria of Public Utilities Code section 399.33 (a). This documentation may include, but is not limited to: findings adopted by the POU's governing board, adopted city council resolutions, proof of facility ownership, financial records, compliance filings, and/or wage schedules or other such documents for facility employees.
- (3) The nameplate capacity of the facility and the POU's calculation of the facility's capacity factor for each year of the compliance period based on the facility's annual generation for that year.
- (4) Documentation demonstrating the POU's efforts to sell the qualifying gas-fired power plant or gas-fired power plant generation to mitigate against the reduction of generation below a 20 percent capacity factor.
- (5) Documentation demonstrating that additional procurement of eligible renewable energy resources or zero carbon generation resources resulted in the power plant operating at, or below, a 20 percent capacity factor on an average annual basis during the compliance period.
- (6) Any additional documentation requested by the Commission necessary to determine whether the POU meets the criteria specified in Public Utilities Code section 399.33 (a) and satisfied the requirements of section 3204 (b)(11).
- (7) The reporting requirements of this section 3207 (m) apply only to a POU that has availed itself of the provisions of section 3204 (b)(11) by notifying the Commission by April 1, 2019, of its intent to act pursuant to section 3204 (b)(11).
- (n) In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU that meets the criteria of Public Utilities Code section 399.18 shall submit to the Commission, by the deadline for annual reports specified in section 3207 (c) for the final year of each compliance period, or within 30 days of the effective date of these regulations, whichever is later, documentation demonstrating that the POU satisfied the criteria for that compliance period.
- ~~(o)~~ In addition to applicable reporting requirements in section 3207 (a) (d), by April 1, 2021, a POU shall notify the Commission of any contracts, ownership, or ownership agreements reported for previous years in accordance with section 3207 (c) and from which the POU intends to claim long term procurement to satisfy the requirements of section 3204 (d) for the compliance period beginning January 1, 2021. If needed by Commission staff to make a contract classification determination, a POU may be required to submit additional documentation to show a contract, ownership, or ownership agreement meets the requirements to be classified as long term.
- ~~(o)~~~~(p)~~~~(e)~~ In addition to the applicable reporting requirements in section 3207 (a)-(d), a POU may be required to submit any additional information needed to demonstrate compliance with an RPS procurement requirement or any other RPS-related requirement upon request from Commission.

~~(p)(i)(b)(a)~~ Incorrect, and incomplete, or missing reports.

- (1) If the Executive Director determines a report submitted by a POU pursuant to this section is incorrect or incomplete, or if the POU did not submit a report by the deadline, he or she shall issue a written notice to the POU specifying what information is missing or needs to be corrected in the report or, in the case of an unsubmitted report, that the report is past due. If a POU submits the missing or correct information or a complete report to the Commission within ten (10) business days of receipt of such notice, **or such later date as specified in the notice**, the POU's initial failure to submit a complete and correct report by the reporting deadline shall not be processed as a separate violation under these regulations. Written notices issued pursuant to this subdivision may include e-mail or other written communications.
- (2) A POU may request an extension of time to submit the missing or correct report information or the missing report specified in the written notice issued by the Executive Director. Such a request for an extension of time must be received by the Commission no later than the date the missing or correct information or missing report is due to the Commission as specified in the Executive Director's written notice. The Executive Director shall act on a request for an extension of time within five business days after it is received by the Commission and may grant an extension of time of up to 30 calendar days from the date the missing or correct report information or missing report is due under the written notice if he or she finds that there is good cause for an extension. The POU's initial failure to submit a complete and correct report shall not be deemed a separate violation under these regulations if the Commission receives the complete or correct report information or missing report by the date specified in the extension. In determining whether good cause exists for purposes of this subdivision, the Executive Director may consider, without limitation, the following factors:
  - (A) Whether the POU was diligent in gathering the information necessary to submit a complete and correct report to the Commission and preparing the report for submission by the due date.
  - (B) Whether there were circumstances beyond the control of the POU that prevented the POU from gathering and producing a complete and correct report to the Commission by the due date.
  - (C) Whether the extension of time is likely to enable the POU to submit a complete and correct report by the extended due date.

NOTE: Authority cited: Sections 25213 and 25218 (e), Public Resources Code; and section 399.30 and 9508, Public Utilities Code. Reference: Section 25747, Public Resources Code; and sections 399.13, 399.15, 399.16, 399.18, 399.30, 399.33, 9507 and 9508, Public Utilities Code.

## Section 3208 – Enforcement

- (a) Any complaint against a POU pertaining to the enforcement of a RPS requirement, or any regulation, order, or decision adopted by the Commission pertaining to the RPS, shall be filed in accordance with Title 20, section 1240 of the California Code of Regulations.
- (b) A complaint may be issued for a POU's failure to comply with any of the requirements in these regulations, including, but not limited to any of the following:
- (1) Failure to meet an RPS procurement target as specified in subdivision (a) of section 3204 for reasons other than the POU's adopted cost limitations and/or delay of timely compliance rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2) and (3) of section 3206
  - (2) Failure to meet a Portfolio Content Category 1 portfolio balance requirement as specified in subdivision (c) of section 3204 for reasons other than the POU's adopted cost limitation, ~~and/or~~ delay of timely compliance, and/or portfolio balance requirement reduction rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2)-(4) ~~and (3)~~ of section 3206
  - (3) Beginning January 1, 2021, failure to meet the long-term procurement requirement as specified in section 3204 (d) for reasons other than the POU's adopted delay of timely compliance or cost limitation rules which the Commission determines comport with the RPS requirements as specified in subdivision (a)(2) and (3) of section 3206.
  - ~~(3)(4)~~ Failure to adopt an RPS procurement plan, enforcement program or plan, or provide notice, disclosure, or other information to the Commission and public as specified in section 3205
  - ~~(4)(5)~~ Failure to submit a complete annual, compliance, or other report, or other documentation or information as specified by section 3207.
- (c) Deficits incurred in any RPS procurement requirement shall be equally considered in the complaint process.

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

**California Code of Regulations  
Title 20. Public Utilities and Energy  
Division 2. State Energy Resources Conservation and Development  
Commission**

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**Chapter 2. Rules of Practice and Procedures  
Article 5. Request for Investigations and Complaints**

**Section 1240 – Renewables Portfolio Standard Enforcement**

- (a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.
- (b) Complaints shall follow the process set forth in section 1233.1.
  - (1) The executive director may file a complaint against a local publicly owned electric utility for failure to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities.
  - (2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the informational requirements set forth in section 1233.1(b).
- (c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.
- (d) Answer
  - (1) The local publicly owned electric utility shall file an answer within 45 days after service of the complaint. The answer shall be filed with the commission as specified in section 1208. In addition to those matters set out in section 1233.2, the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer. The answer may also include information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating or otherwise pertinent factors related to any alleged violation or to a possible monetary penalty that may be imposed if noncompliance is determined pursuant to this section. The information included regarding any mitigating or otherwise pertinent factors may describe all relevant circumstances, including, but not limited to, the following:
    - (A) The extent to which the alleged violation has or will cause harm.

- (B) The nature and expected persistence of the alleged violation.
- (C) The history of past violations.
- (D) Any action taken by the local publicly owned electric utility to mitigate the alleged violation.
- (E) The financial burden to the local publicly owned electric utility.

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

(e) Response

- (1) Commission staff may file a response to the answer no later than 15 days after receipt of the answer.
- (2) In the event that commission staff files a response under (e)(1), the local publicly owned electric utility may file a reply to such response no later than 10 days from receipt of such response.

(f) Hearing

- (1) A hearing on the complaint shall be scheduled to commence no sooner than 45 days after the filing of the answer pursuant to subdivision (d) of this section.
- (2) A notice of hearing on the complaint shall be provided in accordance with section 1209.
- (3) The hearing may be scheduled before the commission, a committee designated by the commission, or a hearing officer assigned by the chair at the request of the committee as provided in section 1205.
- (4) If the hearing is not held before the commission, the proposed decision set out in section 1233.4(a) shall be forwarded to the commission, to the extent reasonably possible, no later than 45 days after the hearing has been concluded. If the hearing is held before the commission, to the extent reasonably possible, the commission shall publish its decision within 45 days after the hearing has been concluded.

(g) The decision of the commission shall be a final decision. There is no right of reconsideration of a final decision issued under this section 1240. The decision will include all findings, including findings regarding mitigating and aggravating factors related to noncompliance. The decision may also include findings regarding mitigating and aggravating factors upon which the California Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions (n) and (o) ~~and (p)~~. The decision may also include suggested penalties for the California Air

Resources Board to consider, as appropriate. Any suggested penalties shall be comparable to penalties adopted by the California Public Utilities Commission for noncompliance with a Renewables Portfolio Standard requirement for retail sellers.

(h) Referral

- (1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, commission staff shall forward a notice of violation, based on the final decision of the commission, together with the record of proceedings, to the California Air Resources Board for determination of a penalty and to the local publicly owned electric utility. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the commission pertaining to the proceedings.
- (2) If a petition for writ of mandate is filed by respondent, commission staff shall not forward the notice of violation to the California Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

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

STATE OF CALIFORNIA

STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

*IN THE MATTER OF:*

**MODIFICATION OF REGULATIONS  
SPECIFYING ENFORCEMENT  
PROCEDURES FOR THE  
RENEWABLES PORTFOLIO  
STANDARD FOR LOCAL PUBLICLY  
OWNED ELECTRIC UTILITIES**

**Docket No. 16-RPS-03**

**[PROPOSED] RESOLUTION  
ADOPTING REGULATIONS**

**WHEREAS**, on May 7, 2020, the State Energy Resources Conservation and Development Commission (“California Energy Commission” or “CEC”) mailed and posted on the CEC’s website a Notice of Proposed Action (NOPA) formally notifying the public of the CEC’s intent to adopt proposed regulations specifying procedures for the enforcement of the Renewables Portfolio Standard (RPS) for local publicly owned electric utilities (POUs), the Express Terms of the proposed regulations, an Initial Statement of Reasons (ISOR) describing the rationale for the proposal, and the economic and fiscal impact analysis for the proposal; and

**WHEREAS**, on May 8, 2020, the NOPA was published in the California Regulatory Notice Register; and

**WHEREAS**, on July 9, 2020, the CEC published an Initial Study and Proposed Negative Declaration for the proposed regulations and published and submitted to the State Clearinghouse a Notice of Intent to Adopt a Negative Declaration, concluding that the proposed regulations would not result in any significant adverse impacts to the environment; and

**WHEREAS**, on June 8, 2020, the CEC held a Lead Commissioner Workshop on the regulations; and

**WHEREAS**, on June 22, 2020, the initial written comment period closed; and

**WHEREAS**, on July 21, 2020, the CEC issued a Notice of Availability of 15-Day Language, which established a written public comment period for the 15-day language ending on August 5, 2020; and

**WHEREAS**, on August 5, 2020, the CEC issued a Notice of Postponement of Adoption Hearing, which postponed the August 12, 2020 Public Hearing noticed in the NOPA to consider adoption of the proposed regulations; and

**WHEREAS**, on August 18, 2020, the CEC issued a Notice of New Public

Hearing Date and Notice of Availability of Second 15-Day Language, which rescheduled the Public Hearing to consider adoption of the proposed regulations to September 9, 2020, and established a written public comment period for the second 15-day language ending on September 2, 2020; and

**WHEREAS**, on September 8, 2020, the CEC issued a Notice of Postponement of Adoption Hearing, which postponed the September 9, 2020, Public Hearing; and

**WHEREAS**, on October 26, 2020, the CEC issued a Notice of Lead Commissioner Workshop for November 5, 2020; and

**WHEREAS**, on October 30, 2020, the CEC issued a Key Topics Guide for the November 5, 2020, workshop, which contained a staff proposal on key elements of the RPS long-term procurement requirement and illustrative draft regulatory language; and

**WHEREAS**, on December 1, 2020, the CEC issued a Notice of New Public Hearing Date and Notice of Availability of Third 15-Day Language, which rescheduled the Public Hearing to consider adoption of the proposed regulations to December 22, 2020, and established a written public comment period for the third 15-day language ending December 16, 2020; and

**WHEREAS**, on December 22, 2020, the CEC held a public hearing to receive comments on the proposed regulations and to consider its adoption of the proposed Negative Declaration and the proposed regulations, and did so adopt the regulations.

**THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:**

With regard to the California Environmental Quality Act:

- The CEC has considered the application of the California Environmental Quality Act (CEQA) to the proposed regulations and concluded that the proposed regulations will not have any direct, indirect, or cumulatively considerable significant adverse effect on the environment; and

With regard to the Administrative Procedure Act:

- The proposed regulations will apply only to POUs as defined in Public Utilities Code section 224.3, which are local agencies and not businesses; and
- The proposed regulations will not result in the creation of new businesses or elimination of existing businesses, will not result in the expansion of businesses currently doing business in California, and will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; and
- The proposed regulations would impose a mandate on local agencies since POUs are local agencies, but pursuant to Government Code section 17556 (d), the costs would not be required to be reimbursed because POUs, as local agencies, have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Public Utilities Code sections 10001, et seq., 11501, et seq., and 15501 et seq., and Water Code section 20500, et seq. provide revenue sources for the affected POU's to recoup any costs incurred through compliance with the proposed regulations; and

- The proposed regulations will impose no direct costs, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, other than the mandate discussed above; and
- The proposed regulations will not result in the creation or elimination of jobs within California; and
- The proposed regulations will result in no costs or savings in federal funding to the State of California; and
- The proposed regulations will result in marginal costs to the CEC for implementation, but no costs or savings to any other state agency; and
- The proposed regulations will result in marginal costs to POU's, which are local agencies. None of these costs would be reimbursable because POU's, as local agencies, have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Additionally, the proposed regulations will result in marginal savings to local agencies.
- The proposed regulations will result in no nondiscretionary costs or savings to school districts; and
- The proposed regulations will have no impact on housing costs; and
- The proposed regulations will have no significant, statewide adverse economic impact on businesses in general or small businesses in particular; and
- The proposed regulations will result in no cost impacts to representative private persons or businesses in reasonable compliance with the regulations; and
- The proposed regulations will not adversely impact the health and welfare of California residents, worker safety, or the state's environment; and
- The proposed regulations have no alternatives that would be more effective in carrying out the purposes of the statutes for which the regulations are proposed, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and
- The proposed regulations will not have a significant adverse economic impact on small business and no alternatives were proposed that would lessen any adverse economic impact on small business; and
- The proposed regulations will not require completion of any new reports by businesses, but will require the completion and submission of reports by POU's, which are local agencies, not businesses; and
- None of the comments received during the comment period or at the public adoption hearing, and nothing else in the record, justified any changes to the proposed regulations as published on December 1, 2020.

**THEREFORE BE IT RESOLVED**, after considering the Initial Study, and all related materials in the record, the CEC finds that (1) there is no substantial evidence that the adoption of the proposed amendments to the regulations specifying procedures for the enforcement of the RPS for POUs will have a significant effect on the environment, and (2) the Negative Declaration reflects the CEC's independent judgment and analysis. The CEC hereby adopts the Negative Declaration and Initial Study published on July 9, 2020. Documents and other materials that constitute the record of proceedings upon which the decision to adopt the Negative Declaration is based can be found at the Warren-Alquist State Energy Building, 1516 9<sup>th</sup> Street, Sacramento, California, 95814 in the custody of the CEC Docket Unit.

**FURTHER BE IT RESOLVED**, additionally, after considering all comments received and the staff's responses, and based on the entire record of this proceeding, the CEC hereby adopts the amendments to its regulations specifying procedures for the enforcement of the RPS for POUs, as published on December 1, 2020, and set forth in the California Code of Regulations, title 20, sections 3201–3208 and 1240.

The CEC takes this action under the authority of sections 25213 and 25218(e) of the Public Resources Code, which authorize the CEC to adopt rules or regulations, as reasonable and necessary, to implement, inter alia, Public Utilities Code sections 399.13, 399.15, 399.16, 399.18, 399.30, and 399.33; and

**FURTHER BE IT RESOLVED**, that documents and other materials that constitute the rulemaking record can be found at the Warren-Alquist State Energy Building, 1516 9th Street, Sacramento, California, 95814 in the custody of the CEC Docket Unit; and

**FURTHER BE IT RESOLVED**, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed regulations go into effect as soon as possible, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents, such as the Final Statement of Reasons; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the rulemaking file required by OAL; and preparing and filing the Notice of Determination with the State Clearinghouse.

### **CERTIFICATION**

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the CEC held on December 22, 2020.

AYE:

NAY:

ABSENT:

ABSTAIN:

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Cody Goldthrite  
Secretariat