

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

**Final Regulations Submitted to Secretary of State on July 12, 2021**

## **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) 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 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.
- (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.
- (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.
- (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.
- (o) "**Executive Director**" means the Executive Director of the Commission, or his or her designee.
- (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).
- (s) **“Megawatt-hour” or “MWh”** means a unit of energy equivalent to one megawatt of electricity supplied for one hour.
- (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.
- (u) **“Ownership agreement”** includes:
  - (1) An agreement between a POU and a third party to acquire or develop part or all of an electrical generation facility or
  - (2) If the POU developed and owns part or all of the electrical generation facility and has no such agreement with a third party, the arrangement by which the POU developed 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.
- (w) **“Portfolio balance requirement”** refers to the portfolio content category minimum requirement and maximum limit defined in Public Utilities Code section 399.16.
- (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.
- (y) **“POU” or “Local publicly owned electric utility”** means a local publicly owned electric utility as defined by Public Utilities Code section 224.3.

- (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.
- (aa) "**Renewable electrical generation facility**" means a facility as defined in Public Resources Code section 25741(a).
- (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.
- (cc) "**Renewables Portfolio Standard**" or "**RPS**" has the same meaning as defined in Public Utilities Code section 399.12 (i).
- (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.
- (ee) "**RPS Guidelines**" means the guidelines adopted by the Commission pursuant to Public Resources Code section 25747 (a) to implement the RPS.
- (ff) "**RPS procurement requirements**" refers to the portfolio balance requirement, the RPS procurement target, and, beginning January 1, 2021, to the long-term procurement requirement with which a POU must comply.
- (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.
- (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.
- (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).
- (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).
- (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.

- (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.
- (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).
- (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 (b)(3), 3204 (b)(4), or 3204 (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), 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 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 section 3204 (c) and (d).

(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).

- (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 (b)(3), section 3204 (b)(4) or section 3204 (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.
- (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).
- (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) 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<sub>X</sub> = 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<sub>X</sub> = 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) 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) 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<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> = 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) toward its RPS procurement target for this period.

- (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:

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

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:

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

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:

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

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:

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

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

- (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 retail sales, upon which the RPS procurement targets in section 3204 (a)(1)-(7) 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.
- (2) Notwithstanding section 3204 (a)(1) – (7) section 3204 (c)(1)-(3), 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.
- (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).

- (3) Notwithstanding section 3204 (a)(1) – (7), section 3204 (c)(1)-(3), 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 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).
- (A) For purposes of this section 3204 (b)(3), “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), “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) corresponding to the year during which the POU's qualifying hydroelectric generation was insufficient to meet its annual electricity demand.
- (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). 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.
- (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). 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.
- (6) Notwithstanding section 3204 (a)(2) – (3), 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.
- (A) For purposes of this section 3204 (b)(6), "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).
1. A POU shall demonstrate that it receives greater than 50 percent of its annual retail sales from qualifying hydroelectric generation by providing the Commission documentation showing that the annual average qualifying hydroelectric generation produced in the twenty years preceding the 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 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.
  2. If a POU that receives greater than 50 percent of its annual retail sales from its qualifying hydroelectric generation has retail sales unsatisfied by its qualifying hydroelectric generation for the compliance period beginning January 1, 2014, ending December 31, 2016, the POU shall procure electricity products equal to the lesser of the following for the compliance period:
    - i. The portion of the POU's retail sales unsatisfied by the POU's qualifying hydroelectric generation.
    - ii. The target listed in section 3204 (a)(2).
    - 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 shall be subject to the requirements in section 3204 (c)(1)-(3).

(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).

(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 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).

(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 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).
- (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).
- (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), 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 POUs that meet the criteria of section 3204 (b)(4), the POUs 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 the quantity of electricity products that meet the criteria of section 3204 (b)(9)(B).
- (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 retail sales during the compliance period. The numerical expression for this procurement quantity is:

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

*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> = 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:

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

(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 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), 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 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:

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

*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 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:

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

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

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

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

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

*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> = 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) 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 capacity factor on an annual average during 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.
- (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:
    - (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:

- (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:

- (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) 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)*

*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), 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)
- (B) A long-term contract includes the following contract structures:
1. 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 POU's with the RPS-certified facility, if all participating POU's 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 POU's 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 POU's 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 POU's 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. A POU's contract or resale agreement with a joint powers agency or third-party supplier 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'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) 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 section 3204 (d)(2)(A)-(C).
- (E) 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.-3. 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).
  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, 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, only the electricity products procured prior to the amendment execution date or termination notice may be classified as long-term.
- (F) 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) Electricity products procured in excess of the quantity that the POU is obligated to procure under a long-term contract shall be treated as a new agreement for the additional quantities, 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) 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) or an ownership agreement subject to section 3204 (d)(2)(F), even if the matching incremental electricity is not associated with a long-term contract or an ownership agreement.
- (I) Notwithstanding the requirements for underlying contracts in section 3204 (d)(2)(A)-(C), 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) 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).
- (K)(I) Excess procurement that was accrued in accordance with the requirements of section 3206 (a)(1)(C) or section 3206 (a)(1)(I)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).
- (L) 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) 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 the RPS-certified facility generating the procured electricity products shall be treated as part of the original long-term contract or ownership agreement.
  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., 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 shall be treated as new agreements for procurement of generation associated with the substitute eligible renewable energy resource 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.
    - 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., 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 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 that reallocate electricity products among the identified joint parties shall be treated as part of the original long-term contract or ownership agreement.
  5. Assignments of long-term contracts, whereby a 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 a long-term contract, provided the assignment maintains the commitment 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.
- (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, 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) 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.
- (c) Notwithstanding section 3205 (a) and (b), 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.

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):
    - (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 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. shall be subtracted from the calculation

of accrued excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2).

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) 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) Electricity products accrued as excess procurement may be applied toward any future compliance periods, except as specified below:
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 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) 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:

$$\text{Excess Procurement} = EP_X - (RPS_X - B_X) - (S3_X + STC_X)$$

*EP<sub>X</sub> = Electricity products retired 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<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*

*S3<sub>X</sub> = 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*

*STC<sub>X</sub> = 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.*

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:

$$\text{Excess Procurement} = EP_X - (RPS_X - B_X) - (S3_X + S2_X)$$

*S2<sub>x</sub> = 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*

- (I) Notwithstanding section 3206 (a)(1)(A)-(H), a POU that meets the criteria of section 3204 (b)(4) or section 3204 (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 as 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 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.
  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.
  5. Electricity products accrued as excess procurement may be applied toward any future compliance periods.
  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:

$$\textit{Excess Procurement} = (EP_x) - (RPS_x - B_x) - (UR_x + STC_x)$$

$EP_x$  = Electricity products retired for compliance period X

$RPS_x$  = 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

$UR_x$  = 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

- 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:

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

(2) Delay of timely compliance

- (A) A POU may adopt rules permitting the POU to determine that conditions beyond the control of the POU exist to delay timely compliance with RPS procurement requirements, as defined in section 3204. The POU's adopted rules shall limit the determination to one or more of the causes for delay specified in section 3206 (a)(2)(A)1.-4. The POU's determination shall include information showing 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 shall include in its determination information showing how the inadequate transmission capacity delayed timely compliance and:
  - 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 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. 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., "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.
  - (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.
  - (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, 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. 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 retail sales, multiplied by 2003 retail sales, plus 1 percent of 2001 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:

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

*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>* = 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 retail sales, and the annual procurement target for 2010 shall be an amount equal to 20 percent of 2010 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 July 1 of each year, each POU shall submit an annual report to the Commission that includes the information in section 3207 (c)(1)-(4) for the prior calendar year. 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.
  - (2) RPS annual procurement information for the prior calendar year, including:
    - (A) Amount of 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.
    - (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).
    - (F) 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; 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 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.
- (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.
- (H) A description of any modifications to 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.
- (I) 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.

- (J) 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.
- (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 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 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.

(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:

- (1) The POU's RPS procurement target for the compliance period, in MWh.
- (2) The amount of draft verified procurement retired, in MWh, for the compliance period that the POU applies toward the RPS procurement requirements 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.
- (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.
- (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) or section 3206 (a)(1)(I)6., 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 report the amount that is classified as long-term or short-term.
  - (A) For the 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.
- (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.
  - (A) If a POU applies adopted cost limitation measures, the POU shall also report:
    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 (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 (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, 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:
- (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, documentation demonstrating that the average annual qualifying hydroelectric generation as defined in section 3204 (b)(6)(A) in the twenty years preceding the 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), 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) 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) 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).

- (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) 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).
- (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 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 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) Incorrect, 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, 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) 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.
  - (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
  - (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). 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.