City of Palo Alto
City Council Staff Report

Report Type: Consent Calendar               Meeting Date: 11/12/2013

Summary Title: Renewable Energy Procurement Program Update

Title: Recommendation that the City Council Adopt a Resolution Amending the City’s Renewable Energy Resources Procurement Plan in Compliance with the California Energy Commission’s Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that the Council of the City of Palo Alto adopt a resolution (Attachment A) amending the City of Palo Alto Electric Utility’s Renewable Energy Resources Procurement Plan consistent with the “Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities” (RPS Regulations), recently adopted by the California Energy Commission (CEC).

Executive Summary

Palo Alto has a Council-approved goal to provide 33% of the City’s electricity needs from renewable energy resources by 2015. The City’s goal exceeds California’s Renewable Portfolio Standard (RPS) mandate of 33% by 2020. Section 399.30 of California’s Public Utilities Code requires the City to formally adopt an RPS procurement plan that recognizes certain elements of the State’s RPS law. The Council first adopted the City’s electric utility Renewable Energy Resources Procurement Plan (RPS Procurement Plan) in December 2011, and since then, the CEC adopted new RPS regulations, effective October 1, 2013. Palo Alto must update its RPS Procurement Plan to reflect additional requirements in the CEC’s regulations. One of the key new provisions reflected in the proposed RPS Procurement Plan is a way to use the City’s early investments in renewable energy to count towards future compliance requirements.

Staff requests that Council approve the amended RPS Procurement Plan (Attachment C) to comply with state law and CEC regulations. Adoption of the proposed plan does not preclude the City’s implementation of its more stringent RPS goals.
Background

California’s RPS Policy History

The State of California has an RPS program that is intended to increase the amount of electricity generated each year from eligible renewable energy resources. In 2002, Senate Bill (SB) 1078 established California’s first RPS, which required investor owned utilities (IOUs) to generate at least 20% of their electric retail sales per year with eligible renewable energy resources by 2017. This objective was accelerated in 2006 under SB 107, which required IOUs to achieve the 20% target by 2010. While both of these laws applied specifically to IOUs, SB 1078 directed local publicly owned utilities (POUs)—such as Palo Alto—to implement and enforce an RPS that “recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.” POU governing boards, including Palo Alto’s City Council, are granted discretion over the mix and costs of resources procured for their own RPS programs, and can also adopt more stringent standards.

In April 2011 California’s Governor Brown signed SB 2 of the First Extraordinary Session (SB X1-2), known as the California Renewable Energy Resources Act, into law, which extended California’s RPS mandate to 33% by 2020. In addition, this new RPS law applied to all electricity retailers (or load serving entities, LSEs) in the state—including POUs such as Palo Alto. SB X1-2 directed the CEC to adopt regulations specifying procedures for enforcement of a Renewables Portfolio Standards for POUs. After some delay, the CEC adopted its final RPS Regulations, which became effective October 1, 2013. The CEC RPS Regulations are provided in Attachment D.

One of the key differences between SBX1-2 and the two previous state RPS laws is that the new law explicitly gives state regulators the authority to enforce the RPS mandate on POUs. Under SB 1078 and SB 107 the CEC was responsible only for certifying renewable facilities as eligible for the RPS and for developing a tracking and verification system to prevent the double-counting of renewable energy output. In contrast, SBX1-2 permits the California Air Resources Board (CARB) to impose financial penalties upon POUs for failure to comply with state RPS regulations.

Palo Alto’s RPS Policy

In March 2011, Council adopted Palo Alto’s current renewable resource portfolio standard as part of the updated Long-term Electric Acquisition Plan (LEAP) (Resolution 9152, Staff Report No. 1317). The relevant portion of the applicable LEAP Strategy #3 is as follows:
**Renewable Portfolio Standard** – Reduce the carbon intensity of the electric portfolio by acquiring renewable energy supplies by:

A. Pursuing a target level of renewable purchases of 33% by 2015 with the following attributes:
   - The contracts for investment in renewable resources shall not exceed 30 years in term.
   - Pursue only renewable resources deemed to be eligible by the CEC.
   - Evaluate use of Renewable Energy Certificates (RECs) to meet RPS.

B. Ensuring that the retail rate impact for renewable purchases does not exceed 0.5 ¢/kWh on average.

Despite having adopted a more stringent goal than required by the state mandate, California’s Public Utilities Code requires the City to formally adopt an RPS procurement plan that recognizes certain elements of the State’s RPS law. Specifically, the City’s Plan must show how the City will achieve RPS procurement requirements for each compliance period. Council first adopted the City’s electric utility RPS Procurement Plan on December 12, 2011 (Resolution No. 9215, Staff Report No. 2225). The subject of this report is an update to Palo Alto’s RPS procurement plan to reflect the new requirements and provisions adopted in the CEC’s regulations. Included in the update is the City’s adoption of rules dealing with cost limitation, excess renewables procurement, the historic carryover of pre-2011 procurement, portfolio balance requirement reductions and delay of timely compliance. In December 2011, Council also adopted an enforcement plan for the RPS program, which may also be updated in the next few months, but is not the subject of this report.

**Discussion**

**RPS Procurement Plan**

Attachment C presents the proposed amended RPS Procurement Plan. The RPS Procurement Plan references the Public Utilities Code and CEC RPS Regulations but does not reproduce the regulatory language. The RPS Procurement Plan requires CPAU to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of CPAU’s total kilowatt hours sold to its retail end-use customers. This quantity is measured during each of three compliance periods, and annually thereafter, to achieve the targets specified in SB X1-2 and the CEC’s RPS Regulations. In addition to establishing minimum procurement targets, the City’s RPS procurement plan includes the following elements:

1. Adopts the CEC’s definitions of the Procurement Content Categories (PCCO, PCC1, PCC2, and PCC3) for the different types of renewable energy as a function of when contracts
were executed, where the generation supply is located and how the renewable attributes are bundled with the energy generation;

2. Adopts the CEC’s limits on portfolio balance requirements in terms of the percentage of PCC1, PCC2, and PCC3 that can be contained in CPAU’s RPS portfolio.

3. Describes the process, calculation and criteria for using historic carryover, whereby historic carryover recognizes early investments in renewable energy by allowing pre-December 31, 2010 generation to count towards future compliance requirements under certain conditions;

4. Outlines procedures for applying excess renewable energy from one compliance period to a subsequent period;

5. Describes procedures allowing for a delay of timely compliance due to mitigating circumstances;

6. Allows for the adoption of cost limitations for procurement expenditures;

7. Allows for the reduction or relaxation of the portfolio balance requirements;

8. Summarizes external reporting requirements; and

9. Provides for an annual review of the plan.

Attachment B highlights the changes made to the City’s original RPS Procurement Plan to reflect the changes and additions included in the CEC’s RPS Regulations effective October 1, 2013.

Resource Impact
Adoption of the proposed RPS Procurement Plan amendments is not expected to have an immediate impact on resources because Council has already adopted RPS goals that exceed the State mandates. Therefore, adoption of this RPS Procurement Plan does not add any further procurement requirements and it is unlikely the City will be out of compliance with California’s RPS program and subject to fines imposed by CARB.

Policy Implications
Adoption of an RPS Procurement Plan is required under California Public Utilities Code section 399.30. This does not prevent the City from setting and implementing more aggressive RPS targets, as it has already done.
Environmental Review

Adoption of the RPS Procurement Plan does not meet the definition of a project pursuant to Public Resources Code Section 21080, subdivision (b)(8), thus no California Environmental Quality Act review is required.

Attachments:

- Attachment A: Resolution  (PDF)
- Attachment B: RPS Procurement Plan Redline  (PDF)
- Attachment C: RPS Procurement Plan November 2013  (PDF)
- Attachment D: CEC RPS Regulations  (PDF)
Resolution No. __________
Resolution of the Council of the City of Palo Alto Amending the City of Palo Alto’s Renewable Energy Resources Procurement Plan in Compliance with the California Energy Commission’s Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities

RECITALS

A. In April 2011, Governor Brown signed Senate Bill X1-2, the California Renewable Energy Resources Act, into law.

B. Senate Bill X1-2 states that the intent of the Legislature is to increase the amount of electricity generated per year from eligible renewable resources to an amount that averages 20 percent of total electricity sold to retail customers in California by December 31, 2013, and at least 33 percent by December 31, 2020.

C. Senate Bill X1-2 applies to local publicly owned utilities, including the City of Palo Alto acting by its Utilities Department (“CPAU”).

D. The City’s Long-term Electric Acquisition Plan’s (“LEAP”) Objectives, Strategies, and Implementation Plan sets an RPS goal that requires 33 percent of City of Palo Alto’s electricity retail sales be served by eligible renewable energy resources by year-end 2015 (Resolution Number 9152).

E. On December 12, 2011, the Council adopted Resolution Number 9215, approving the City’s Electric Utility Renewable Energy Resources Procurement Plan (“CPAU RPS Procurement Plan”), in compliance with Senate Bill X1-2. This action did not preclude Council’s implementation of the more aggressive Renewables Portfolio Standards it adopted earlier that year.

F. Senate Bill X1-2 also directed the CEC to adopt regulations specifying procedures for enforcement of the Renewables Portfolio Standards for publicly owned utilities such as CPAU. The CEC subsequently developed and adopted their “Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities” (“CEC RPS Regulations”), effective October 1, 2013.

G. The 2013 CEC RPS Regulations contain additional requirements, including specific formulae for calculating the RPS targets, content category definitions and reporting deadlines, which require a revision to the City’s RPS Procurement Plan. The CEC RPS Regulations also provide more optional compliance measures that have been included in the amended RPS Procurement Plan.
The Council for the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby finds and declares:

1. Changes in law, reflected in Senate Bill X 1-2, require the City of Palo Alto to conform to California’s Renewable Energy Resources Program by increasing the amount of electricity generated from eligible renewable energy resources per year, so that amount equals at least 33% of total retail sales of electricity in California by year-end 2020. Though the requirements of the State’s RPS program are applicable to local publicly owned utilities, the Council as the local governing body is responsible for implementation of those requirements and the enforcement is delegated to the CEC and the California Air Resources Board.

2. The City must adopt the procurement requirements set forth in California Code of Regulations, Title 20, Division 2, Chapter 13, Sections 3200 - 3208 and Title 20, Division 2, Chapter 2, Article 4, Section 1240 (“CEC RPS Regulations”).

3. The City adopts rules permitting CPAU to apply historic carryover due to CPAU’s early investment in renewable energy resources, to be applied to CPAU’s RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period, according to the requirements set forth in section 3206 (a)(5) of the CEC’s RPS Regulations.

4. The City adopts rules permitting CPAU to apply excess procurement in one compliance period to subsequent compliance periods, according to the requirements set forth in section 3206 (a)(1) D. of the CEC’s RPS Regulations.

5. The City adopts rules regarding conditions that allow for a waiver of timely compliance and cost limitations, according to the requirements set forth in Public Utilities Code section 399.15 and the CEC’s RPS Regulations.

6. The City adopts rules permitting CPAU to reduce its portfolio balance requirements, according to the requirements set forth in section 3206 (a)(4) of the CEC’s RPS Regulations.

7. The City has provided at least 10 days’ advance notice to the public and the CEC regarding the proposed adoption of the City’s RPS Procurement Plan.

SECTION 2. The Council approves the amendments to the City of Palo Alto Renewable Energy Resources Procurement Plan and its effective date of November 12, 2013. The City Manager or his designee, the Director of Utilities, shall review the CPAU RPS Procurement Plan annually in order to determine the City’s compliance with California’s RPS program, and shall comply with the reporting requirements as described in Section 3207 of the CEC’s RPS Regulations.
SECTION 3. The Council finds that the adoption of this resolution does not constitute a project under the California Environmental Quality Act, California Public Resources Code section 21080, subdivision (b)(8).

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

____________________________________  ______________________________________
City Clerk                                  Mayor

APPROVED AS TO FORM:

____________________________________  ______________________________________
Senior Deputy City Attorney                  City Manager

____________________________________
Director of Utilities

___________________________________
Director of Administrative Services
CITY OF PALO ALTO ELECTRIC UTILITY’S

RENEWABLE ENERGY RESOURCES PROCUREMENT PLAN

Per SENATE BILL X1 2

Version 2

Last Revised: October 21, 2013

REVISION HISTORY

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Resolution</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>11/04/13</td>
<td></td>
<td>Updated to reflect adoption of final CEC regulations, effective 10/1/13, permitting the City to adopt rules for Excess Procurement, Compliance Delay, Cost Limitations, Portfolio Balancing Reductions, and Historic Carryover. Removed sections that duplicated regulatory language and provided references in place. Other non-substantive language and document clean up.</td>
</tr>
<tr>
<td>1</td>
<td>12/12/11</td>
<td>9215</td>
<td>Original version per Senate Bill X1 2 requirements</td>
</tr>
</tbody>
</table>

Effective 11-12-1213
INTRODUCTION:

This document presents City of Palo Alto Utilities’ (CPAU) Renewable Energy Resources Procurement Plan, as required for compliance with Senate Bill (SB) X1 2. This legislation, which was enacted signed into law in the 2011-2012 First Extraordinary Session of the Legislature, modifies modified the state’s renewable portfolio standard (RPS) program and sets forth new RPS requirements applicable to publicly owned utilities (POUs). CPAU, as a publicly owned utilityPOU, is covered under the new legislation must comply with SB X1-2. Pursuant to Public Utility Code § 399.30(a) each publicly owned utilityPOU must adopt and implement a renewable energy resources procurement plan (RPS Procurement Plan).

SB X1 2 also directed the California Energy Commission’s (CEC) to adopt regulations specifying procedures for enforcement of the Renewables Portfolio Standards for POUs. This Procurement Plan replaces the RPS Procurement Plan approved by the Council of the City of Palo Alto (CPA Council) on December 12, 2011 (Resolution No. 9215, Staff Report No. 2225) and is consistent with the provisions set forth in the “Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities” (CEC’s RPS Regulations), adopted by the CEC and effective October 1, 2013.

In addition to the development of an RPS Procurement Plan, SBX1-2 requires publicly owned utilities to adopt and implement a separate program for the enforcement of the RPS Procurement Plan the CPAU enforcement program by January 1, 2012. City of Palo Alto’s enforcement program is not addressed in this document, but rather, in a separate report.

CPAU’s RPS Procurement Plan, as reflected in Sections 1-13 below consists of: (1) A. Purpose of the plan; B. Plan elements that are directly mandated by the legislationPlan Elements; (2) C. measuresMeasures that address each of the optional provisions set forth in §399.30(d) and RPS Regulations Section 3206; and (3) D. RPS reportingAdditional provisions.

Where appropriate, this RPS Procurement Plan includes section citations to the legislationPublic Utilities Code (PUC) and the CEC’s RPS Regulations.

---

1 SB 21X (Simitian, Stats. 2011, ch. 2011 1) was signed by California’s Governor on April 12, 2011, and made significant revisions to Public Utilities Code sections 399.11-399.32, the California Renewable Portfolio Standard Program. Various provisions of sections 399.11, et seq., were subsequently modified.

2 California Code of Regulations, Title 20, Division 2, Chapter 13, Sections 3200 - 3208 and Title 20, Division 2, Chapter 2, Article 4, Section 1240.

3 Pursuant to § 399.30(e), POUs must adopt a “program for enforcement” of the RPS Procurement Plan on or before January 1, 2012, at a publicly noticed meeting with not less than 30 days prior notice given to the public.
**1A. PURPOSE (PUC § 399.30(a))**

In order to fulfill unmet long-term generation resource needs, CPAU—the City Council of the City of Palo Alto (the Council)—shall adopt and implement this RPS Procurement Plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of CPAU’s total kilowatt hours sold to its retail end-use customers, during each compliance period, to achieve the targets specified in SBX1-2 and the RPS Regulations.

The CPA Council voluntarily adopted targets for CPAU that exceed those of SB X1-2 (Resolution 9152, Staff report No. 1317, March 2011). This RPS Procurement Plan establishes the framework for achieving the minimum requirements under SB X1-2 and the RPS Regulations, and does not include or preclude actions taken by CPAU to achieve the CPA Council’s goals.

**B. PLAN ELEMENTS**

CPAU will comply with the requirements for renewables procurement targets set forth in SBX1-2 and the and consistent with the provisions applicable enforcement procedures codified in of the CEC’s RPS Regulations, including implementation of the following Plan Elements:

1. **Compliance Period Definitions**

   CPAU has adopted the relevant compliance period definitions per identified in PUC § 399.30(b).

2. **Compliance Period Definitions**

   CPAU shall meet or exceed the following procurement targets of renewable energy resources for each compliance period per PUC §§ 399.30(c)(1) and (2) and the CEC’s RPS Regulations:

   **Compliance Period 1 Target** ≥ 20% \(\times\) (CPAU Retail Sales\(_{2011}\) + CPAU Retail Sales\(_{2012}\) + CPAU Retail Sales\(_{2013}\)).

   **Compliance Period 2** Target ≥ 20% \(\times\) CPAU Retail Sales\(_{2014}\) + 20% \(\times\) CPAU Retail Sales\(_{2015}\) + 25% \(\times\) CPAU Retail Sales\(_{2016}\)

   **Compliance Period 3** Target ≥ 27% \(\times\) CPAU Retail Sales\(_{2017}\) + 29% \(\times\) CPAU Retail Sales\(_{2018}\) + 31% \(\times\) CPAU Retail Sales\(_{2019}\) + 33% \(\times\) CPAU Retail Sales\(_{2020}\)

   Annually thereafter, CPAU shall procure renewable energy resources equivalent to at least thirty-three percent (33%) of retail kilowatt hours sales.

   * The annual procurement targets in Compliance periods 2 and 3 are soft targets. That is, by the end of each procurement period, CPAU’s RPS total for the period has to equal the sum of the annual targets, but the targets do not have to be achieved in any one year.
3. Portfolio Content Categories (PCC)

CPAU adopts the definitions for qualifying electric products and Portfolio Content Categories (PCC) per PUC § 399.16 and Sections 3202 and 3203 of the CEC’s RPS Regulations.

a. How CPAU Plans to Achieve its RPS Requirements per Section 3205(a)(1) of the CEC’s RPS Regulations

CPAU’s RPS portfolio will include grandfathered contracts (commonly referred to as “PCC 0”), which are executed prior to June 1, 2010, and PCC 1 eligible resources, which are typically directly or dynamically connected to a California balancing authority. CPAU’s RPS portfolio may also include PCC 2 eligible resources that are scheduled into a California balancing authority, and PCC 3 eligible resources, which are typically unbundled renewable energy credits (RECs). CPAU shall determine to which category each procured resource belongs.

The grandfathered or PCC 0 resources are those electricity products defined in Section 3202(a)(2) of the CEC’s RPS Regulations that are procured pursuant to a contract or ownership agreement executed before June 1, 2010, and that count in full towards CPAU’s RPS procurement requirements. PCC 1, 2, and 3 resources are defined in Section 3203 of the CEC’s RPS Regulations.

In its 2011 and 2012 RPS Compliance Report, CPAU listed a number of PCC 0 contracts. All of these contracts extend through the end of Compliance Period 3. All but one of the PCC 0 resources have achieved commercial operation, and the remaining resource is currently under construction and is expected to achieve commercial operation early 2014. CPAU anticipates being able to meet its RPS targets through Compliance Period 2 with its PCC 0 contracts.

CPAU has currently executed four contracts for PCC 1 resources. The first, executed in 2012, has not yet commenced construction, but the contract specifies that the project must commence operation in 2014. The three others, executed in 2013, are contracted to commence operation in 2016. With these four PCC 1 resources, CPAU forecasts that its renewable energy supplies will be well in excess of Compliance Period 3 requirements.

In addition, CPAU issued an RFP in the fall of 2013 for renewable power for terms ranging from 5 to 30 years from any resource that meets the CEC’s RPS eligibility criteria (with a strong preference for proposals that would qualify as PCC 1).
4. **Portfolio Balancing Requirements**

Should any of CPAU’s existing contracts fail to achieve operation, such that additional resources must be acquired to meet the requirements contained in the CEC’s RPS Regulations, then CPAU shall meet the portfolio balancing requirements specifying the limits on quantities for PCC 1 and PCC 3 per PUC §§ 399.30(c)(3), §§ 399.16(c)(1) and (2). CPAU shall apply the formulae specified in Section 3204(c) of the CEC’s RPS Regulations to determine these portfolio balance requirements.

5. **Reasonable Progress**

CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet its compliance period targets during intervening years per PUC §§ 399.30(c)(1) and (2).

2. **Compliance Periods (§ 399.30(b))**


3. **Procurement Targets of Renewable Energy Resources for Each Compliance Period (§§ 399.30(c)(1) and (2))**

A. During Compliance Period 1, January 1, 2011 to December 31, 201, CPAU shall procure renewable energy resources equivalent to an average of at least twenty percent (20%) of retail sales.

B. By the end of Compliance Period 2, December 31, 2016, CPAU shall procure renewable energy resources equivalent to at least twenty-five percent (25%) of retail sales.

C. By the end of Compliance Period 3, December 31, 2020, CPAU shall procure renewable energy resources equivalent to at least thirty-three percent (33%) of retail sales.

D. Commencing on December 31, 2021, and annually thereafter, CPAU shall procure renewable energy resources equivalent to at least thirty-three percent (33%) of retail sales.

4. **Reasonable Progress Towards Meeting Compliance Period Targets During Intervening Years (§§ 399.30(c)(1) and (2))**
A. By December 31, 2014, CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet the twenty-five percent (25%) RPS target by 2016.

B. By December 31, 2015, CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet the twenty-five percent (25%) RPS target by 2016.

C. By December 31, 2017, CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet the thirty-three percent (33%) RPS target by 2020.

D. By December 31, 2018, CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet the thirty-three percent (33%) RPS target by 2020.

E. By December 31, 2019, CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet the thirty-three percent (33%) RPS target by 2020.

5. Procurement Requirements — Definitions for Content Categories (§399.30(c)(3))

CPAU’s RPS Procurement Plan shall consist of procurement Content Categories that meet the criteria for the following eligible renewable energy resource electricity products:

A. Content Category 1 (consistent with § 399.16(b)(1)): Resources in this category shall either:

   (A) Have a first point of interconnection with a California balancing authority, have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.

   (B) Have an agreement to dynamically transfer electricity to a California balancing authority.

B. Content Category 2 (consistent with § 399.16(b)(2)): Resources in this category shall include firmed and shaped eligible renewable energy resource
electricity products providing incremental electricity and scheduled into a California balancing authority.

C. Content Category 3 (consistent with § 399.16(b)(3)): Resources in this category shall include eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of Content Category 1 or Content Category 2.

D. Grandfathered Resources (§ 399.16(d)): Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements, if all of the following conditions are met:

1. The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.

2. Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource.

3. The duration of the contract may be extended if the original contract specified a procurement commitment of fifteen (15) or more years.

4. “Eligible renewable energy resource” means an electrical generating facility that meets the definition of a “renewable electrical generation facility” in Section 25741 of the Public Resources Code, subject to the following: (C) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, if the facility is a “renewable electrical generation facility” as defined in Section 25741 of the Public Resources Code. (§ 399.12(e)(1)(C).

Resources procured prior to June 1, 2010 shall be counted for RPS compliance without regard to the limitations on the use of each portfolio Content Category as described in Section 6.

6. Procurement Requirements – Quantity for Content Categories (§ 399.30(c)(3), § 399.16(c)(1) and (2))

A. Compliance Period 1 Procurement Requirements: For Compliance Period 1, CPAU shall procure not less than fifty percent (50%) of the eligible renewable energy resource electricity products associated with contracts executed after
June 1, 2010 from Content Category 1, and not more than twenty-five percent (25%) from Content Category 3.

B. Compliance Period 2 Procurement Requirements:  For Compliance Period 2, CPAU shall procure not less than sixty-five percent (65%) of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010 from Content Category 1, and not more than fifteen percent (15%) from Content Category 3.

C. Compliance Period 3 Procurement Requirements:  For Compliance Period 3, CPAU shall procure not less than seventy-five percent (75%) of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010 from Content Category 1, and not more than ten percent (10%) from Content Category 3.

D. Annual Procurement Requirements After 2020:  Beginning in calendar year 2021 and annually thereafter, CPAU shall procure not less than seventy-five percent (75%) of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010 from Content Category 1, and not more than ten percent (10%) from Content Category 3.

C. OPTIONAL COMPLIANCE MEASURES

As permitted by Section 3206(a) of the CEC’s RPS Regulations, CPA Council hereby adopts rules permitting the use of each of the following five optional compliance measures included in the CEC’s RPS Regulations: Excess Procurement, Delay of Timely Compliance, Cost Limitations, Portfolio Balance Requirement Reduction, and Historic Carryover. Historic carryover, excess procurement, delay of timely compliance, cost limitations, and portfolio balance requirement reduction will only be triggered by unexpected circumstances and upon review and approval by the CPA Council.

e. Council Review._____

71. Excess Procurement (PUC § 399.30(d)(1), §399.13(a)(4)(B))

a. Adoption of Excess Procurement Rules._____

The CPA Council has elected to adopt rules permitting CPAU to apply excess procurement in one compliance period to a subsequent compliance period, as described in Section 3206(a)(1) of the CEC’s RPS Regulations.
b. **Limitations of CPAU’s Use of Excess Procurement.**

At the CPA Council’s sole discretion, CPAU shall be allowed to apply excess procurement (Excess Procurement) from one compliance period to subsequent compliance periods as long as the following conditions are met:

A-1a. CPAU may accumulate, beginning on January 1, 2011, Excess Procurement from one Compliance Period to be applied in any subsequent Compliance Period, including compliance years following 2020.

B-2b. In calculating the quantity of Excess Procurement, CPAU shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than ten (10) years in duration.

C-3e. Eligible resources must be from Content Category 1 or Content Category 2 or Grandfathered Resources to be Excess Procurement. Resources from Content Category 3 will not count towards Excess Procurement.

c. **Excess Procurement Calculation.**

CPAU will calculate its Excess Procurement according to formulae in section 3206 (a)(1) D. of the CEC’s RPS Regulations.

d. **Council Review.**

CPAU’s use of the Excess Procurement to apply towards CPAU’s RPS procurement target in any compliance period will be reviewed by CPA Council during its annual review as per section D.3. of this RPS Procurement Plan.

82. **Waiver of Delay of Timely Compliance (§ 399.30(d)(2), § 399.15(b)(5))**

Aa. **Adoption of Delay of Timely Compliance Rules.**

The CPA Council has elected to adopt rules permitting CPAU’s Council to make a finding that conditions beyond CPAU’s control exist to delay timely compliance with RPS procurement requirements, as described in Section 3206(a)(2) of the CEC’s RPS Regulations.

b. **Delay of Timely Compliance Findings.**

The CPA Council may make a finding, based on sufficient evidence presented by CPAU staff, and as described in this Section 3, that is limited to one or more of the following causes of delay, and shall demonstrate that CPAU would have met its RPS procurement requirements but for the cause of the delay:

Waiver of Timely Compliance: Pursuant to Public Utilities Code § 399.15 and § 399.30 and the CEC RPS Regulations, CPAU adopts the option of requesting the CPA Council’s approval to delay CPAU’s timely compliance with SB X1 2 and the CEC RPS Regulations in the event under conditions beyond CPAU’s control.

Enforcement of timely compliance shall be waived if CPAU demonstrates to the
Council that any of the following conditions are beyond CPAU’s control, and will prevent timely compliance:

**[1.] Inadequate Transmission (§ 399.15(b)(5)(A)):**

i. There is inadequate transmission capacity to allow for sufficient electricity to be delivered from CPAU’s proposed eligible renewable energy resource projects using the current operational protocols of the California Independent System Operator (CAISO) Balancing Authority Area. In making its findings relative to the existence of this condition, CPAU’s deliberations shall include, but not be limited to the following:

   ii. If the CPA Council’s delay finding rests on circumstances related to CPAU’s transmission resources or transmission rights, the CPA Council may find that

   a.) CPAU has undertaken, in a timely fashion, 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.

   b.) CPAU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.

   In determining the reasonableness of a CPAU’s actions, CPAU shall consider its expectations for full-cost recovery for these transmission lines and upgrades, and

   (ii) Whether CPAU has taken all reasonable operational measures to maximize cost-effective deliveries of electricity from eligible renewable energy resources in advance of transmission availability.

**[2.] Permitting, interconnection, or other factors that delayed procurement or insufficient supply (§ 399.15(b)(5)(B)).**

i. 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 CPAU.
- In making its findings relative to the existence of this condition, CPA Council’s deliberations shall include, but not be limited to the following:

  (ia) Whether CPAU 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;

  (iib) Whether CPAU sought to develop one of the following: 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 CPAU procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply;

  (iv) Whether CPAU has taken reasonable measures, under its control to procure cost-effective distributed generation and allowable unbundled renewable energy credits;

  (v) Whether any of CPAU’s existing and operating renewable energy resources suffers a force majeure event that causes the complete or partial destruction of the generator resource or significant damage to the generator resource thus necessitating an extended forced outage.

(3.) Unanticipated curtailment to address needs of the balancing authority (§ 399.15(b)(5)(C)).

Bc. Procedures Upon Approving Waiver:
In the event of a Waiver of Timely Compliance due to any of the factors set forth above, CPAU shall implement the following procedures:

(1.) Establish additional reporting for intervening years to demonstrate that reasonable actions under the CPAU’s control are being taken (§399.15(b)(6)).

(2.) Require a demonstration that all reasonable actions within the CPAU’s control have been taken to ensure compliance in order to grant the waiver (§ 399.15(b)(7)).
C. **Prior Deficits**: In no event shall deficits from prior compliance periods be added to future compliance periods (§ 399.15(b)(9)).

93. **Cost Limitations for Expenditures** *(PUC § 399.30(d)(3), § 399.15(c))*

**Aa. Cost Limitations for Expenditures: Adoption of Delay of Cost Limitation Rules**

The CPA Council has elected to adopt rules for cost limitations on the procurement expenditures used to comply with CPAU’s procurement requirements, as described in Section 3206(a)(3) of the CEC’s RPS Regulations. CPA Council, City of Palo Alto, at its sole discretion, may elect to establish new cost limitations for all eligible renewable energy resources used to comply with the renewables portfolio standard. Any such new cost limitation rules will be developed are intended to be consistent with PUC §399.15(c).

**b. Considerations in Development of Cost Limitation Rules**

In adopting cost limitation rules, the CPA Council has relied on the following:

1. In adopting new rules, CPA Council shall rely on
   1) This Procurement Plan;
   2) as well as: 1) procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources; and
   3) The potential that some planned resource additions may be delayed or canceled; and

2. In addition to section PUC §399.15(c), CPA Council may take into account:
   Local and regional economic conditions and the ability of CPAU’s customers to afford produced or procured energy products. These economic conditions may include but are not limited to unemployment, wages, cost of living expenses, the housing market, and cost burden of other utility rates on the same customers. CPA Council may also consider cost disparities between customer classes within Palo Alto, and between CPA customers and other POU and IOU customers in the region.

**dc. Cost Limitations**

City of Palo Alto’s current RPS policy requires that CPAU pursue a target level of renewable purchases of 33% while “ensuring that the retail rate impact for renewable purchases does not exceed 0.5 ¢/kWh on average”, i.e., the incremental cost of the renewable resource over and above current market prices for the estimated cost of an equivalent volume and shape of alternative non-RPS resources shall not exceed a retail rate impact in excess of 0.5
¢/kWh on average. This limit was first established by CPA the CPA Council in October 2002 based on public input, and the goal of balancing resource reliability and cost considerations in the consideration of investment in renewable and energy efficiency resources. - City of Palo Alto

ed. **Actions to be Taken if Costs Exceed Adopted Cost Limitation.**

If costs are anticipated to exceed the cost limitations set by CPA Council, staff will present proposals to the City of Palo Alto’s Utilities Advisory Commission (UAC) to either reduce the RPS requirements or increase the cost limitation. Staff and UAC’s recommendations will then be taken to CPA Council for action. Sec. 3206(a)(3)(E) requires a list of actions to be taken if the projected costs exceed the cost limitation. It’s up to you what to include. I’d suggest starting with UAC/Council review of an approach presented by Staff.

shall review the need for cost limitations as part of the annual review process described in Section 12.

4. **Portfolio Balance Requirement Reduction**

a. **Adoption of Portfolio Balance Requirement Reduction Rules.**

The CPA Council has elected to adopt rules that allow for the reduction of the portfolio balance requirement for PCC 1 for a specific compliance period, consistent with PUC Section 399.16(e), as described in Section 3206(a)(4) of the CEC’s RPS Regulations.

b. **Portfolio Balance Requirement Reduction Rules.**

CPAU may reduce the portfolio balance requirement for PCC1 for a specific compliance period, consistent with PUC §399.16 (e) and the following:

1. The need to reduce the portfolio balance requirements for PCC 1 must have resulted because of conditions beyond CPAU’s control, as provided in Section 3206(a)(2) of the CEC’s RPS Regulations.

2. CPAU may not reduce its portfolio balance requirement for PCC 1 below 65 percent for any compliance period after December 31, 2016.

CPAU must comply with the requirements of section 3206 (a)(4) of the CEC’s RPS Regulations should it proceed with this option.

3. Any reduction in portfolio balance requirements for PCC 1 must be adopted at a publicly noticed meeting, providing at least 10 calendar days’ notice to the CEC, and include an updated renewable energy resources procurement plan detailing the portfolio balance requirement changes.

CPAU must receive the CPA Council’s approval at a publicly noticed meeting to reduce its portfolio balance requirement.
5. **Historic Carryover**

a. **Adoption of Historic Carryover Rules**

The CPA Council has elected to adopt rules to permit its use of Historic Carryover, as defined in Section 3206(a)(5) of the RPS Regulations, to meet its RPS procurement targets. Current calculations indicate that CPAU has Historic Carryover due to CPAU’s early investment in renewable energy resources.

b. **Historic Carryover Procurement Criteria**

CPAU’s use of Historic Carryover is subject to section 3206 (a)(5) of the CEC’s RPS Regulations, including the following:

1) Procurement generated before January 1, 2011 may be applied to CPAU’s RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period; and
2) The procurement must also meet the criteria of Section 3202 (a)(2) of the CEC’s RPS Regulations; and
3) The procurement must be in excess of the sum of the 2004-2010 annual procurement targets defined in Section 3206(a)(5)(D) of the CEC’s RPS Regulations; and
4) The procurement cannot have been applied to the RPS of another state or to a voluntary claim.
5) The Historic Carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010.
6) Both the Historic Carryover and the procurement applied to CPAU’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.

c. **Historic Carryover Formula**

CPAU will calculate its Historic Carryover according to formulae in section 3206 (a)(5)C and (D) of the CEC’s RPS Regulations.

d. **Historic Carryover Claims**

The number of RECs qualifying for Historic Carryover is dependent upon the acceptance by the CEC of CPAU’s applicable procurement claims for January 1, 2004 – December 31, 2010, which are due to the CEC within 90 calendar days after the effective date of the CEC’s RPS Regulations (October 30, 2013). The Historic Carryover submittal shall also include baseline calculations, annual procurement target calculations, and any other pertinent data.
e. Council Review

CPAU’s use of the Historic Carryover to apply towards CPAU’s RPS procurement target in any compliance period will be reviewed by CPA Council during its annual review as per section D.3. of this RPS Procurement Plan.

D. ADDITIONAL PLAN COMPONENTS

101. Exclusive Control (PUC §399.30(mk)): In all matters regarding compliance with the RPS Procurement Plan, CPAU shall retain exclusive control and discretion over the following:

Aa. The mix of eligible renewable energy resources procured by CPAU and those additional generation resources procured by CPAU for purposes of ensuring resource adequacy and reliability.

Bb. The reasonable costs incurred by CPAU for eligible renewable energy resources owned by it.

112. Reporting (PUC § 399.30(f), § 399.30(g), § 399.30(l))

Aa. Deliberations on Procurement Plan (§399.30(f)):

[1.] Public Notice: Annually, CPAU shall post notice of meetings if the Council of the City of Palo Alto (Council) CPA Council will deliberate in public regarding this RPS Procurement Plan.

[2.] Notice to the California Energy Commission (CEC): Contemporaneous with the posting of a notice for such a meeting, CPAU shall notify the CEC of the date, time and location of the meeting in order to enable the CEC to post the information on its Internet website.

[3.] Documents and Materials Related to Procurement Status and Plans: When CPAU provides information to the CPA Council related to its renewable energy resources procurement status and future plans, for the CPA CPA Council’s consideration at a noticed public meeting, CPAU shall make that information available to the public and shall provide the CEC with an electronic copy of the documents for posting on the CEC’s Internet website.

Bb. Compliance Reporting (Section 3207 of the CEC RPS Regulations)

(1) CPAU shall submit an annual report to the CEC by October 31, 2013 for 2011 and 2012 data, and by July 1 for each year thereafter. The reports

Effective 11-1213
shall include the information specified in Section 3207(c) of the CEC RPS Regulations.

(2) By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, CPAU shall submit to the CEC a compliance report that addresses the annual reporting requirements of the previous section and information for the preceding compliance period as specified in Section 3207(d) of the CEC RPS Regulations.

**Annual Report to CEC regarding Contract Execution (§399.30(g))**

1. Annually, CPAU shall submit a report to the CEC regarding procurement contracts executed during the prior year.

2. CPAU’s annual report to the CEC regarding contract execution shall include all of the following:

   a. A description of the eligible renewable energy resource, including the duration of the contract or electricity purchase agreement.
   
   b. A description and identification of the electrical generating facility providing the eligible renewable energy resource under the contract.
   
   c. An estimate of the percentage increase in CPAU’s total retail sales of electricity from eligible renewable energy resources that will result from the contract.

**Report to CEC and Customers (§399.30(l))**

1. Annually, CPAU shall provide a report to the CEC and customers regarding renewable resources.

2. CPAU’s annual report to the CEC regarding renewable resources shall include all of the following:

   a. Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development, including a description of programs, expenditures, and expected or actual results.

   b. The resource mix used to serve its customers by energy source.

   c. CPAU’s status in implementing the renewables portfolio standard pursuant to § 399.30(a) and CPAU’s progress toward attaining the standard following implementation of the RPS Procurement Plan.
**123. Annual Review**

CPAU’s RPS Procurement Plan shall be reviewed annually by the CPA Council in accordance with CPAU’s “RPS Enforcement Program.”

**134. Plan Modifications/Amendments**

This RPS Procurement Plan may be modified or amended by an affirmative vote of the CPA Council during a public meeting. Any CPA Council action to modify or amend the plan must be publicly noticed in accordance with Section 11D.2.a.

**Effective Date:** This plan shall be effective on **January November 112, 20122013**.

**APPROVED AND ADOPTED** this ______ day of __________________, 20112013.
CITY OF PALO ALTO ELECTRIC UTILITY’S

RENEWABLE ENERGY RESOURCES PROCUREMENT PLAN

Version 2

Last Revised: October 21, 2013

REVISION HISTORY

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Resolution</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>11/04/13</td>
<td></td>
<td>Updated to reflect adoption of final CEC regulations, effective 10/1/13, permitting the City to adopt rules for Excess Procurement, Compliance Delay, Cost Limitations, Portfolio Balancing Reductions, and Historic Carryover. Removed sections that duplicated regulatory language and provided references in place. Other non-substantive language and document clean up.</td>
</tr>
<tr>
<td>1</td>
<td>12/12/11</td>
<td>9215</td>
<td>Original version per Senate Bill X1 2 requirements</td>
</tr>
</tbody>
</table>

Effective 1-12-13  Page 1 of 11
INTRODUCTION:
This document presents City of Palo Alto Utilities’ (CPAU) Renewable Energy Resources Procurement Plan, as required for compliance with Senate Bill (SB) X1 2.¹ This legislation, which was signed into law in the 2011-2012 First Extraordinary Session of the Legislature, modified the state’s renewable portfolio standard (RPS) program and set forth RPS requirements applicable to publicly owned utilities (POUs). CPAU, as a POU, must comply with SB X12. Pursuant to Public Utility Code § 399.30(a) each POU must adopt and implement a renewable energy resources procurement plan (RPS Procurement Plan).

SB X1 2 also directed the California Energy Commission (CEC) to adopt regulations specifying procedures for enforcement of the Renewables Portfolio Standards for POUs. This Procurement Plan replaces the RPS Procurement Plan approved by the Council of the City of Palo Alto (CPA Council) on December 12, 2011 (Resolution No. 9215, Staff Report No. 2225) and is consistent with the provisions set forth in the “Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities²” (CEC’s RPS Regulations), adopted by the CEC and effective October 1, 2013.

CPAU’s RPS Procurement Plan consists of:
A. Purpose of the plan;
B. Plan Elements;
C. Measures that address each of the optional provisions set forth in §399.30(d) and RPS Regulations Section 3206; and
D. Additional provisions.

Where appropriate, this RPS Procurement Plan includes section citations to the Public Utilities Code (PUC) and the CEC’s RPS Regulations.

A. PURPOSE (PUC § 399.30(a))
In order to fulfill unmet long-term generation resource needs, the CPA Council adopts and implements this RPS Procurement Plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of CPAU’s total kilowatt hours sold to its retail end-use customers, during each compliance period, to achieve the targets specified in SBX1 2 and the RPS Regulations.

¹ SB 2 1X (2011 1) was signed by California’s Governor on April 12, 2011, and made significant revisions to Public Utilities Code sections 399.11-399.32, the California Renewable Portfolio Standard Program. Various provisions of sections 399.11, et seq., were subsequently modified.

² California Code of Regulations, Title 20, Division 2, Chapter 13, Sections 3200 - 3208 and Title 20, Division 2, Chapter 2, Article 4, Section 1240.
The CPA Council voluntarily adopted targets for CPAU that exceed those of SB X1 2 (Resolution 9152, Staff report No. 1317, March 2011). This RPS Procurement Plan establishes the framework for achieving the minimum requirements under SB X1 2 and the RPS Regulations, and does not include or preclude actions taken by CPAU to achieve the CPA Council’s goals.

B. PLAN ELEMENTS

CPAU will comply with the requirements for renewables procurement targets set forth in SBX1-2 and the applicable enforcement procedures codified in the CEC’s RPS Regulations, including implementation of the following Plan Elements:

1. Compliance Period Definitions
   CPAU has adopted the relevant compliance period definitions identified in PUC § 399.30(b).

2. Compliance Period Definitions
   CPAU shall meet or exceed the following procurement targets of renewable energy resources for each compliance period per PUC §§ 399.30(c)(1) and (2) and the CEC’s RPS Regulations:

   Compliance Period 1 Target \( \geq 20\% \times (CPAU\ Retail\ Sales_{2011} + CPAU\ Retail\ Sales_{2012} + CPAU\ Retail\ Sales_{2013}) \).

   Compliance Period 2* Target \( \geq 20\% \times CPAU\ Retail\ Sales_{2014} + 20\% \times CPAU\ Retail\ Sales_{2015} + 25\% \times CPAU\ Retail\ Sales_{2016} \)

   Compliance Period 3* Target \( \geq 27\% \times CPAU\ Retail\ Sales_{2017} + 29\% \times CPAU\ Retail\ Sales_{2018} + 31\% \times CPAU\ Retail\ Sales_{2019} + 33\% \times CPAU\ Retail\ Sales_{2020} \)

   Annually thereafter, CPAU shall procure renewable energy resources equivalent to at least thirty-three percent (33%) of retail kilowatt hours sales

   * The annual procurement targets in Compliance periods 2 and 3 are soft targets. That is, by the end of each procurement period, CPAU’s RPS total for the period has to equal the sum of the annual targets, but the targets do not have to be achieved in any one year.

3. Portfolio Content Categories (PCC)
   CPAU adopts the definitions for qualifying electric products and Portfolio Content Categories (PCC) per Sections 3202 and 3203 of the CEC’s RPS Regulations.

   a. How CPAU Plans to Achieve its RPS Requirements per Section 3205(a)(1) of the CEC’s RPS Regulations

      CPAU’s RPS portfolio will include grandfathered contracts (commonly referred to as “PCC 0”), which are executed prior to June 1, 2010, and PCC 1 eligible resources, which are typically directly or dynamically connected to a California balancing authority. CPAU’s RPS portfolio may also include PCC 2

Effective 1-12-13

Page 3 of 11
eligible resources that are scheduled into a California balancing authority, and PCC 3 eligible resources, which are typically unbundled renewable energy credits (RECs). CPAU shall determine the category to which each procured resource belongs.

The grandfathered or PCC 0 resources are those electricity products defined in Section 3202(a)(2) of the CEC’s RPS Regulations that are procured pursuant to a contract or ownership agreement executed before June 1, 2010, and that count in full towards CPAU’s RPS procurement requirements. PCC 1, 2, and 3 resources are defined in Section 3203 of the CEC’s RPS Regulations.

In its 2011 and 2012 RPS Compliance Report, CPAU listed a number of PCC 0 contracts. All of these contracts extend through the end of Compliance Period 3. All but one of the PCC 0 resources have achieved commercial operation, and the remaining resource is currently under construction and is expected to achieve commercial operation early 2014. CPAU anticipates being able to meet its RPS targets through Compliance Period 2 with its PCC 0 contracts.

CPAU has currently executed four contracts for PCC 1 resources. The first, executed in 2012, has not yet commenced construction, but the contract specifies that the project must commence operation in 2014. The three others, executed in 2013, are contracted to commence operation in 2016. With these four PCC 1 resources, CPAU forecasts that its renewable energy supplies will be well in excess of Compliance Period 3 requirements.

In addition, CPAU issued an RFP in the fall of 2013 for renewable power for terms ranging from 5 to 30 years from any resource that meets the CEC’s RPS eligibility criteria (with a strong preference for proposals that would qualify as PCC 1).

4. Portfolio Balancing Requirements
Should any of CPAU’s existing contracts fail to achieve operation, such that additional resources must be acquired to meet the requirements contained in the CEC’s RPS Regulations, then CPAU shall meet the portfolio balancing requirements specifying the limits on quantities for PCC 1 and PCC 3 per PUC § 399.30(c)(3), §§ 399.16(c)(1) and (2). CPAU shall apply the formulae specified in Section 3204(c) of the CEC’s RPS Regulations to determine these portfolio balance requirements.

5. Reasonable Progress
CPAU shall demonstrate that it is making reasonable progress towards ensuring that it shall meet its compliance period targets during intervening years per PUC §§ 399.30(c)(1) and (2).
C. OPTIONAL COMPLIANCE MEASURES

As permitted by Section 3206(a) of the CEC’s RPS Regulations, CPA Council hereby adopts rules permitting the use of each of the following five optional compliance measures included in the CEC’s RPS Regulations: Excess Procurement, Delay of Timely Compliance, Cost Limitations, Portfolio Balance Requirement Reduction, and Historic Carryover.

1. Excess Procurement (PUC § 399.30(d)(1), §399.13(a)(4)(B))

   a. Adoption of Excess Procurement Rules
      The CPA Council has elected to adopt rules permitting CPAU to apply excess procurement in one compliance period to a subsequent compliance period, as described in Section 3206(a)(1) of the CEC’s RPS Regulations.

   b. Limitations of CPAU’s’ Use of Excess Procurement
      CPAU shall be allowed to apply Excess Procurement from one compliance period to subsequent compliance periods as long as the following conditions are met:
      1. CPAU may accumulate, beginning on January 1, 2011, Excess Procurement from one Compliance Period to be applied in any subsequent Compliance Period, including compliance years following 2020
      2. In calculating the quantity of Excess Procurement, CPAU shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than ten (10) years in duration.
      3. Eligible resources must be from Content Category 1 or Content Category 2 or Grandfathered Resources to be Excess Procurement. Resources from Content Category 3 will not count towards Excess Procurement.

   c. Excess Procurement Calculation
      CPAU shall calculate its Excess Procurement according to formulae in section 3206 (a)(1) D. of the CEC’s RPS Regulations.

   d. Council Review
      CPAU’s use of the Excess Procurement to apply towards CPAU’s RPS procurement target in any compliance period will be reviewed by CPA Council during its annual review as per section D.3. of this RPS Procurement Plan.

2. Delay of Timely Compliance (§ 399.30(d)(2), §399.15(b)(5))

   a. Adoption of Delay of Timely Compliance Rules
      The CPA Council has elected to adopt rules permitting CPAU’s Council to make a finding that conditions beyond CPAU’s control exist to delay timely compliance with RPS procurement requirements, as described in Section 3206(a)(2) of the CEC’s RPS Regulations.
b. **Delay of Timely Compliance Findings**

The CPA Council may make a finding, based on sufficient evidence presented by CPAU staff, and as described in this Section 3, that is limited to one or more of the following causes of delay, and shall demonstrate that CPAU would have met its RPS procurement requirements but for the cause of the delay:

1. **Inadequate Transmission**
   i. There is inadequate transmission capacity to allow for sufficient electricity to be delivered from CPAU’s proposed eligible renewable energy resource projects using the current operational protocols of the California Independent System Operator (CAISO) Balancing Authority Area.
   
   ii. If the CPA Council’s delay finding rests on circumstances related to CPAU’s transmission resources or transmission rights, the CPA Council may find that:
       
       a.) CPAU has undertaken, in a timely fashion, 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.
       
       b.) CPAU 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 factors that delayed procurement or insufficient supply.**
   i. 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 CPAU.
   
   ii. In making its findings relative to the existence of this condition, CPA Council’s deliberations shall include, but not be limited to the following:
       
       a) Whether CPAU 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;
       
       b) Whether CPAU sought to develop its own eligible renewable energy resources, transmission to interconnect to
eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.

c) Whether CPAU procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply;

d) Whether CPAU has taken reasonable measures, under its control to procure cost-effective distributed generation and allowable unbundled renewable energy credits;

(3) Unanticipated curtailment to address needs of the balancing authority.

c. Procedures Upon Approving Waiver:
   In the event of a Waiver of Timely Compliance due to any of the factors set forth above, CPAU shall implement the following procedures:
   (1) Establish additional reporting for intervening years to demonstrate that reasonable actions under the CPAU’s control are being taken (§399.15(b)(6)).
   (2) Require a demonstration that all reasonable actions within the CPAU’s control have been taken to ensure compliance in order to grant the waiver (§ 399.15(b)(7)).

3. Cost Limitations for Expenditures (PUC § 399.30(d)(3), § 399.15(c))

   a. Cost Limitations for Expenditures
      The CPA Council has elected to adopt rules for cost limitations on the procurement expenditures used to comply with CPAU’s procurement requirements, as described in Section 3206(a)(3) of the CEC’s RPS Regulations. These cost limitation rules are intended to be consistent with PUC §399.15(c).

   b. Considerations in Development of Cost Limitation Rules
      In adopting cost limitation rules, the CPA Council has relied on the following:
      1) This Procurement Plan;
      2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources;
      3) The potential that some planned resource additions may be delayed or canceled; and
      4) Local and regional economic conditions and the ability of CPAU’s customers to afford produced or procured energy products. These economic conditions may include but are not limited to unemployment, wages, cost of living expenses, the housing market, and cost burden of other utility rates on the same customers. The CPA Council may also
consider cost disparities between customer classes within Palo Alto, and between CPA customers and other POU and IOU customers in the region.

c. **Cost Limitations**
City of Palo Alto’s current RPS policy requires that CPAU pursue a target level of renewable purchases of 33% while “[e]nsuring that the retail rate impact for renewable purchases does not exceed 0.5 ¢/kWh on average”, i.e., the incremental cost of the renewable resource over and above the estimated cost of an equivalent volume and shape of alternative non-RPS resources shall not cause a retail rate impact in excess of 0.5 ¢/kWh on average. This limit was first established by the CPA Council in October 2002 based on public input, and the goal of balancing resource reliability and cost considerations in the consideration of investment in renewable and energy efficiency resources.

d. **Actions to be Taken if Costs Exceed Adopted Cost Limitation**
If costs are anticipated to exceed the cost limitations set by CPA Council, staff will present proposals to the City of Palo Alto’s Utilities Advisory Commission (UAC) to either reduce the RPS requirements or increase the cost limitation. Staff and UAC’s recommendations will then be taken to CPA Council for action.

4. **Portfolio Balance Requirement Reduction**

a. **Adoption of Portfolio Balance Requirement Reduction Rules**
The CPA Council has elected to adopt rules that allow for the reduction of the portfolio balance requirement for PCC 1 for a specific compliance period, consistent with PUC Section 399.16(e), as described in Section 3206(a)(4) of the CEC’s RPS Regulations.

b. **Portfolio Balance Requirement Reduction Rules**
CPAU may reduce the portfolio balance requirement for PCC1 for a specific compliance period, consistent with PUC §399.16 (e) and the following:
1. The need to reduce the portfolio balance requirements for PCC 1 must have resulted because of conditions beyond CPAU’s control, as provided in Section 3206(a)(2) of the CEC’s RPS Regulations.
2. CPAU may not reduce its portfolio balance requirement for PCC 1 below 65 percent for any compliance period after December 31, 2016.
3. Any reduction in portfolio balance requirements for PCC 1 must be adopted at a publicly noticed meeting, providing at least 10 calendar days’ notice to the CEC, and include an updated renewable energy resources procurement plan detailing the portfolio balance requirement changes.
5. **Historic Carryover**

a. *Adoption of Historic Carryover Rules*

The CPA Council has elected to adopt rules to permit its use of Historic Carryover, as defined in Section 3206(a)(5) of the RPS Regulations, to meet its RPS procurement targets. Current calculations indicate that CPAU has Historic Carryover due to CPAU’s early investment in renewable energy resources.

b. *Historic Carryover Procurement Criteria*

CPAU’s use of Historic Carryover is subject to section 3206 (a)(5) of the CEC’s RPS Regulations, including the following:

1) Procurement generated before January 1, 2011 may be applied to CPAU’s RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period; and
2) The procurement must also meet the criteria of Section 3202 (a)(2) of the CEC’s RPS Regulations; and
3) The procurement must be in excess of the sum of the 2004-2010 annual procurement targets defined in Section 3206(a)(5)(D) of the CEC’s RPS Regulations; and
4) The procurement cannot have been applied to the RPS of another state or to a voluntary claim.
5) The Historic Carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010.
6) Both the Historic Carryover and the procurement applied to CPAU’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.

c. *Historic Carryover Formula*

CPAU will calculate its Historic Carryover according to formulae in section 3206 (a)(5)(C) and (D) of the CEC’s RPS Regulations.

d. *Historic Carryover Claims*

The number of RECs qualifying for Historic Carryover is dependent upon the acceptance by the CEC of CPAU’s applicable procurement claims for January 1, 2004 – December 31, 2010, which are due to the CEC within 90 calendar days after the effective date of the CEC’s RPS Regulations (October 30, 2013). The Historic Carryover submittal shall also include baseline calculations, annual procurement target calculations, and any other pertinent data.
e. **Council Review**

CPAU’s use of the Historic Carryover to apply towards CPAU’s RPS procurement target in any compliance period will be reviewed by CPA Council during its annual review as per section D.3. of this RPS Procurement Plan.

**D. ADDITIONAL PLAN COMPONENTS**

1. **Exclusive Control (PUC §399.30(k))**: In all matters regarding compliance with the RPS Procurement Plan, CPAU shall retain exclusive control and discretion over the following:

   a. The mix of eligible renewable energy resources procured by CPAU and those additional generation resources procured by CPAU for purposes of ensuring resource adequacy and reliability.

   b. The reasonable costs incurred by CPAU for eligible renewable energy resources owned by it.

2. **Reporting (PUC § 399.30(f), § 399.30(g), § 399.30(l))**

   a. **Deliberations on Procurement Plan (§399.30(f))**:

      (1) **Public Notice**: Annually, CPAU shall post notice of meetings if the CPA Council will deliberate in public regarding this RPS Procurement Plan.

      (2) **Notice to the California Energy Commission (CEC)**: Contemporaneous with the posting of a notice for such a meeting, CPAU shall notify the CEC of the date, time and location of the meeting in order to enable the CEC to post the information on its Internet website.

      (3) **Documents and Materials Related to Procurement Status and Plans**: When CPAU provides information to the CPA Council related to its renewable energy resources procurement status and future plans, for the CPA Council’s consideration at a noticed public meeting, CPAU shall make that information available to the public and shall provide the CEC with an electronic copy of the documents for posting on the CEC’s Internet website.

   b. **Compliance Reporting** (Section 3207 of the CEC RPS Regulations)

      (1) CPAU shall submit an annual report to the CEC by October 31, 2013 for 2011 and 2012 data, and by July 1 for each year thereafter. The reports shall include the information specified in Section 3207(c) of the CEC RPS Regulations.
(2) By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, CPAU shall submit to the CEC a compliance report that addresses the annual reporting requirements of the previous section and information for the preceding compliance period as specified in Section 3207(d) of the CEC RPS Regulations.

3. **Annual Review**

CPAU’s RPS Procurement Plan shall be reviewed annually by the CPA Council in accordance with CPAU’s “RPS Enforcement Program.”

4. **Plan Modifications/Amendments**

This RPS Procurement Plan may be modified or amended by an affirmative vote of the CPA Council during a public meeting. Any CPA Council action to modify or amend the plan must be publicly noticed in accordance with Section D.2.a.

Effective Date: This plan shall be effective on November 12, 2013.

APPROVED AND ADOPTED this ________ day of __________________, 2013.
California Energy Commission
ADOPTED REGULATIONS
APPROVED BY THE OFFICE OF ADMINISTRATIVE LAW

ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

California Code of Regulations, Title 20, Division 2, Chapter 13, Sections 3200 - 3208
Title 20, Division 2, Chapter 2, Article 4, Section 1240

CALIFORNIA ENERGY COMMISSION
Edmund G. Brown Jr., Governor

AUGUST 2013
CEC-300-2013-002-CMF
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.


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.

(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 (c).

(i) “Compliance report” means the report that each POU files with the Commission by July 1 of the calendar year following the end of a compliance period as specified in section 3207.

(j) “Electricity product” means either:

1. Electricity and the associated renewable energy credit generated by an eligible renewable energy resource.
2. An unbundled renewable energy credit.

(k) “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.

(l) “Executive Director” means the Executive Director of the Commission, or his or her designee.

(m) “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.

(n) “Megawatt-hour” or “MWh” means a unit of energy equivalent to one megawatt of electricity supplied for one hour.

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

(p) “Ownership agreement” includes:

1. An agreement between a POU and a third party to acquire or develop an electrical generation facility or
2. If the POU built and owns the electrical generation facility and therefore has no such agreement with a third party, the arrangement by which the POU built the facility, in which case the date of the arrangement for the purposes of section 3202(a) is the commercial operation date of the facility.
(q) “Portfolio balance requirement” refers to the portfolio content category minimum and maximum requirements defined in Public Utilities Code section 399.16.

(r) “Portfolio content category” refers to one of three categories of electricity products procured from an eligible renewable energy resource, as specified in section 3203.

(s) “POU” or “Local publicly owned electric utility” means a local publicly owned electric utility as defined by Public Utilities Code section 224.3.

(t) “Procure” means to acquire electricity products from eligible renewable energy resources, either directly from the eligible renewable energy resource or from a third party, through executed contracts or ownership agreements.

(u) “Renewable electrical generation facility” means a facility as defined in Public Resources Code section 25741(a).

(v) “Renewable energy credit” or “REC” means a certificate of proof, as defined in Public Utilities Code section 399.12 (h), associated with the generation of electricity from an eligible renewable energy resource.

(w) “Renewables Portfolio Standard” or “RPS” has the same meaning as defined in Public Utilities Code section 399.12 (i).

(x) “RPS-certified facility” means a facility that the Commission has certified as being eligible for the RPS pursuant to the Commission’s RPS Guidelines, or that the Commission has granted limited RPS certification in place for the duration of that facility’s contract or ownership agreement term pursuant to the Commission’s RPS Guidelines.

(y) “RPS Guidelines” means the guidelines adopted by the Commission pursuant to Public Resources Code section 25747 (a) to implement the RPS.

(z) “RPS procurement requirements” refers to both the portfolio balance requirement and the RPS procurement target with which a POU must comply.

(aa) “RPS procurement target” means the specified percentage of retail sales that a POU must procure of electricity products from eligible renewable energy resources for each compliance period as defined in Public Utilities Code section 399.30 (c). For POUs that meet the criteria listed in Public Utilities Code section 399.30 (j), the procurement target is the annual specified percentage of the portion of electricity demand not met by the POU’s qualifying hydroelectric generation, or the soft target for that year, whichever is less, that must be procured from eligible renewable energy resources.

(bb) “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 water pumping, or electricity produced for onsite consumption (self-generation).

(cc) “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.
(dd) “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.

(ee) “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.

(ff) “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).

(gg) “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.


Section 3202 – Qualifying Electricity Products

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

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

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

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

(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 paragraphs (B) and (C), the electricity product shall count in full toward the RPS procurement requirements, subject to the following:

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

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 will not be subtracted when calculating excess procurement in accordance with section 3206 (a).

(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 3202 (a)(2)(C), or substitute a different eligible renewable energy resource, only the MWhs or resources procured prior to June 1, 2010, shall count in full toward the RPS procurement targets. The remaining procurement must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).

(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).

(b) If any electricity products procured pursuant to a contract or ownership agreement executed prior to June 1, 2010, are resold on or after June 1, 2010, and the resale is not explicitly included in the original contract or ownership agreement terms, the electricity products must be classified in a portfolio content category and follow the portfolio balance requirements of section 3204 (c), unless the procurement is retired by a POU that meets the criteria of section 3204 (a)(7), section 3204 (a)(8) or 3204 (a)(9).

(c) A POU may not use a REC associated with electricity products to meet its RPS procurement requirements unless it is retired within 36 months from the initial month of the generation of the associated electricity. For example, a POU can retire a REC associated with electricity generated in February 2011 no later than February 28, 2014, to claim the REC toward the POU’s RPS procurement requirements. RECs may not be retired for purposes of the RPS
procurement requirements of a compliance period if that compliance period begins after the date of retirement.

(d) 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.

(e) A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date the POU procured that REC. For example, a POU may not retire a REC associated with electricity generated in November 2013 that the POU procured in February 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.


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.

(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.


**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:

\[
(EP_{2011} + EP_{2012} + EP_{2013}) \geq 0.20
\]

\[
(RS_{2011} + RS_{2012} + RS_{2013})
\]

\(EP_x = \text{Electricity products retired for the specified year } X; \text{ this may include excess procurement}
\]

\(RS_x = \text{Total retail sales made by the POU for the specified year } X\)

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

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

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

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

(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, a POU shall demonstrate it has procured electricity products within that period sufficient to meet or exceed the sum of 27 percent of its 2017 retail sales, 29 percent of its 2018 retail sales, 31 percent of its 2019 retail sales, and 33 percent of its 2020 retail sales. The numerical expression of this requirement is:
No POU may apply Portfolio Content Category 3 RECs in excess of the maximum limit calculated in 3204 (c)(7) toward its RPS procurement target for this period.

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

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

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

(A) A POU shall demonstrate that it meets the criteria listed in section 399.30 (g) by providing the Commission documentation showing the POU receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386). The documentation shall include a copy of any written notice filed with the United States Secretary of the Interior or the Western Area Power Administration declaring the POU’s intent to exercise its preference rights under the Trinity River Diversion Act and any integrated resource plan filed with the Western Area Power Administration confirming the POU’s election to receive all of its electricity pursuant to its preference rights, and any updates or amendments to those written notices and integrated resource plans. The POU shall initially submit documentation to the Commission within 30 calendar days of the effective date of these regulations. Thereafter, the POU shall submit to the Commission a copy of any new or updated written notices or integrated resource plans filed with the United States Secretary of the Interior or the Western Area
Power Administration. Copies of such notices and plans shall be submitted to the Commission within 30 calendar days of the date the notices and plans are filed with the United States Secretary of the Interior or the Western Area Power Administration. The Commission may request additional documentation if necessary to determine whether the POU meets the criteria listed in Public Utilities Code section 399.30 (g).

(7) Notwithstanding section 3204 (a)(1) – (4) or section 3204 (c)(1)-(9), a POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall be deemed to be in compliance with this section 3204 for a given calendar year if 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 paragraph (D).

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

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

(B) For purposes of this section 3204 (a)(7), “electricity demand” means consumption of electricity by all end-use customers and their tenants, including but not limited to the POU itself, measured in MWh.

(C) A POU shall demonstrate that it meets the criteria listed in Public Utilities Code section 399.30 (j) by providing the Commission documentation showing the POU received at least an average of 67 percent of its electricity demand in the seven years preceding each compliance period from qualifying hydroelectric generation. The POU shall initially submit documentation for the seven years immediately preceding January 1, 2011, within 30 calendar days of the effective date of these regulations. New documentation shall be submitted within 90 calendar days of the end of each compliance period.

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

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

(8) 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)-(9). A POU shall demonstrate that it
meets the criteria listed in Public Utilities Code section 399.30 (h) by providing the Commission documentation showing the POU was in existence on or before January 1, 2009, that it provides retail electric service to 15,000 or fewer customer accounts in California, and that it is interconnected to a balancing authority primarily located outside California but within the WECC.

(9) 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)-(9). A POU shall demonstrate that it meets these criteria by providing the Commission documentation showing that the POU is a successor to an electrical corporation that had 1,000 or fewer customer accounts in California as of January 1, 2010, and was not interconnected to any transmission system or to the Independent System Operator as of January 1, 2010.

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

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

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

The numerical expression of this requirement is:

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

\[ PCC1_x = \text{Electricity products retired and applied to the RPS procurement target for compliance period X that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)} \]

\[ POST_x = \text{Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance period X} \]

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

The numerical expression of this requirement is:

\[ PCC1_{2014-2016} \geq 0.65 \times (POST_{2014-2016}) \]
(3) For the compliance period beginning January 1, 2017, and ending December 31, 2020, not less than 75 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a).

The numerical expression of this requirement is:

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

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

The numerical expression of this requirement is:

\[ PCC1_Y \geq 0.75 \times (POST_Y) \]

\[ PCC1_Y = \text{Electricity products retired and applied toward the RPS procurement target for compliance year } Y \text{ that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 1 specified in section 3203 (a)} \]

\[ POST_Y = \text{Portion of electricity products procured pursuant to a contract or ownership agreement executed on or after June 1, 2010, that is retired and applied toward the RPS procurement target for compliance year } Y \]

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

The numerical expression of this requirement is:

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

\[ PCC3_X = \text{Electricity products retired and applied toward the RPS procurement target for compliance period } X \text{ that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in section 3203 (c)} \]

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

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

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

The numerical expression of this requirement is:

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

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

The numerical expression of this requirement is:

\[ PCC3_Y \leq 0.10 \times (POST_Y) \]

\[ PCC3_Y = \text{Electricity products retired and applied toward the RPS procurement target for compliance year } Y \text{ that must meet the criteria of section 3202 (a)(1) and the definition of Portfolio Content Category 3 specified in section 3203 (c)} \]

(9) Except as otherwise required by 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.


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

(a) Renewable Energy Resources Procurement Plan

(1) Within 60 calendar days of the effective date of these regulations, each POU shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS procurement requirements for each compliance period. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption. A POU that has previously adopted a renewable resources procurement plan before the effective date of
these regulations does not need to adopt a new renewable energy resources procurement plan and submit the plan to the Commission if no changes are made to the plan after the effective date of these regulations.

(2) A POU that meets the criteria listed in Public Utilities Code section 399.30 (j) shall adopt a renewable energy resources procurement plan detailing how the POU will achieve its RPS targets annually. The renewable energy resources procurement plan shall additionally provide a forecast of the qualifying hydroelectric generation expected to meet the POU’s forecasted annual electricity demand. The renewable energy resources procurement plan, and any revisions or updates to the plan, shall be submitted to the Commission within 30 calendar days of adoption.

(3) Each POU shall provide the following notice regarding new or updated renewable energy resources procurement plans:

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

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

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

(b) Enforcement Program

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

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

(A) No less than 30 calendar days notice shall be given to the public of any meeting held for purposes of adopting the enforcement program.
(B) If the enforcement program is modified or amended, no less than 10 calendar days notice shall be given to the public before any meeting is held to make a substantive change to the enforcement program.

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

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

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

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

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

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


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 in one compliance period to a subsequent compliance period, as specified in paragraphs (B) – (D) and subject to the following limitations:

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 counted as excess procurement.

2. Electricity products that meet the criteria of section 3202 (a)(1) and that exceed the maximum limit for Portfolio Content Category 3, as specified in section 3204 (c), must be subtracted from the calculation of excess procurement.

3. Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2).

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

(C) Electricity products qualifying as excess procurement may be applied toward any future compliance periods, including compliance years following 2020.

(D) Excess procurement shall be calculated as follows:

1. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2013, is:

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

$$EP_x = Electricity\ products\ retired\ and\ applied\ toward\ the\ RPS\ procurement\ target\ for\ the\ compliance\ period\ X$$

$$RPS_x = The\ RPS\ procurement\ target\ calculated\ in\ section\ 3204\ (a)\ for\ compliance\ period\ X$$

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

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

2. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2016, is:
3. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2020, is:

$$\text{Excess Procurement} = (\text{EP}_{2014-2016}) - (\text{RPS}_{2014-2016} + \text{S3}_{2014-2016} + \text{STC}_{2014-2016})$$

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

$$\text{Excess Procurement} = (\text{EP}_Y) - (\text{RPS}_Y + \text{S3}_Y + \text{STC}_Y)$$

$\text{EP}_Y =$ Electricity products retired and applied toward the RPS procurement target for the compliance year $Y$

$\text{RPS}_Y =$ The RPS procurement target calculated in section 3204 (a) for compliance year $Y$

$\text{S3}_Y =$ Retired PCC 3 RECs that meet the criteria of section 3202 (a)(1) in excess of the maximum calculated in section 3204 (c) for compliance year $Y$

$\text{STC}_Y =$ All electricity products that meet the criteria of section 3202 (a)(1) or section 3202 (a)(3), are associated with contracts less than 10 years in duration, and are retired and applied toward the RPS procurement target for compliance year $Y$

(E) Notwithstanding section 3206 (a)(1)(A)-(D), a POU that meets the criteria of section 3204 (a)(8) or section 3204 (a)(9) may adopt rules permitting the POU to apply excess procurement 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 counted as excess procurement. Electricity products that exceed the maximum limit for unbundled RECs specified in paragraph 5 must be subtracted from the calculation of excess procurement.

2. Electricity products procured under contracts of less than 10 years in duration shall be subtracted from the calculation of excess procurement, unless the electricity product meets the criteria in section 3202 (a)(2).

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

4. Electricity products qualifying as excess procurement may be applied toward any future compliance periods, including compliance years following 2020.
5. Excess procurement shall be calculated as follows:

   i. The numerical expression of the excess procurement permitted for the compliance period ending December 31, 2013, is:

   \[
   \text{Excess Procurement} = (EP_{2011-2013}) - (RPS_{2011-2013} + UR_{2011-2013} + STC_{2011-2013})
   \]

   \( UR_{2011-2013} = \text{Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2013, that exceed an amount equal to 25 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.} \]

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

   \[
   \text{Excess Procurement} =
   (EP_{2014-2016}) - (RPS_{2014-2016} + UR_{2014-2016} + STC_{2014-2016})
   \]

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

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

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

   \( UR_{2017-2020} = \text{Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, 2020, that exceed an amount equal to 10 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.} \]

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

   \[
   \text{Excess Procurement} = (EP_{Y}) - (RPS_{Y} + UR_{Y} + STC_{Y})
   \]

   \( UR_{Y} = \text{Unbundled RECs that do not meet the criteria of section 3202 (a)(2) and are retired and applied toward the RPS procurement target for compliance period ending December 31, Y.} \]
year $Y$ that exceed an amount equal to 10 percent of the electricity products that meet the criteria of section 3202 (a)(1) and are retired and applied toward the RPS procurement target.

(2) Delay of timely compliance

(A) A POU may adopt rules permitting the POU to make a finding that conditions beyond the control of the POU exist to delay the timely compliance with RPS procurement requirements, as defined in section 3204. Such a finding shall be limited to one or more of the following causes for delay and shall demonstrate that the POU would have met its RPS procurement requirements but for the cause of delay:

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

   i. The POU has undertaken all reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources, in light of its expectation for cost recovery.

   ii. The POU has taken all reasonable operational measures to maximize cost-effective purchases of electricity from eligible renewable energy resources in advance of transmission availability.

2. Permitting, interconnection, or other circumstances have delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. The POU must also find that:

   i. The POU prudently managed portfolio risks, including, but not limited to, holding solicitations for RPS-eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.

   ii. The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.

   iii. 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.
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 was necessary to address the needs of a balancing authority.

(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) Such cost limitation rules shall ensure that:

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

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

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

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

(E) 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.

(4) Portfolio balance requirement reduction

(A) A POU may adopt rules that allow for the reduction of the portfolio balance requirement for Portfolio Content Category 1 for a specific compliance period consistent with Public Utilities Code section 399.16 (e).

(B) The need to reduce the portfolio balance requirements for Portfolio Content Category 1 must have resulted because of conditions beyond the control of the POU as provided in section 3206 (a)(2).

(C) A reduction of the portfolio balance requirement for Portfolio Content Category 1 below 65 percent for any compliance period after December 31, 2016, will not be considered consistent with Public Utilities Code section 399.16 (e).
(D) A POU that reduces its portfolio balance requirements for Portfolio Content Category 1 must adopt these changes at a publicly noticed meeting, providing at least 10 calendar days advance notice to the Commission, and must include this information in an updated renewable energy resources procurement plan submitted to the Commission. The notice to consider the portfolio balance requirement reduction and the procurement plan must include the following information:

1. The compliance period for which the reduction may be adopted.
2. The level to which the POU has reduced the requirement.
3. The reason or reasons the POU has proposed for adopting the reduction.
4. An explanation of how the needed reduction resulted from conditions beyond the control of the POU as provided in section 3206 (a)(2).

(5) Historic Carryover

(A) A POU may adopt rules that allow for procurement generated before January 1, 2011, that meets the criteria of section 3202 (a)(2), that is in excess of the sum of the 2004 – 2010 annual procurement targets defined in section 3206 (a)(5)(D) and that was not applied to the RPS of another state or to a voluntary claim, to be applied to the POU’s RPS procurement target for the compliance period ending December 31, 2013, or for any subsequent compliance period.

(B) The historic carryover must be procured pursuant to a contract or ownership agreement executed before June 1, 2010. Both the historic carryover and the procurement applied to the POU’s annual procurement targets must be from eligible renewable energy resources that were RPS-eligible under the rules in place for retail sellers at the time of execution of the contract or ownership agreement, except that the generation from such resources need not be tracked in the Western Renewable Energy Generation Information System. If the contract or ownership agreement is executed prior to April 21, 2004, the procurement must be from resources that were RPS-eligible under the rules in the RPS Guidelines in place as of April 21, 2004.

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

(D) The RPS compliance obligation used to calculate a POU’s historic carryover shall be based on the following:
1. A baseline of an amount equal to 2001 procurement divided by 2001 total retail sales, multiplied by 2003 total retail sales, plus 1 percent of 2001 total retail sales (or, if the POU was not in existence in 2001, “2001” in this calculation shall be replaced by the first full calendar year in which the POU was operational, and “2003” in this calculation shall be replaced by the second full calendar year after which the POU was operational). The numerical expression of the baseline is:

\[
Baseline = (EP_{2001} \times RS_{2003}) + (0.01 \times RS_{2001})
\]

\[
EP_x = \text{Electricity products procured and retired and applied toward the RPS}
\]

\[
procurement target for the specified year }X
\]

\[
RS_x = \text{Total retail sales made by the POU for the specified year }X
\]

2. Annual procurement targets for 2004-2010 that are equal to the lesser of 20 percent of the previous year’s retail sales or 1 percent of the previous year’s retail sales greater than the annual procurement target for the previous year. The POU’s annual procurement target for 2004 shall be equal to the lesser of 20 percent of 2003 retail sales or the baseline plus 1 percent of 2003 total retail sales, and the annual procurement target for 2010 shall be an amount equal to 20 percent of 2010 total retail sales. For POUs 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) 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.


Section 3207 – Compliance Reporting for POUs

(a) Each POU shall submit the following reports to the Commission as required by this section.

(b) Within 90 calendar days after the effective date of these regulations, any POU that has adopted rules allowing for historic carryover, in accordance with section 3206 (a)(5), shall submit documentation to the Commission including all applicable procurement claims by RPS-certified facility and generation month for January 1, 2004 – December 31, 2010 (or the date on which the POU became operational through December 31, 2010), baseline calculations used to determine the amount of historic carryover claimed, annual procurement target calculations for 2004-2010, and any other pertinent documentation necessary.

(c) By September 1, 2013, or 30 calendar days after the effective date of these regulations, whichever is later, and by July 1 of each year thereafter, each POU shall submit an annual report to the Commission that includes the information in paragraphs (1) - (4) below for the prior calendar year. The report submitted in 2013 shall include information required by paragraphs (1)-(4) below for both the 2011 and 2012 calendar years. The format for the annual report shall be specified by the Commission, but the information contained in the annual report may be combined with other existing reports that contain the same information and are also supplied to the Commission. If the annual report refers to information provided to the Commission through existing reports, the annual report shall
reference the information by identifying the name, submittal date, and page number of the 
estanding report.

(1) POU identifying information, including:

(A) POU name, contact name, mailing address, phone number, and e-mail address.

(B) Year the POU was established.

(C) Number of end-use retail customer accounts in California.

(2) RPS annual progress information for the prior calendar year, including:

(A) Amount of total retail sales to end-use customers, in MWh, and projected retail sales 
for the current compliance period.

(B) Amount of procured electricity products retired, in MWh.

(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 interim tracking 
system established by the Commission prior to the implementation of WREGIS.

(D) An initial, nonbinding classification of retired electricity products qualifying for each 
portfolio content category or qualifying to count in full in accordance with section 
3202 (a)(2).

(E) A description of 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, the contracted amount of MWh as a 
percentage of retail sales, resource fuel type, the execution date of the procurement 
contract or ownership agreement, the duration of the procurement contract or 
ownership agreement, a summary of the procurement contract or ownership 
agreement, the operational status of the resource, the date the resource came on-line, 
the date the resource came on-line using a renewable fuel or technology, if different, 
the date on which procurement of electricity products begins, if different, RPS 
certification status, the county, state, and country in which the resource is located, 
and a summary of the resource names and identification numbers.

(F) Documentation demonstrating the portfolio content category classification claimed 
for procured electricity products. This documentation may include interconnection 
agreements, NERC e-Tag data, scheduling agreements, firming and shaping 
agreements, and electricity product contract information.

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

(H) A description of any identified issues that occurred that have the potential to delay 
the POU’s timely compliance with the RPS procurement requirements defined in 
section 3204, and planned actions to minimize the delay of timely compliance. Such
issues may include, but are not limited to, inadequate transmission to allow for procurement to be delivered from eligible renewable energy resources, permitting, interconnection, or other circumstances that have delayed the procurement from eligible renewable energy resources, unanticipated curtailment of a contracted or owned eligible renewable energy resource, and higher-than-expected costs for the procurement or development of eligible renewable energy resources.

(I) An attestation, signed by an authorized agent of the POU, affirming that the information provided in the report is true and correct.

(3) Actions taken by the POU demonstrating reasonable progress toward meeting its RPS procurement requirements. The information reported shall include, but not be limited to, a discussion of the following actions taken by the POU during the prior calendar year:

(A) Solicitations released to solicit bid for contracts to procure electricity products from eligible renewable energy resources to satisfy the POU’s RPS procurement requirements.

(B) Solicitations released to solicit bid for ownership agreements for eligible renewable energy resources to satisfy the POU’s RPS procurement requirements.

(C) Actions taken to develop eligible renewable energy resources to satisfy the POU’s RPS procurement requirements, including initiating environmental studies, completing environmental studies, acquiring interests in land for facility siting or transmission, filing applications for facility or transmission siting permits, and receiving approval for facility or transmission siting permits.

(D) Interconnection requests filed for eligible renewable energy resources to satisfy the POU’s RPS procurement requirements.

(E) Interconnection agreements negotiated and executed for eligible renewable energy resources to satisfy the POU’s RPS procurement requirements.

(F) Transmission-related agreements negotiated and executed to transmit electricity products procured from eligible renewable energy resources to satisfy the POU’s RPS procurement requirements.

(G) Other planning activities to procure electricity products from eligible renewable energy resources.

(4) In addition to the information specified in subparagraphs (c)(3)(A) – (G), the POU shall include a description of all actions planned by the POU in the current calendar year to demonstrate progress toward achieving the POU’s RPS procurement requirements. The description of actions planned shall include, but not be limited to, a discussion of activities specified in subparagraphs (c)(3)(A) – (G).

(d) By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, each POU shall submit to the Commission a compliance report that addresses the reporting
requirements of section 3207 (c) and the following information for the preceding compliance period:

(1) Classification per RPS-certified facility of the amount of procurement qualifying for each portfolio content category and procurement that shall count in full in accordance with section 3202 (a)(2).

(2) The POU’s RPS procurement target for the compliance period, in MWh.

(3) The amount of excess procurement, in MWh, from previous compliance periods, if any, and historic carryover, if any, that the POU is applying to the compliance period.

(4) The amount of procurement retired, in MWh, that the POU wishes to claim toward the RPS procurement target for calculating the portfolio balance requirements.

(5) The amount of excess procurement, in MWh, 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)(D) or section 3206 (a)(1)(E), as applicable.

(6) If a POU’s compliance report indicates that the POU’s RPS procurement requirements were not met, the POU shall 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. The POU shall also submit an updated enforcement program and/or procurement plan that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU’s shortfall.

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

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

(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, that the POU receives greater than 67 percent of its electricity sources to meet its electricity demands on an annual basis from qualified hydroelectric facilities as defined in section 3204 (a)(7). 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) Incorrect and incomplete reports.

(1) If the Executive Director determines a report submitted by a POU pursuant to this section is incorrect or incomplete, he or she shall issue a written notice to the POU specifying what information is missing or needs to be corrected in the report. If a POU submits the missing or correct information to the Commission within ten (10) business days of receipt of such notice, the POU’s initial failure to submit a complete and correct report 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 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 is due to the Commission. 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 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 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.

Section 3208 – Enforcement

(a) Any complaint against a POU pertaining to the enforcement of a RPS requirement, or any regulation, order, or decision adopted by the Commission pertaining to the RPS, shall be filed in accordance with Title 20, section 1240 of the California Code of Regulations.

(b) A complaint may be issued for a POU’s failure to comply with any of the requirements in these regulations, including, but not limited to any of the following:

(1) Failure to meet an RPS procurement target as specified in subdivision (a) of section 3204 for reasons other than the POU’s adopted cost limitations and/or delay of timely compliance rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2) and (3) of section 3206

(2) Failure to meet a Portfolio Content Category 1 portfolio balance requirement as specified in subdivision (c) of section 3204 for reasons other than the POU’s adopted cost limitation and/or delay of timely compliance rules which the Commission determines comport with the RPS requirements as specified in subdivisions (a)(2) and (3) of section 3206

(3) Failure to adopt an RPS procurement plan, enforcement program or plan, or provide notice, disclosure, or other information to the Commission and public as specified in section 3205

(4) Failure to submit a complete annual, compliance, or other report, or other documentation or information as specified by section 3207.

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

(1) No complaint for the failure of a local publicly owned electric utility 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, may be filed by any person or entity listed in section 1231, except Commission staff.

(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 following:

(A) A statement of facts upon which the complaint is based.

(B) A statement indicating the statute, regulation, order, or decision upon which the complaint is based.

(C) The action the Commission is requested to take.

(D) The authority for the Commission to take such action.

(3) A declaration under penalty of perjury shall not be required for the filing of a complaint under this section 1240.

(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 with the Chief Counsel within 45 calendar days after service of the complaint. In addition to those matters set
out in section 1233 (b), 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 factors related to any alleged violation.

(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, respondent 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 with the Chief Counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.

(2) In the event that Commission staff files a response under (e)(1), the local publicly owned electric utility may file with the Chief Counsel a reply to such response no later than 10 calendar days from receipt of such response. The reply shall be served upon Commission staff upon filing.

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than 30 calendar days after the filing of a staff response pursuant to subdivision (e) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section 1234 (b). Such notice shall be provided no later than 30 calendar days after the last filing is made.

(3) The hearing may be scheduled before the full 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 full Commission, the proposed decision set out in section 1235 shall be forwarded to the full Commission, to the extent reasonably possible, no later than 45 calendar days after the hearing has been concluded. If the hearing is held before the full Commission, to the extent reasonably possible, the Commission shall publish its decision within 45 calendar days after the hearing has been concluded.

(g) The decision of the full 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, upon which the 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 (l) and (m).
(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 full Commission, together with the record of proceedings, to the Air Resources Board for determination of a penalty. 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 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.