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PROPOSED DECISION

Agenda ID #15774 (Rev. 1)
Ratesetting
6/29/2017 Item #18

Decision **PROPOSED DECISION OF ALJ SIMON** **(Mailed 5/26/2017)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 15-02-020 (Filed February 26, 2015)

DECISION REVISING COMPLIANCE REQUIREMENTS FOR THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD IN ACCORDANCE WITH SENATE BILL 350

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Appendix A - Selected Public Utilities Code Sections

DECISION REVISING COMPLIANCE REQUIREMENTS FOR THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD IN ACCORDANCE WITH SENATE BILL 350

Summary

This decision implements new compliance requirements for the California renewables portfolio standard (RPS) program in response to changes made by Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547. The most important changes addressed by this decision go into effect beginning with the compliance period that runs from January 1, 2021 to December 31, 2024. These changes affect the role of long term contracts in RPS procurement requirements and the methodology for determining how excess procurement in one compliance period may be applied to later compliance periods. In implementing these changes, this decision:

1. Implements new rules for use of long term contracts in RPS compliance for all compliance periods beginning January 1, 2021;
2. Implements new rules for applying excess procurement in one compliance period to later compliance periods for all compliance periods beginning January 1, 2021;
3. Provides direction for early compliance with the new long term contract and excess procurement rules in the 2017-2020 compliance period; and
4. Integrates changes made by SB 350 into the ongoing RPS compliance process.

1. Procedural History

Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547, enacted wide-ranging changes and updates to a number of areas of California's energy policy, including but not limited to the renewables portfolio standard (RPS). SB 350 made changes to, among other aspects, the duration of the RPS mandate; the

timing of compliance periods; the required proportion of retail sales that California retail sellers must provide from eligible renewable energy resources; the contractual arrangements that may be used to comply with the RPS procurement requirements; and the methods for carrying over excess procurement from one compliance period to later compliance periods.

In this proceeding, implementation of SB 350's provisions for the RPS program began with the Administrative Law Judge's Ruling Requesting Comment on Implementation of Elements of Senate Bill 350 Relating to Procurement Under the California Renewables Portfolio Standard (April 15, 2016). Comments were filed on May 5, 2016.[1] Reply comments were filed on May 16, 2016.[2]

In Decision (D.)16-12-040, the Commission implemented the new compliance periods and procurement quantity requirements set by SB 350.[3] The

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[1] Comments were filed by: Alliance for Retail Energy Markets (AReM); Bioenergy Association of California; California Farm Bureau Federation (Farm Bureau); California Municipal Utilities Association (CMUA); Center for Energy Efficiency and Renewable Technologies (CEERT); Green Power Institute (GPI); Independent Energy Producers Association (IEP); Liberty Utilities (CalPeco Electric L.L.C .), Bear Valley Electric Service, PacifiCorp (jointly) (collectively, CASMU); Noble Americas Energy Solutions LLC (Noble); Pacific Gas and Electric Company (PG&E); L. Jan Reid (Reid); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SCE); Shell Energy North America (US), L.P. and Commerce Energy, Inc. (jointly; collectively, Shell/Commerce); and The Utility Reform Network and the Coalition of California Utility Employees (jointly; collectively, TURN/CUE).

[2] Reply comments were filed by: AReM; CASMU; CMUA; Coalition of California Utility Employees and The Utility Reform Network (jointly) (collectively, TURN/CUE); Large-Scale Solar Association (LSA); Noble; Office of Ratepayer Advocates (ORA); PG&E; SDG&E; SCE; and Sonoma Clean Power Authority (Sonoma).

[3] *See* D.11-12-020 at Sections 3.4-3.5 for a discussion of the terminology "procurement quantity requirement," to describe the percentage of retail sales required to be procured from eligible renewable energy resources. This is usually shortened by parties, Energy Division staff, and in decisions to "PQR."

Commission stated that later decisions would address revisions to compliance and enforcement rules needed to implement SB 350.

2. Plan of this Decision

This decision is the second in a planned series of decisions implementing SB 350's changes to the RPS program. This decision will implement the new compliance requirements. A subsequent decision will conclude the series by implementing any needed changes to RPS enforcement processes, including potential penalties. This is analogous to the Commission's implementation of SB 2 (1X) (Simitian), Stats. 2012, ch. 1, in D.12-06-038 (compliance) and D.14-12-023 (enforcement). [4]

A brief review of the basic principles of statutory construction relied on in this decision, and other RPS decisions, is useful. The California Supreme Court has enunciated clear standards for courts or agencies construing a statute. The Commission must:

> . . . look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy . . . .
>
> Where more than one statutory construction is arguably possible, our policy has long been to favor the construction that leads to the more reasonable result. This policy derives largely from

[4] The sections of SB 350 addressed in this decision are reproduced in Appendix A. They are Pub. Util. Code §§ 399.13(a)(4)(B); 399.13(a)(6); 399.13(b); 399.16(c); 399.16(d). All further references to sections are to the Public Utilities Code unless otherwise noted.

the presumption that the Legislature intends reasonable results consistent with the apparent purpose of the legislation.[5]

3. Discussion

3.1. Long-Term Contracts

3.1.1. Background

From the beginning of the RPS program, the Legislature has identified procurement through the use of long term contracts as a priority.[6] In the initial decision implementing the RPS program, D.03-06-071, the Commission determined that no contracts of less than 10 years should be offered by the Investor-Owned Utilities (IOUs), since such contracts "do not appear likely to promote development of new renewable resources." (At 58.)[7]

The Commission looked at the role of long term contracts in depth in D.06-10-019, after a hearing in which a variety of parties and market participants offered testimony. The Commission determined that, because it was necessary to have contracts of at least ten years in order for developers to be able to finance new renewable energy projects, the requirement for IOUs to offer 10-year

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[5] *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 387-388. (*See* also, e.g., *People v. Canty* (2004) 32 Cal.4th 1266, 1276; *Lungren v. Deukmejian* (1988) 45 Cal. 3d 27, 735.)

[6] In the original RPS legislation, SB 1078 (Sher), Stats. 2002, ch. 516, then-Section 399.14(a)(4) provided that: "In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration."

Following the convention set in D.07-05-028, contracts of at least 10 years are referred to as "long term contracts." Contracts of any duration that is less than 10 years are "short term contracts."

[7] The Commission did allow shorter contracts that were proposed by the developer and were individually approved by the Commission. (n.52 at 58.) In D.06-03-016, this position was reaffirmed.

contracts was essentially self-implementing. In view of the fact that only long term contracts would provide the basis for new renewable generation resources, the Commission concluded that allowing short term contracts would not undercut the mandate for long term contracts; it therefore allowed IOUs to enter into contracts as short as one month, subject to Commission approval of the specific contract. (D.06-10-019, Conclusions of Law 14-16; Ordering Paragraphs (OPs) 16-17.)

This framework was reworked by the Legislature in SB 107 (Simitian), Stats. 2006, ch. 464.[8] SB 107 allowed the use of short term contracts if the Commission established rules for the use both of long term contracts and of contracts of any length with renewable generation facilities built after January 1, 2005 (which the Commission termed, for purposes of this requirement, "new facilities") D.07-05-028, OP 1.

This provision was implemented in D.07-05-028. The Commission required that a retail seller must enter each year into long term contracts and/or

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[8] Section 399.14(b), as amended by SB 107, provided:

> (b) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, subject to the following conditions:
> (1) No supplemental energy payments shall be awarded for a contract of less than 10 years' duration. The ineligibility of contracts of less than 10 years' duration for supplemental energy payments pursuant to this paragraph does not constitute an insufficiency in supplemental energy payments pursuant to paragraph (4) or (5) of subdivision (b) of Section 399.15.
> (2) The commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

The provisions of former Section 399.14(b)(1), relating to the former process for supplemental energy payments, are not relevant to this discussion.

contracts with new facilities for energy deliveries equivalent to at least 0.25% of that retail seller's prior year's retail sales, in order to be able to count for RPS compliance energy deliveries from short term contracts with RPS-eligible facilities that commenced commercial operation prior to January 1, 2005. In practice, this means that failing to comply with the long term contract signing requirement is an absolute bar to using renewable energy credits (RECs) from short term contracts for RPS compliance. This was labeled the "minimum quantity" requirement.[9]

In D.12-06-038, the Commission implemented revised Section 399.13(b) by adapting the existing framework of D.07-05-028 to the new multi-year compliance periods and PQR set by SB 2 (1X) (Simitian), Stats. 2012, ch. 1.[10] The details of making the transition from the rules in D.07-05-028 to the new SB 2 (1X) rules for long term contracting requirements are complex, as OPs 15-19 of D.12-06-038 demonstrate. However, SB 2 (1X) retained the fundamental requirement of the signing of a minimum quantity of long term contracts in order for procurement from short term contracts to be used at all for RPS

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[9] The compliance period pursuant to SB 107 was one year; hence the minimum quantity requirements were annual.

[10] Section 399.13(b) as amended by SB 2 (1X) provided:

> (b) A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration.

This provision eliminated the category of facilities that began commercial operation after January 1, 2005, focusing only on the length of the contract.

compliance. By its terms, this long term/short term procurement regime expires at the end of 2020. (D.12-06-038, OP 22.)

SB 2 (1X) also added a new requirement related to long term and short term contracts as part of its overhaul of the rules for excess procurement in one compliance period that could be applied in a later compliance period. When calculating allowable excess procurement, "the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration." (Section 399.13(a)(4)(B).) This provision was also implemented by D.12-06-038 (OP 27).

SB 2 (1X) also created a prohibition on counting any RECs described in Section 399.16(b)(3) (PCC 3) (largely but not exclusively unbundled RECs) as excess procurement.[11] This provision was implemented by D.12-06-038 (OP 30).[12]

3.1.2. SB 350

In Section 399.13(a)(6), SB 350 continues the requirement that:

> In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years duration, unless the commission approves of a contract of shorter duration.

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[11] This decision continues to use the summary categorization of procurement used in D.11-12-052 and subsequent decisions: Category 1 for procurement described in § 399.16(b)(1); Category 2 for procurement described in § 399.16(b)(2); and Category 3 for procurement described in § 399.16(b)(3). Following the shorthand usage adopted by Energy Division staff and the parties, these categories may also be referred to as PCC 1, PCC 2, and PCC 3, respectively.

[12] The process for implementing the new excess procurement rules established by SB 2 (1X) is discussed in Section 3.7 of D.12-06-038.

SB 350 also provides a new role for long term contracts in RPS compliance, beginning with the 2021-2024 compliance period.[13] New Section 399.13(b) provides:

> A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.

This new provision shifts the focus from the current "minimum quantity" requirement that applies at the inception of RPS procurement contracts, to a minimum percentage of procurement that must be shown at the end of a compliance period (the "LT requirement"). How this change will work in practice is discussed below.

3.1.3. Long-Term Contract Procurement Percentage Requirement

The 65% requirement for procurement from long term contracts that is set by the LT requirement is a new element in RPS compliance calculations. It is one of three current quantitative requirements:

- the overall percentage of retail sales that must be supplied by eligible renewable resources in each compliance period (PQR);
- the portfolio balance requirement (PBR) added by SB 2 (1X) that provides quantitative minimum and maximum procurement requirements in each of its three categories;[14]

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[13] These changes will also apply to any retail seller that voluntarily undertakes to meet these requirements in the 2017-2020 compliance period. *See* Section 3.1.6., below.

[14] The PBR is set out in Section 399.16(c). It is explained and implemented in D.12-06-038.

- the long term contracting requirement:
  - the current requirement, in the form of the minimum quantity requirement; and
  - the new LT requirement that will become effective in the 2021-2024 compliance period (or 2017-2020 for early compliance).

SB 2 (1X) both added new requirements and set ways for retail sellers to seek reductions or waivers of those requirements. Section 399.15(b)(5), added by SB 2 (1X), establishes a process for a retail seller to seek a waiver of a deficiency in meeting its PQR under certain circumstances spelled out in the statute. In D.14-12-023, the Commission implemented the process for a retail seller to seek a waiver of its PQR deficiency. Section 399.16(e), also added by SB 2 (1X), provides a method for a retail seller to request a reduction of any shortfall of Category 1 RECs in meeting the retail seller's PBR. In D.14-12-023, the Commission implemented the PBR reduction process in a manner analogous to its implementation of the process for a waiver of PQR deficiencies.

In Section 399.13(b), by contrast, SB 350 does not provide any method for waiver or reduction, or indeed for any other alteration or adjustment, of the LT requirement. The statutory authority for the PQR waiver and PBR reduction by their terms apply only to those specific processes. As explained in D.14-12-023, the waiver process set out in Section 399.15(b)(5) applies only to enforcement of "this section," i.e., Section 399.15, which sets the PQR. Section 399.16(e) provides a retail seller with the opportunity to apply "for a reduction of a procurement content requirement of subdivision (c) [of that section, Section 399.16]."

This statutory structure leads to the conclusion, advanced by PG&E and supported by AReM, CASMU, SCE, SDG&E, and TURN/CUE,[15] that that the new LT requirement must be construed as an inflexible requirement of RPS compliance.[16] If the RECs associated with long term contracts[17] add up to less than 65% of PQR, then all the RECs counted for compliance in the compliance period must be adjusted so that the RECs from long term contracts equal 65% of the RECs used for compliance. In sum, failure to meet the LT requirement forces failure to meet the PQR.[18]

Table 1, below, shows an example of the forcing effect of the new LT requirement. Table 1, using a hypothetical compliance showing in the compliance period 2021-2024, provides a simplified example of the impact of the LT requirement. None of the three tables below is intended to be a

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[15] AReM Comments at 17, Reply Comments at 6; CASMU Reply Comments at 4-5; SDG&E Comments, Appendix A; SCE Reply Comments, at 9; TURN/CUE Comments at 5. This position is also implicit in the proposed stipulation attached to PG&E's comments as Appendix B, formally titled Stipulation Regarding RPS Banking Amendment (IOU proposed stipulation), which is supported generally by the IOUs, CMUA, ORA, and TURN/CUE.

[16] CMUA, though generally supporting the IOU proposed stipulation, opposes this view of the LT requirement, arguing that it will "unnecessarily restrict the ability of retail sellers and their customers to benefit" from the SB 350 changes and could "perpetuate. . . the risk of the complete loss of value associated with retired PCC1 RECs due to the contract term." (Reply Comments at 5.)

[17] The RECs may be those retired for the current compliance period or RECs associated with long term contracts that have been carried forward as excess procurement from a prior compliance period. *See* Section 3.1.5., below for further discussion of excess procurement.

[18] In comments on the proposed decision (PD), some parties expressed concerns about whether a failure to meet the LT requirement that causes a PQR deficiency would result in the imposition of multiple penalties for essentially the same failure. This issue will be addressed in the decision on enforcement and penalties, planned to be the next decision in the series of decisions implementing SB 350's changes to RPS requirements and rules.

comprehensive guide to compliance under SB 350, but rather serves to illustrate specific features of the new compliance rules.[19]

Table 1

	Requirement	**Quantity (RECs)**	**Notes**	**Formula**
a	PQR	100,000		
b	LT requirement	65,000		*a * .65*
c	Actual RECs from LT contracts and from contracts before 6/1/2010 (or 1/14/2011)	55,000	RECs from contracts prior to 6/1/2010 (for IOUs) (or 1/14/2011 for ESPs) (PCC 0) "count in full" and are treated as LT[20]	
d	Actual RECs from ST contracts	45,000		
e	**LT RECs Deficit**	**10,000**		*b-c*
f	RECs allowed to count for PQR	84,615	Actual REC s from LT contracts / % LT required E.g., 2021-2024 CP: Actual RECS from LT contracts / .65 **Automatic PQR deficiency**	*c / .65*
g	Short term RECs counted	29,615	RECS allowed to count for PQR - Actual RECs from LT contracts	*f-c*
h	Total RECs counted	84,615		
i	**PQR deficiency**	**15,385**	Larger than LT RECs deficit; subject to waiver request (D.14-12-023 at section 2.3.1)	*a-h*
j	**RECS counted for excess procurement**	**0**	PQR not met; no excess procurement	

Working through the steps in Table 1, a further consequence of the PQR deficiency triggered by the LT requirement deficit is that the retail seller will not

[19] The more complex interactions among all the compliance rules, including the use of penalties, will be addressed in the forthcoming decision on enforcement.

[20] *See* Section 399.16, as explained and implemented in D.12-06-038. For purposes of the LT requirement, RECs from these contracts "count in full" by being counted as RECs from long term contracts.

be able to count any RECs as excess procurement. A fundamental attribute of excess procurement is that it is excess; i.e., more than needed to meet the PQR in the current compliance period. If the PQR is not met, there will be no excess procurement, even if the retail seller has retired more PCC 1 RECs in the current compliance period than are necessary to meet the PBR.

As explained in D.12-06-036 (at 55), the PBR is calculated based on the number of RECs counted toward the PQR.[21] The retail seller in this example could therefore still meet its PBR with a smaller number of RECs, so long as the RECs were assorted in the proper PBR categories for the number of RECs actually counted toward the PQR. Table 2, below, shows an example of PBR compliance for the same retail seller with the same scenario as Table 1, in the 2021-2024 compliance period.

Table 2

PBR Category	% of total RECs required	Number of RECs counted	Notes
All		84,615	Total RECs counted toward PQR
PCC 0		5,000	PCC 0 are outside the PBR system
RECs counted toward PQR minus PCC 0		79,615	PBR calculated based on this quantity
PCC 1	75% minimum	59,711	75% of 79,615
PCC 2	15% maximum	11,942	15% of 79,615 (Maximum is residual; statute gives min and max for PCC 1 and 3)[22]
PCC 3	10% maximum	7,961	10% of 79,615

[21] There is an exception for RECs associated with contracts signed prior to June 1, 2010 (for IOUs), or January 14, 2011 (for electric service providers). Those RECs are outside the PBR system. *See* D.12-06-038 at Section 3.3.2, and Section 3.1.5.1.3, below.

[22] As noted in D.11-12-052 (at 59), the maximum procurement in PCC 2 is residual. It is a calculated quantity, found by subtracting the sum of the minimum requirement for PCC 1 and the maximum allowed for PCC 3 from 100%. For example, a PCC 1 minimum allocation of 75% of RECs used for the PQR and a PCC 3 maximum of 10% of RECs used would yield a PCC 2 maximum of between 15% and 25% of RECs used for compliance in the current compliance period, depending on the proportion of PCC 3 RECs used.

In the example, the retail seller may count 84,615 RECs toward RPS compliance in the 2021-2024 compliance period. If the retail seller retired 100,000 RECs in the PBR compliant manner shown in Table 3 below, the retail seller would comply with the PBR, would still have a PQR deficiency, and would not be able to count 15,835 of the retired PCC 1 RECs either for current compliance or as excess compliance that can be applied in later compliance periods.

Table 3

Category	Number of RECs retired	Number of RECs counted for PQR	Notes
PCC 1	88,000	72,615	15,835 left
PCC 2	4,000	4,000	0 left
PCC 3	8,000	8,000	0 left
Total	100,000	84,615	15,835 RECs not counted for compliance and not excess procurement

These potential results, as set out in the example in Tables 1-3, seem counterintuitive, since they operate to strand PCC 1 RECs that SB 350 would otherwise allow to be counted as excess procurement. (*See* Section 3.1.5, below.) No assistance in understanding this puzzle is provided by either the drafting history or the legislative history of SB 350.[23] Both new Section 399.13(a)(4)(B) and new Section 399.13(b) were put into their current form by amendments made in

[23] Although no party provided an analysis of this legislative history, the Commission may, and does, take official notice of these documents pursuant to Rule 13.9. (*See* Quintano v. Mercury Casualty Co. (1995) 11 Cal.4th 1049, 1062 n.5.)

The drafts and legislative reports for SB 350 may be found at http://leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_350&sess=CUR&house=B&author=de_león_<de_leon.

the Assembly on September 4, 2015. None of the bill analyses in the Assembly and the Senate that were produced between September 4 and September 11, 2015, the date the bill was enacted, address the impact of the new LT requirement. The most relevant statements in both the Assembly Utilities and Commerce Committee analysis of September 4 and the Assembly Natural Resources Committee analysis of September 10 indicate that the two provisions have been discussed by stakeholders and are considered to be connected.

The inflexibility of the new LT requirement, though not discussed in the legislative history, is analogous to that of the current minimum quantity requirement. In the current structure, unless a retail seller signs long term contracts in the current compliance period for expected generation equal to 0.25% of its retail sales in the prior compliance period (the minimum quantity), it cannot count any RECs from short-term contracts toward its PQR for the current compliance period. (D.12-06-038 at 40). In both cases, failure to meet the requirement for procurement from long term contracts leads to an absolute bar to using some RECs for compliance at all.

3.1.4. Characterizing Long-Term Contracts

In the RPS program, long term contracts advance specific program purposes. In D.06-10-019 and D.07-05-028, the Commission adopted the parties' consensus that long term contracts are necessary in order for developers to finance new and repowered RPS-eligible generation.

Another value of long term contracts is implicit in their duration: the ability of retail sellers, as well as RPS-eligible generators, to plan for a number of years into the future. In addition to the regular RPS compliance planning process incorporated into retail sellers' annual RPS plans (see, most recently, D.16-12-044), SB 350 gives the Commission responsibility for directing integrated

resource planning for IOUs, electric service providers (ESPs), and community choice aggregators. Long term contracts thus provide a valuable resource planning function, in addition to their role in facilitating the financing of new eligible renewable energy generation resources. Both these functions advance the policy of the state to increase the use of eligible renewable energy resources and reduce the emission of greenhouse gases.[24]

The new LT requirement in SB 350 is a new approach to procurement from long term contracts, because it is applied at the end of a compliance period. It is therefore relevant to examine "what is a long term contract" for purposes of the new LT requirement, beginning in the 2021-2024 compliance period (or 2017-2020 for retail sellers electing early compliance).

3.1.4.1. Starting Date of Long-Term Contracts

Parties are virtually unanimous in their view that the Commission should not require that RECs used to comply with Section 399.13(b) must be from contracts signed (or generation facilities entering into commercial operation) on or after January 1, 2021.[25] As SCE points out, the statutory language is focused on the date of compliance, not the date of the contract.

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[24] Pub. Util. Code § 399.11, as amended by SB 350, identifies a number of desired benefits of the RPS program, including displacing fossil fuel consumption within the state (§ 399.11(b)(1)); reducing air pollution in the state (§ 399.11.(b)(3); and meeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation. (§ 399.11(b)(4).)

[25] CASMU Comments at 7; CEERT Comments at 8; GPI Comments at 3; IEP Comments at 2; LSA Reply Comments at 3; ORA Reply Comments at 5-6; PG&E Comments at 6; Reid Comments at 6; SCE Comments at 6; SDG&E Comments at 7; Shell/Commerce Comments at 3; Sonoma Reply Comments at 1; TURN/CUE Comments at 2. Noble was the only party to advance the view that complying contracts must begin after 2020. (Opening Comments at 2-3.)

The parties' near-consensus is consistent with both the statutory language and the procurement goals of the RPS program. It is not reasonable to interpret Section 399.13(b) as a "restart" button in 2021 for long term procurement when SB 350 continues to increase the percentage of retail sales that must come from RPS-eligible resources. Excluding existing long term contracts would reduce the value of the procurement from those contracts and, as SCE notes, create a disadvantage for retail sellers and their customers by undermining the value of customers' pre-existing investments in long term RPS contracts made in accordance with the program rules in effect at the time. We decline to create such a situation; long term contracts that otherwise comply with RPS requirements may be used for compliance regardless of the date they were originally signed.[26]

3.1.4.2. Substitutions and Extensions

Because the RECs from long term contracts will be counted at the end of a compliance period to meet the LT requirement, a new issue must be addressed: are the RECs still from a long term contract that can meet the LT requirement if the generator stops delivering under contract during its term? CMUA suggests that a short term contract can be used to make up the duration lost by the contract failure. (E.g., if a 10-year contract fails in Year 3, the retail seller could continue to comply with the LT requirement using RECs from a newly-executed 7-year contract.) LSA, SCE, and SDG&E disagree with this proposal. LSA and

[26] Parties commenting on this point are unanimous that compliance with general RPS requirements and the rules set out in this decision should be the only limitations on contracts that may be used. (*See* AReM Comments at 11; CASMU Comments at 12; CMUA Comments at 11; PG&E Comments at 14; ORA Reply Comments at 8; Reid Comments at 9; SCE Comments at 1; Shell/Commerce Comments at 7.)

SDG&E argue that this proposal would sanction using short term contracts instead of long term contracts to meet the LT requirement, which would be inconsistent with the statutory requirement for the use of "contracts of 10 years or more in duration. . ." SCE asserts that CMUA's proposal would provide opportunities for gaming, by allowing a retail seller to enter into a nominally long term contract that is not viable, and then replace it with one or more short term contracts.

The CMUA proposal is not consistent with the statutory requirements, for the reasons noted by the parties that oppose it. As SDG&E points out, there is no statutory provision for designating a short term replacement contract that would then count as long term for purposes of compliance with the LT requirement.[27] Nor is there any policy reason to create such a substitution. We do not adopt the CMUA proposal for using short term contracts to make up for long term contract failure.

CMUA also proposes that, without regard to issues related to contract failure, a short term contract, amended by another short term contract to make the total length of the contract at least 10 years, should be considered a long term contract for purposes of compliance with the LT requirement. (E.g., if a 7-year contract is amended to extend the term by 4 years, it becomes a long term contract because its total duration is at least 10 years.)

LSA's concern that CMUA's proposals would allow the use of short term rather than long term contracts to meet the LT requirement is a valid one. Both with respect to "making up" for a contract failure, and with respect to "stacking"

[27] SDG&E Reply at 6-7.

successive short term contract amendments, the result is not a long term contract that meets the LT requirement. Some hypothetical examples illustrate the issues.

> Example A: Contract A begins August 1, 2011 and ends July 31, 2016. In June 2016, the contract is amended so that it ends July 31, 2021.
>
> Example B: Contract B begins August 1, 2011 and ends July 31, 2022. In June 2022, the contract is amended so that it ends July 31, 2023.
>
> Example C: Contract C begins August 1, 2015 and ends July 31, 2019. In June 2019 it is amended to end July 31, 2029.

In the examples given above, Contract A is a short term contract that is extended by short-term amendments to have a first date to last date duration of at least 10 years. By contrast, Contract B was a long term contract at its inception that is subsequently amended in less than a 10-year increment. Contract C began as a short-term contract, but was amended with one amendment that is 10 years in duration.

Contract A began as a short term contract and has been extended for a period of less than 10 years. Adding short term extensions to short term contracts does not provide either financial stability or planning stability. This process, exemplified by Contract A, should not create a long term contract for RPS compliance purposes. Contract A should therefore not be considered to be a long term contract.

Contract B began as a long term contract and has been extended for a period of less than 10 years. Because any extensions build on the value created by the initial long term period, a contract that begins as a long term contract and is then extended for any period of time should be considered a long term contract for RPS compliance purposes for its entire duration. Contract B should therefore be considered to be a long term contract for its entire duration.

Contract C began as a short term contract and has been extended for a period of 10 years. The extension provides the economic and planning stability of a long term contract. The original short term contract, however, does not. A contract that adds a continuous period of 10 years or more to an earlier short term contract should be considered a long term contract starting with the extension, but the original short term contract period should continue to be classified as short term. Contract C should therefore be considered to be a long term contract beginning with the June 2019 amendment of 10 years duration.

In sum, if the original RPS procurement contract is 10 years or more in duration, the contract will be considered long term for all subsequent extensions. If a short term RPS procurement contract is amended by an extension of at least 10 continuous years in duration, the contract will be considered a long term contract from the date of that amendment through the life of the contract.[28]

The rules for long term contracts set out in this decision apply to the SB 350 LT requirement. They are unnecessary for the current minimum quantity requirement, which is based on the long term contracts signed in the compliance period in which the minimum quantity is determined. Retail sellers therefore have no incentive to sign contracts less than 10 years in duration in that compliance period and try to make them into long term contracts later, since only long term contracts at the time of contract signing count for compliance with the current minimum quantity requirement.

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[28] These rules are not intended to alter the provisions of Section 399.16(d)(3), governing the conditions under which a contract or ownership agreement originally executed prior to June 1, 2010 (for IOUs) or January 14, 2011 (for ESPs; *see* Section 399.16(c)(4)) may be amended and continue count in full toward RPS procurement requirements.

3.1.4.3. Variations

Although the primary model for the LT requirement is a retail seller's contract of at least 10 years in duration for eligible renewable resources, there are additional methods of complying with the LT requirement.

3.1.4.3.1. Repackaged Contracts

A special case of long term contracts is the "repackaged" contract, in which a long term contract for a large volume of generation is divided into smaller pieces, with the pieces being sold to several different parties. This was first authorized in D.07-05-028. The authorization was revised by D.12-06-038 to allow the repackaging of long term contracts into contracts smaller in volume, but still long term in duration. It is proposed again by CMUA, supported by PG&E, SCE, SDG&E, and TURN/CUE, to be available to meet the new LT requirement.

The use of repackaged long term contracts is reasonable in the context of the new SB 350 requirements. Such contracts may be used to meet the LT requirement, so long as they are truly long term, i.e., the retail seller's contract for its repackaged share of the generation has a duration of at least 10 years. The RECs claimed for compliance must be from the retail seller's long term contract only; RECs from other repackaged contracts may only be allocated to the contracting parties for those contracts. For any repackaged contract, the contractual arrangements must be sufficiently clear that the California Energy Commission (CEC) is able to verify the RECs claimed from the contract by the

retail seller, and this Commission is able to verify any compliance claims related to the repackaged contract.[29] (*See* Section 3.4, below.)

3.1.4.3.2. Ownership and Ownership Agreements

The terms "ownership" and "ownership agreement[s]" were introduced by SB 2 (1X) in Section 399.16(d). The Commission adopted the terms but did not discuss them in D.12-06-038. In order to provide greater clarity on compliance requirements under new Section 399.13(b), it is now necessary to be more precise about ownership and ownership agreements.

Ownership is not a problematic concept in this context. All parties implicitly accept that the usual idea of ownership applies to ownership of facilities that provide generation of eligible renewable energy resources.[30] Since ownership, as a general matter, is a state with indefinite duration, RECs from an eligible renewable energy resource of which the retail seller has ownership should meet the LT requirement.[31]

An ownership agreement, by logical inference, is an agreement for less than full ownership of eligible renewable energy resources. If the ownership interest were complete, it would simply be "ownership."[32] For purposes of RPS

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[29] In the allocation of RPS tasks between the CEC and this Commission, verification of REC claims is the responsibility of the CEC. (Section 399.25.) Review of retail sellers' categorization of contracts as long term or short term for purposes of RPS compliance is the responsibility of this Commission, through Energy Division staff.

[30] Ownership is commonly understood as the state of having or holding as property. (*See* Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/own.)

[31] *See* section 3.4, below, for requirements to demonstrate continuing ownership.

[32] Shell/Commerce states that an ownership agreement might encompass an agreement to own all of an RPS-eligible facility. (Comments at 4.) Shell/Commerce does not develop this thought. Because this idea is not developed, and is not consistent with commercial practice in the RPS program, it is not adopted.

compliance, therefore, an ownership agreement is an agreement for a retail seller to own a proportion of an eligible renewable energy resource.

Shell/Commerce, alone among the parties, asserts that an "ownership agreement" of any length should suffice to meet the requirements of Section 399.13(b).[33] As TURN/CUE point out, this assertion is not consistent with the logic of the new provisions. If a long term contract must be at least 10 years in duration, an ownership agreement should be at least equivalent in duration.[34] To read the statutory provision as Shell/Commerce argues would undermine the express long term contract requirement by opening the possibility that RECs from short-term deals simply described as "ownership" or "ownership agreements" could be used to fill the entire LT requirement. This would render Section 399.13(b) incoherent on its face, and ineffective in practice to meet its purpose of encouraging long term procurement of eligible renewable energy resources.

The RECs claimed from any ownership agreement must, as SCE points out, constitute no more than the retail seller's claimed proportion in the ownership agreement; that is, a retail seller may not claim 10% of the RECs associated with a particular eligible renewable energy resource when the ownership agreement provides a 5% ownership share. In addition, the ownership agreement must be sufficiently clear that the CEC is able to verify the RECs claimed by the retail seller by virtue of the ownership agreement, and this Commission is able to confirm any compliance claims.

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[33] Shell/Commerce Comments at 3-4.

[34] TURN/CUE Reply at 3-4.

3.1.4.3.2.1. Other Arrangements

In its comments on the PD, Liberty CalPeco identifies a situation currently unique to its operations: an arrangement in which a third party has initial ownership of a generation facility (in the case proposed, for tax equity purposes), but the retail seller is recognized by the Commission as the functional owner and will assume ownership at some point in the future. Although it is not possible to use this example to create a general rule, it is reasonable to consider as "ownership," for RPS compliance purposes, an ownership arrangement that has been recognized by the Commission as being structured to allow a retail seller to have significant control over an eligible renewable energy generation facility and to lead to the retail seller becoming the permanent owner of the generation facility.

3.1.4.3.3. Procurement Entities

For the past ten years, all retail sellers have had the option of seeking the Commission's authorization to have

> a procurement entity. . .enter into contracts on behalf of customers of a retail seller for electricity products from eligible renewable energy resources to satisfy the retail seller's renewables portfolio standard procurement requirements.[35]

Although no requests to employ a procurement entity have been made in the RPS program to date, the Commission continues to encourage retail sellers to

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[35] Section 399.13(f)(1). This is the current statutory authorization for the use of procurement entities. Similar authorizations have been available since the beginning of the RPS program. SB 1078 provided that IOUs could use "another entity" to enter into RPS contracts. (Then-Section 399.14(e).) The option became available to all retail sellers when SB 107 became effective January 1, 2007 (*see* amended Section 399.14(f)), and has been retained in all subsequent statutory revisions of the RPS program.

consider whether use of a procurement entity might facilitate their compliance with RPS procurement requirements.[36]

3.1.5. Excess Procurement That Can Be Applied in Later Compliance Periods

SB 2 (1X) introduced both the use of procurement content categories for RECs and a new system of counting RECs that could be used as excess procurement to be applied in later compliance periods. The calculations for excess procurement rely on a combination of the PCC classification of the RECs and whether the RECs are associated with short term or long term contracts.[37]

Under SB 2 (1X), RECs in PCC 1 or PCC 2 that are excess after a retail seller has met its PQR can be counted as excess procurement that can be carried forward only if they are associated with long term contracts; RECs from short term contracts must be subtracted before excess procurement is calculated. RECs in Category 3 (largely but not exclusively unbundled RECs) cannot be counted as excess procurement at all. Additionally, PCC 3 RECs in excess of their PBR percentage for that compliance period must be subtracted from the number of RECs otherwise available to be counted as excess procurement.[38]

SB 350 changes the eligibility of RECs to be counted as excess procurement, and with that, also changes the way excess procurement is

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[36] *See*, e.g., D.12-06-038 at 45. ("Although the Commission cannot and does not require the use of a procurement entity, we continue to urge smaller retail sellers to give serious consideration to the use of this RPS procurement option.")

[37] SB 2 (1X) at Section 399.13(a)(4)(B); D.12-06-038 at Section 3.7 and OPs 27-32.

[38] *See* D.12-06-038 at 62-74; OPs 27-32.

These rules continue to apply to all retail sellers through the 2017-2020 compliance period, unless a retail seller elects early compliance with the new SB 350 rules. (Section 399.13(a)(4)(B).)

calculated. SB 350 simplifies the excess procurement calculation in some respects. The new rules allow all excess PCC 1 RECs to be counted as excess procurement, whether associated with long term or short term contracts. No PCC 2 or PCC 3 RECs may count as excess procurement, whether from long term or short term contracts.[39] The need to subtract all RECs from short-term PCC 1 and PCC 2 contracts, as well as excess PCC 3 RECs from the excess procurement calculation is eliminated.

SB 350 does not, however, change the basic requirement that RECs can be counted as excess procurement only if the PQR has been met. It is not possible to have excess procurement if there is a PQR deficiency; in other words, if there is a deficit, there cannot be an excess.[40]

PG&E and SCE, supported by AReM, CASMU, and CMUA, argue to the contrary, that a PQR deficiency and a REC excess can exist simultaneously. PG&E asserts that, although the LT requirement is an absolute requirement, the LT requirement is "independent" of the excess procurement rules.[41] In PG&E's view, a retail seller is entitled to count as excess procurement all RECs retired for

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[39] AReM, ORA, PG&E, Reid, SCE, SDG&E, Shell/Commerce and TURN/CUE all agree that PCC 2 and PCC 3 RECs may not be counted as excess procurement.

[40] In D.14-12-023, the Commission addressed this issue in some detail, with the requirements that all available RECs must be applied before any request for a waiver of a PQR deficiency may be made.

[41] This position is elaborated in the IOU proposed stipulation (Attachment B to PG&E's opening comments) at 1, where PG&E states:

> The long term contracting requirement found in Section 399.13(b) is a separate, additional requirement with which all LSEs [load serving entities] must comply. That requirement does not limit whether a Renewable Energy Credit (REC) is eligible to count as bankable excess procurement. [internal footnote omitted.]

RPS compliance that are more than the number of RECs required for the PQR—even if fewer RECs are counted for the PQR than are necessary to meet it.[42]

This position would turn the RPS compliance process on its head. RPS compliance is based on attainment of the procurement requirements set for each compliance period, consistent with the compliance rules set by statute and implemented by Commission decisions. If a retail seller meets its compliance requirements and has RECs retired for RPS compliance that are not needed to meet those requirements, the RECs may be counted as excess procurement (if they meet the rules governing excess procurement).

PG&E's position, however, is that all RECs retired for RPS compliance may be counted as excess procurement (if they meet the rules governing excess procurement) except for the RECs that are counted for compliance. It does not matter, in PG&E's view of how RECs are counted for excess procurement, whether the retail seller in fact complies with the procurement quantity requirements for the compliance period or does not comply.

This view is not consistent with the basic structure of the statute, which is built around attainment of the quantitative procurement requirements set by statute for each compliance period. A retail seller may count RECs as excess procurement that may be applied in later compliance periods only if the retail seller attains its PQR in the current compliance period, and the RECs to be counted as excess procurement conform to all rules for excess procurement.

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[42] PG&E Opening Comments, graphics and text at 10-13. *See* also SCE Comments at 10.

3.1.5.1. Special Cases

Although the new excess procurement rules are straightforward in their simplification of the role of RECs that are categorized as PCC 3, there are two issues with respect to PCC 1 RECs and PCC 2 RECs that require consideration and resolution.

3.1.5.1.1. Category 1 RECs: Long Term or Short Term Contracts

The issue related to Category 1 RECs arises from the new rule allowing Category 1 RECs from both long term and short term contracts to count as excess procurement. This is not problematic at the stage of counting the initial excess procurement. Once the RECs are applied in a later compliance period, however, they must be applied in accordance with the LT requirement, regardless of whether the RECs are being applied for current compliance or are being taken from excess compliance in a prior compliance period and applied in the current compliance period. This will require, as PG&E notes, that the long term or short term nature of the contract with which RECs counted as excess procurement are associated must be tracked in all later compliance periods in which the RECs may be used for compliance.[43] The Director of Energy Division, in consultation with the parties, should make any revisions to the RPS compliance spreadsheet necessary to ensure accurate tracking of the long term or short contracts with

[43] PG&E Comments at 8 (referring to Stipulation Regarding Banking Amendment, attached as Attachment B to PG&E's Comments. *See* Section 3.3., below.)

which Category 1 RECs counted as excess procurement are associated through the time the RECs are used for compliance in a later compliance period.[44]

3.1.5.1.2. Category 2 RECs

The change made to the excess procurement rules by SB 350 also impacts the treatment of Category 2 RECs from long term contracts that had been carried forward as excess procurement in compliance periods prior to 2021-2024 (or prior to the 2017-2020 compliance period, for retail sellers electing early compliance). Under existing rules, Category 2 RECs from long term contracts may be carried forward as excess procurement that can be used in later compliance periods. New Section 399.13(a)(4)(B) provides that, beginning with the 2021-2024 compliance period, PCC 2 and PCC 3 RECs "shall not be counted as excess procurement." None of the parties dispute this reading of Section 399.13(a)(4)(B) or the concept that PCC 2 and PCC 3 RECs retired for RPS compliance may not count as excess procurement under SB 350.[45]

D.12-06-038 makes clear that RECs counted as excess procurement may be used in any subsequent compliance period, including compliance periods after 2020.[46] SB 350 does not allow PCC 2 RECs to be counted as excess procurement. It is therefore necessary harmonize the continued operation of the current rule

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[44] The Director of Energy Division has the authority to request documentation of RPS compliance claims at any time. This authority includes the ability to request copies of contracts in order to check on the proper assignment of RECs to long term or short term contracts.

[45] Comments of AReM (at 12), PG&E (at 14), Reid (at 10), SCE (at 14), SDG&E (at 14), and Shell/Commerce (at 8) agree on this point.

[46] "Finally, once RECs qualify as excess procurement, those RECs may be applied to any subsequent compliance period, including 2021 and later years." (D.12-06-038 at 57.)

with the new prohibition in SB 350 on counting PCC 2 RECs for excess procurement in 2021-2024 and later compliance periods.

In order to harmonize the two requirements, PCC 2 RECs that have been carried forward from earlier compliance periods may count for current compliance in the 2021-2024 compliance period, but may not be carried forward as excess procurement into any later compliance period.[47] Thus, a retail seller with 10,000 PCC 2 RECs from long term contracts that are carried forward as excess procurement into the 2021-2024 compliance period could count some or all of them toward current compliance. If all 10,000 RECs are counted for compliance in the 2021-2024 compliance period, there is no remaining issue. If, on the other hand, only 8,000 Category 2 RECs from the carried over excess procurement are counted for current compliance, then the 2,000 PCC 2 RECs remaining cannot be counted as excess procurement carried forward to the 2025-2027 compliance period or any subsequent compliance period. Those 2,000 PCC 2 RECs would thus be unable to be used for compliance.[48]

As with all other changes beginning in the 2021-2024 compliance period, the SB 350 prohibition on counting PCC 2 RECs as excess procurement does not apply in any earlier compliance period. However, any retail seller electing to comply early with the LT requirement must also comply early (i.e., in the 2017-2020 compliance period) with the prohibition on PCC 2 RECs as excess procurement, as implemented in this decision.

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[47] SB 350 did not change any PBR requirements. Therefore, PCC 2 RECs carried forward from an earlier compliance period may be counted for current compliance in the 2021-2024 compliance period in accordance with the PBR limits for that compliance period.

[48] The issue of RECs that can neither be counted as excess procurement nor counted for current compliance is discussed in D.12-06-038 at 54.

3.1.5.1.3 RECs from Contracts Signed Prior to June 1, 2010

SB 2 (1X) created a special status for RECs from contracts signed prior to June 1, 2010 (for IOUs), which was extended to contracts signed before January 14, 2011 for ESPs by Assembly Bill (AB) 2187 (Bradford), Stats. 2012, ch. 604. The Commission determined that the provision in Section 399.16(d) that RECs from such contracts "count in full" for RPS compliance means that such RECs are outside the PBR system, and may count without regard to any PBR limits. They also may be counted as excess procurement without regard to other limits on RECs for excess procurement. (D.12-06-038 at 32, OP 12.) The parties unanimously conclude that the operation of Section 399.16(d) is not affected by SB 350. This position is sound. RECs from contracts signed prior to June 1, 2010 (for IOUs) or January 14, 2011 (for ESPs) may be counted as excess procurement without regard to any other limitations, on excess procurement so long as the PQR for the current compliance period has been met.[49]

3.2. Early Compliance with Section 399.13(b)

Section 399.13(a)(4)(B)(iii) allows a retail seller to elect to comply early with the new requirements of Section 399.13(b). This election brings with it the new rules on excess procurement set out in Section 399.13(a)(4)(B)(i) and (ii), discussed above. Parties have varying views of how the early election for compliance should be claimed; how it should be applied; and what should happen if a retail seller that makes an early election to comply with Section 399.13(b) fails to do so.

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[49] SB 350 likewise made no change in the special rules for counting RPS-eligible procurement by retail sellers meeting the requirements of Section 399.17 or Section 399.18.

AReM, CASMU, and Reid propose that the retail seller should make the election with the submission of its 2017-2020 compliance period compliance report. CMUA suggests that the election can be made any time during the compliance period. PG&E and TURN/CUE propose that the election be made in the first procurement plan submitted following this decision. SDG&E more broadly suggests that it be made some time after this decision; Noble and SCE propose a time period of 60 days after this decision. Parties variously propose that the election be made by a letter to the Director of Energy Division, by notice in the retail seller's procurement plan, or by a Tier 1 Advice Letter.[50]

Since the decision to comply early with Section 399.13(b) affects several aspects of a retail seller's RPS compliance, as explained above, the election to comply early should be made early in the compliance period, and be made in a formal way. The election should be made in a letter to the Director of Energy Division within 60 days of the effective date of this decision, and must be served on the service list of this proceeding. In order to reflect its early election in its 2017 RPS compliance plan, a retail seller making the early election must file a motion to update its procurement plan not later than the deadline for filing motions to update Plans (currently September 22, 2017).

The early application of the new rules should be reflected in the retail seller's RPS procurement plans filed for each year of the 2017-2020 compliance period subsequent to the election. Each plan should include an express statement that the retail seller has elected early compliance, the date of the letter

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[50] AReM, CASMU, Reid, SCE, SDG&E, and ORA propose a letter to the Executive Director; Noble, TURN/CUE, and ORA propose a Tier 1 Advice Letter; PG&E and TURN/CUE propose including notice in the RPS Procurement plans.

to the Director of Energy Division indicating the election, and any specific consequences of the early election for procurement and compliance planning set out in that procurement plan.

Several parties posit that, even if a retail seller makes its election to comply early with Section 399.13(b), compliance is optional.[51] These parties argue that if the retail seller fails to meet the compliance requirements set out in SB 350, as implemented by this decision, it can simply revert to complying with the existing compliance rules.

This view is opposed by LSA, ORA, Reid, Shell/Commerce, and TURN/CUE. ORA correctly points out that Section 399.13(a)(4)(b)(iii) mandates that the new excess compliance rules "shall take effect for that retail seller for that compliance period" (i.e., 2017-2020), "if a retail seller notifies the commission that it will comply with the provisions of subdivision (b)" for the 2017-2020 compliance period. This means, as TURN/CUE points out, that the ability to use the new rules on excess procurement is tied to the retail seller's election to comply with the new LT requirement.[52]

This is exactly the situation in 2021-2024 and later compliance periods for all retail sellers. Electing early compliance with the new rules of Section 399.13(b) is therefore an irrevocable commitment to that set of compliance rules for the 2017-2020 compliance period. It is not a "dry run" for how a retail seller would comply in the 2021-2024 compliance period and all compliance periods thereafter; it is the real compliance rules for that retail seller

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[51] These include AReM, CASMU, CMUA, PG&E, SCE, and SDG&E.

[52] TURN/CUE Comments at 6.

for the 2017-2020 compliance period. Compliance with the new rules is not optional if a retail seller elects to comply with them early, just as compliance will not be optional when all retail sellers have to comply with those same rules.

Because early compliance is real compliance, retail sellers electing early compliance will be subject to the same enforcement methods, including possible penalties, as they would be when the new rules go into effect for all retail sellers in the 2021-2024 compliance period. Implementation of enforcement provisions, including potential penalties, for the new SB 350 rules will be the subject of a future Commission decision.[53]

3.3. IOU Stipulation on Counting RECs for Compliance Under SB 350

PG&E, SCE, and SDG&E each attach to their comments a document they label a stipulation, setting out a detailed process that they urge should be used in counting RECs for current compliance and for excess procurement.[54] The stipulation carries within it the incorrect assumption that RECs may be counted as excess procurement that can be applied in later compliance periods even though a retail seller has not met its PQR for the current compliance period. The Commission rejects this assumption, as discussed in Section 3.1.5, above.

Within the limited scope of optimizing the use of RECs for compliance in the current compliance period, whether beginning with the 2021-2024 compliance period or the early election of the 2017-2020 compliance period, one

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[53] LSA, ORA, and Reid urge that the Commission announce possible enforcement actions now, but it makes more sense to implement any new enforcement provisions after thorough consideration—both with respect to enforcement provisions for 2021-2024 and later compliance periods and to early compliance.

[54] The IOU proposed stipulation is generally supported by CMUA, ORA, and TURN/CUE.

basic idea advanced in the stipulation is useful. Retail sellers should have the opportunity to maximize the number of PCC 1 RECs that may be counted as excess procurement by maximizing the use of PCC 2 and PCC 3 RECs, within the limits imposed by the PBR and by the LT requirement, for current compliance.[55]

This idea, while helpful to retail sellers, is not appropriately framed as an order of the Commission. However, Energy Division staff is encouraged to work with the parties to develop a way to make an "order of operations" for counting RECs for current compliance in 2021-2024 and later compliance periods feasible within the RPS compliance reporting regime.[56]

This approach is separate from the somewhat elaborate distinction made by PG&E (Comments at 10) between RECs retired for RPS compliance and RECs applied to compliance. There are not, however, two types of RECs for RPS compliance purposes, retired RECs and applied RECs; there are only retired RECs.

In order to count for RPS compliance, RECs must be retired for RPS compliance (i.e., placed in the retail seller's RPS retirement subaccount in the Western Renewable Energy Generation Information System).[57] RECs retired for RPS compliance may be used for no purposes other than RPS compliance. To the extent that PG&E intends "applied RECs" to mean "RECs counted for RPS compliance or counted as excess procurement that may be used in a later

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[55] The treatment of PCC 2 RECs carried over from earlier compliance periods, as mandated by this decision, must also be taken into account. *See* Section 3.1.5.1.2, above.

[56] If Energy Division staff identifies a way to allow any agreed-on order of counting RECs to be used for retail sellers electing early compliance, the Director of Energy Division is authorized, but not required, to implement it for retail sellers electing early compliance.

[57] Information about WREGIS and WREGIS rules may be found at https://www.wecc.biz/WREGIS/Pages/Default.aspx.

compliance period," it is simply a somewhat confusing synonym. To the extent that PG&E is suggesting that some RECs retired for RPS compliance may sit in a pool of retired RECs until called on, that view is not consistent with RPS compliance requirements. Retired RECs may have one of three fates: they may be counted for current compliance; they may be counted as excess procurement that may be applied in later compliance periods; or, they may not be counted for RPS compliance at all, if the retail seller does not meet the appropriate compliance requirements and/or excess procurement requirements.

3.4. Administration of the New Requirements

Parties largely agree that current RPS compliance reporting mechanisms, with small adjustments, can accommodate the changes made by SB 350 and implemented by this decision. TURN/CUE additionally suggest a change to current compliance practice. They urge that all contracts associated with RECs counted to meet the LT requirement should be provided as part of a retail seller's RPS compliance report and be publicly disclosed at that time. Since, as Noble notes, the Director of Energy Division already has the authority to request contracts or other documents supporting compliance claims, this suggestion is unnecessary.

To the extent that TURN/CUE seek a change to the compliance process to require public disclosure of contracts, AReM, CASMU, and Sonoma correctly point out nothing in SB 350 mandates or suggests that the current treatment with respect to confidentiality for contracts requested by the Director of Energy

Division should be changed. We agree that current practices with respect to confidentiality should be continued.[58]

In one respect, however, a change to current practice should be made. A retail seller that relies on a repackaged contract, a long term ownership agreement, or an ownership status that has variations approved by the Commission as the source of any RECs retired for RPS compliance in a particular compliance period must submit a copy of the complete repackaged contract, or ownership agreement, or Commission-approved ownership status at the time it submits its compliance report for that compliance period, without waiting for a request from the Director of Energy Division. The documents should be able to support all compliance claims based on the contract, agreement, or ownership status.

In any subsequent compliance period, the retail seller must identify in its compliance report which, if any, repackaged contracts, ownership agreements, or ownership status determinations it relies on for that compliance period, but does not need to provide the documentation unless requested by the Director of Energy Division.

In any compliance showing, a retail seller relying on RECs from ownership of an eligible renewable energy resource must be prepared to provide evidence of continuing ownership when requested to do so by the Director of Energy Division.

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[58] If the Director of Energy Division, based on review of documentation submitted in support of compliance pursuant to the new SB 350 rules, believes that some change in this regard may be warranted, the Commission could consider such a change when and if necessary.

All documentation related to repackaged contracts, ownership agreements, and other showings related to ownership should be given the same confidentiality protections as any contract submitted as part of the RPS compliance process.

ORA suggests that this Commission and the CEC should work to eliminate barriers to timely verification of procurement, suggesting a joint workshop as a mechanism. Since Energy Division staff and CEC staff communicate regularly about RPS compliance issues, it is not necessary to require them to communicate in a particular manner. Any specific problems parties identify with the verification process should be brought to the attention of the Director of Energy Division.

The Director of Energy Division is authorized, in consultation with the parties, to make any necessary revisions to the RPS compliance spreadsheet and other documentation to implement the requirements of this decision.

3.5. Obligations of New Retail Sellers

It should be remembered that the current minimum quantity requirement for long term contracting, which remains in effect through the 2017-2020 compliance period, utilizes retail sales in the prior compliance period to calculate the minimum quantity of long term contracts to be signed in the current compliance period. Because of this retrospective element, D.12-06-038 provides a special calculation method for new retail sellers in the first RPS compliance period of their operation. (D.12-06-038 at 46-47; OP 20.)

This method will continue to apply to new retail sellers until the current minimum quantity requirement expires at the end of 2020, but it is unnecessary for the new LT requirement. The LT requirement will be calculated based on RECs at the end of a compliance period, rather than on contracts that are signed

during a compliance period. New retail sellers will not need any special rule, since their LT requirement obligation will always be based on their PQR for the current compliance period, without any calculation based on the previous compliance period.[59]

A retail seller that commences service in the 2017-2020 compliance period and chooses to elect early compliance must make the election by letter to the Director of Energy Division within 60 days of commencing service. The retail seller must also follow the requirement to serve its letter on the service list of this proceeding (or its successor). In each of its RPS procurement plans in the 2017-2020 compliance period following the election, the new retail seller must provide the information set out in this decision.

4. Next Steps

Energy Division staff, in consultation with the parties, should make any revisions to the current RPS compliance spreadsheet and narrative instructions that are necessary to implement the compliance rules set out in this decision. These revisions should be made in a timeframe that will allow retail sellers that elect early compliance with Section 399.13(b) to report on their compliance progress without undue delay.

The Director of Energy Division should develop criteria for reviewing retail sellers' contracts to identify any problems in compliance that may require additional attention from staff or the Commission as the new rules under SB 350 are implemented.

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[59] This outcome is the same whether the retail seller complies with the new LT requirement in the 2021-2024 compliance period, or elects early compliance in the 2017-2020 compliance period.

5. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed June 15, 2017 by AReM; Calpine Energy Solutions, LLC; CEERT; GPI; IEP; Liberty Utilities (CalPeco Electric); ORA; PaciCorp; PG&E; SCE; SDG&E; and Shell. Reply comments were filed June 20, 2017 by AReM, ORA, PacifiCorp, PG&E, and SCE.

All comments and reply comments have been carefully considered. Revisions have been made to clarify some elements of the PD and to improve clarity and consistency.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Anne E. Simon and Robert M. Mason III are the co-assigned ALJs in this proceeding.

Findings of Fact

1. SB 350 includes new provisions for RPS compliance related to the use of RECs from long term contracts and the use of excess procurement that will be used for compliance periods beginning with the 2021-2024 compliance period.
2. SB 350 includes provisions allowing retail sellers to choose to comply with the new requirements beginning in the 2017-2020 compliance period.
3. It is reasonable to implement the new statutory provisions at this time, so that retail sellers may be prepared to comply with the provisions beginning with the 2021-2024 compliance period, and may choose to comply early, beginning with the 2017-2020 compliance period.

Conclusions of Law

1. In order to effectuate the changes made to RPS compliance by SB 350, beginning with the 2021-2024 compliance period, each retail seller should demonstrate that at least 65 % of the RECs that it counts toward its PQR in the compliance period are associated with long term contracts.

2. In order to support RPS procurement planning for purposes of RPS compliance and to ensure consistency among retail sellers, an RPS procurement contract should be considered a long term contract in the following circumstances.

   a. The contract is at least 10 years or more in duration; or
   b. The contract is initially 10 years or more in duration, and is extended for any period of time, the entire term of the contract is considered long term; or
   c. The initial term of the contract is less than 10 years, and the contract is amended by an extension of at least 10 continuous years in duration, the contract will be considered a long term contract from the date of that amendment through the life of the contract.

3. In order to effectuate the goals of long term contracting for eligible renewable energy resources, a contract that has added a period of less than 10 years to a contract originally for a period of less than 10 years should not be considered a long term contract for purposes of RPS compliance.

4. In order to promote consistency in RPS compliance, retail sellers should be able to count RECs from any contract that meets the requirements for long term contracts set in this decision toward the LT requirement, regardless of the date the contract was signed, so long as the RECs meet all other applicable requirements for RPS compliance.

5. In order to support the use of long term contracts for RPS compliance, a retail seller may count for compliance in the 2021-2024 compliance period and later compliance periods, only as many RECs as would make the number of RECs associated with long term contracts equal to at least 65% of the total number of RECs counted toward the PQR in that compliance period.

6. In order to support the use of long term contracts for RPS compliance, a retail seller that has elected early compliance with Section 399.13(b) may count for compliance in the 2017-2020 compliance period and later compliance periods, only as many RECs as would make the number of RECs associated with long term contracts equal to at least 65% of the total number of RECs counted toward the PQR in that compliance period.

7. In order to ensure consistency between the requirements of SB 2 (1X) and SB 350, RECs from contracts that were signed prior to June 1, 2010 (for IOUs) or January 14, 2011 (for ESPs), should count in full, by counting as RECs from long term contracts toward a retail seller's PQR in 2021-2024 and later compliance periods.

8. In order to ensure consistency between the requirements of SB 2 (1X) and SB 350, RECs from contracts that were signed prior to June 1, 2010 (for IOUs) or January 14, 2011 (for ESPs), should count in full by counting as RECs from long term contracts, toward the PQR of a retail seller that has elected early compliance with Section 399.13(b) in 2017-2020 and later compliance periods.

9. In order to allow flexibility in RPS procurement, a retail seller should be able to count as a long term contract a procurement contract at least 10 years in duration that has been created from a contract that is at least 10 years in duration that provides a larger quantity of MWh than the contract entered into by the retail seller (a "repackaged long term contract").

10. In order to support accurate reporting of RPS compliance, the RECs claimed by a retail seller from any repackaged long term contract should be verifiable by the CEC as being associated with that repackaged long term contract.

11. In order to support accurate reporting of RPS compliance, a retail seller claiming RECs associated with a repackaged long term contract should submit the complete repackaged long term contract for review by the Director of Energy Division at the same time it submits its compliance report for the first compliance period in which it claims RECs associated with the repackaged contract, so that the Commission is able to confirm the compliance claims related to the repackaged long term contract.

12. In order to allow flexibility in RPS procurement, a retail seller should be able to count for compliance with the LT requirement RECs from RPS-eligible generation facilities owned by the retail seller.

13. In order to allow flexibility in RPS procurement, a retail seller should be able to count for compliance with the LT requirement RECs from RPS-eligible generation facilities in which the retail seller has an ownership interest that is at least 10 years in duration.

14. In order to provide flexibility to smaller retail sellers, it is reasonable to consider as "ownership," for RPS compliance purposes, an ownership arrangement that has been recognized by the Commission as being structured to allow a retail seller to have significant control over an eligible renewable energy generation facility and to lead to the retail seller becoming the permanent owner of the generation facility.

15. In order to support accurate reporting of RPS compliance, the RECs claimed by a retail seller from any ownership interest of at least 10 years in

duration should be verifiable by the CEC as being associated with that ownership interest.

16. In order to support accurate reporting of RPS compliance, a retail seller claiming renewable energy credits associated with an ownership interest at least 10 years in duration should submit the complete ownership agreement for review by the Director of Energy Division at the same time it submits its compliance report for the first compliance period in which it claims RECs associated with the ownership agreement, so that the Commission is able to confirm the compliance claims related to the ownership agreement.

17. In order to promote consistency in the administration of the RPS program, any repackaged contracts, demonstration of ownership, or ownership agreements submitted to the Director of Energy Division should be subject to the same confidentiality protections as all other contracts submitted to the Director of Energy Division as part of the RPS compliance process.

18. In order to promote consistency in RPS compliance, all RECs retired for RPS compliance should be referred to as "retired RECs."

19. In order to ensure compliance with all RPS requirements, a retail seller should not be able to count any RECs retired for a compliance period as excess procurement that can be applied in a later compliance period unless the retail seller has met its PQR in the compliance period for which the RECs are retired.

20. In order to implement the excess procurement rules efficiently, RECs properly counted as excess procurement in a prior compliance period may be counted for current compliance in a later compliance period in accordance with the LT requirement and PBR requirements even if the retail seller does not meet its PQR in the compliance period in which the RECs are counted for current compliance.

21. In order to implement new requirements of SB 350 effectively, beginning with the 2021-2024 compliance period, a retail seller should be able to count as excess procurement all Category 1 RECs associated with long term contracts, and all Category 1 RECs associated with short term contracts, so long as the retail seller has complied with the LT requirement, has met it its PQR, and the Category 1 RECs conform to all other requirements for excess procurement.

22. In order to promote the transition to the use of the new LT requirement and new excess procurement rules, a retail seller who elects early compliance with Section 399.13(b) should be able to count as excess procurement in the 2017-2020 compliance period all Category 1 RECs associated with long term contracts and all Category 1 RECs associated with short term contracts, so long as the retail seller has complied with the LT requirement, has met its PQR, and the Category 1 RECs conform to all other requirements for excess procurement.

23. In order to ensure consistency between the requirements of SB 2 (1X) and the requirements of SB 350, retail sellers should be able to count for current compliance in the 2021-2024 compliance period Category 2 RECs that were properly counted as excess procurement in an earlier compliance period, so long as they are used in accordance with the LT requirement and the PBR limit for that compliance period.

24. In order to conform RPS compliance to the requirements of SB 350, retail sellers should not be able to carry any Category 2 RECs forward as excess procurement for use in any compliance period after the 2021-2024 compliance period, even if the Category 2 RECs were properly carried forward as excess procurement in an earlier compliance period.

25. In order to ensure consistency between the requirements of SB 2 (1X) and the requirements of SB 350, retail sellers that elect early compliance with

Section 399.13(b) should be able to count for compliance in the 2017-2020 compliance period Category 2 RECs that were properly counted as excess procurement in an earlier compliance period, so long as they are used in accordance with the LT requirement and the PBR limit for that compliance period.

26. In order to conform RPS compliance to the requirements of SB 350, retail sellers that elect early compliance with Section 399.13(b) should not be able to carry any Category 2 RECs forward as excess procurement for use in any compliance period after the 2017-2020 compliance period, even if the Category 2 RECs were properly carried forward as excess procurement in an earlier compliance period.

27. In order to conform RPS compliance to the requirements of SB 350, beginning with the 2021-2024 compliance period, a retail seller should not be required to subtract the number of Category 2 or Category 3 RECs counted for RPS compliance in the current compliance period from the retail seller's procurement for purposes of calculating excess procurement, if the retail seller has met its PQR for the current compliance period and thus may count RECs toward excess procurement in that compliance period.

28. In order to conform RPS compliance to the requirements of SB 350, beginning with the 2017-2020 compliance period, a retail seller that elects early compliance with Section 399.13(b) should not be required to subtract the number of Category 2 or Category 3 RECs counted for RPS compliance in the current compliance period from the retail seller's procurement for purposes of calculating excess procurement, if the retail seller has met its PQR for the current compliance period and thus may count RECs toward excess procurement in that compliance period.

29. In order to ensure consistency between the requirements of SB 2 (1X) and SB 350, retail sellers should be able to count RECs from RPS procurement contracts signed prior to June 1, 2010 (for IOUs) or January 14, 2011 (for ESPs) as excess procurement in 2021-2024 and later compliance periods without limitation, so long as the RECs are in excess of the PQR and the retail seller has met its PQR for the compliance period.

30. In order to encourage efficient RPS compliance, beginning with the 2021-2024 compliance period, a retail seller should be able to choose to count for compliance in the current compliance period all available Category 2 and/or Category 3 RECs up to the maximum allowable PBR percentage for each category, even if the retail seller has available for current compliance more Category 1 RECs than the minimum required percentage for that compliance period, to the extent technically possible within the RPS compliance reporting system, including the CEC's verification process.

31. In order to encourage efficient RPS compliance, a retail seller electing early compliance with Section 399.13(b) should be able, beginning with the 2017-2020 compliance period, to count for compliance in the current compliance period all available Category 2 and/or Category 3 RECs up to the maximum allowable percentage of each category, even if the retail seller has available for current compliance more Category 1 RECs than the minimum required percentage for that compliance period, to the extent technically possible within the RPS compliance reporting system, including the CEC's verification process.

32. In order to advance the fair and efficient administration of the RPS program, any retail seller electing to comply with the requirements of Section 399.13(b) in the compliance period 2017-2020 should give notice of its election by a letter sent to the Director of Energy Division not later than 60 days

from the effective date of this decision that is simultaneously served on the service list of this proceeding. A retail seller making the early election must also file a motion to update its 2017 RPS Procurement Plan not later than the deadline for filing motions to update Plans. The retail seller's RPS procurement plans for the 2017-2020 compliance period should also state the election, give the date of the letter making the election, and explain how it is taking account of the LT requirement and new excess procurement rules in its procurement planning for the 2017-2020 compliance period.

33. In order to advance the fair and efficient administration of the RPS program, a retail seller that commences service in the 2017-2020 compliance period and chooses to elect early compliance must make the election by letter to the Director of Energy Division within 60 days of commencing service and serve the letter simultaneously on the service list of this proceeding (or its successor).

34. In order to advance the fair and efficient administration of the RPS program and promote consistency in RPS compliance, a retail seller's election to comply with Section 399.13(b) in the 2017-2020 compliance period should be irrevocable once made.

35. In order to promote accurate reporting of RPS compliance, when submitting its compliance report for a compliance period, each retail seller should ensure that all retired RECs are accounted for in one of three ways: as counted for current compliance; as counted as excess procurement that may be applied in later compliance periods; or as not counted for RPS compliance (if the retail seller does not meet the appropriate compliance requirements and/or excess procurement requirements).

36. The Director of Energy Division should be authorized to make any changes to RPS reporting and compliance documents necessary to facilitate compliance with this order.

37. The Director of Energy Division should be authorized to request and review documentation from any retail seller to aid in determining compliance with this order and to identify any potential issues with compliance in the future.

38. In order to allow retail sellers to plan effectively for RPS compliance, this order should be effective today.

O R D E R

IT IS ORDERED that:

1. Beginning with the compliance period January 1, 2021-December 31, 2024, each retail seller must demonstrate that at least 65 per cent of the renewable energy credits that it counts toward compliance with its renewables portfolio standard procurement quantity requirement in the compliance period are associated with contracts for eligible renewable energy resources that are long term contracts; i.e., contracts that are at least 10 years in duration.

2. Beginning with the compliance period January 1, 2021-December 31, 2024, a retail seller may use, as part of its demonstration that at least 65 per cent of the renewable energy credits that it counts toward compliance with its renewables portfolio standard procurement requirement in the current compliance period are associated with contracts for eligible renewable energy resources that are at least 10 years in duration, any contract that has an original duration of at least 10 years or has been amended to add a period of at least 10 continuous years to

the contract term, in which case the contract will be considered long term beginning on the date of the amendment.

3. Beginning with the compliance period January 1, 2021-December 31, 2024, a retail seller may not use, as part of its demonstration that at least 65 per cent of the renewable energy credits that it counts toward compliance with its renewables portfolio standard procurement requirement in the current compliance period are associated with contracts for eligible renewable energy resources that are at least 10 years in duration, any contract that has been amended to add a period of less than 10 years to a contract with an original duration of less than 10 years.

4. Beginning with the compliance period January 1, 2021-December 30, 2024, a retail seller may use, as part of its demonstration that at least 65 per cent of the renewable energy credits (RECs) that it counts toward compliance with its renewables portfolio standard procurement requirement in the current compliance period are associated with contracts for eligible renewable energy resources that are at least 10 years in duration, contracts that comply with the requirements of Ordering Paragraphs 1 and 2, regardless of the date the contract or any relevant amendment was signed or the effective date of the contract or any relevant amendment, so long as the RECs meet all other applicable requirement for RPS compliance.

5. Beginning with the compliance period January 1, 2021-December 31, 2024, a retail seller may count for compliance with its renewables portfolio standard procurement quantity requirement (PQR) in the current compliance period only as many renewable energy credits (RECs) as would make the number of RECs associated with long term contracts counted toward the PQR equal to at least

65 per cent of the total number of RECs counted toward the PQR in that compliance period.

6. A retail seller that, pursuant to Pub. Util. Code § Section 399.13(a)(4)(B)(iii), has elected early compliance with the requirements of Pub. Util. Code § 399.13(b) in the compliance period January 1, 2017-December 31, 2020 must comply with all requirements of Section 399.13(b) and Section 399.13(a)(4)(B)(iii), as implemented by this decision, in the 2017-2020 compliance period.

7. Beginning with the compliance period January 1, 2021-December 31, 2024, a retail seller may count as renewable energy credits (RECs) from long term contracts, RECs from contracts that were signed prior to June 1, 2010 (for investor owned utilities) or January 14, 2011 (for electric service providers) toward its renewables portfolio standard procurement quantity requirement for the current compliance period.

8. A retail seller that has elected early compliance with Section 399.13(b) in 2017-2020 may count as renewable energy credits (RECs) from long term contracts, RECs from contracts that were signed prior to June 1, 2010 (for investor owned utilities) or January 14, 2011 (for electric service providers), toward its renewables portfolio standard procurement quantity requirement for the 2017-2020 compliance period.

9. A retail seller may count as a long term contract for purposes of compliance with Pub. Util. Code § 399.13(b) a procurement contract at least 10 years in duration that has been created from a contract that is at least 10 years in duration and which provides a larger volume of eligible renewable energy generation than the contract entered into by the retail seller (a "repackaged long term contract"), so long as the California Energy Commission is able to verify that the renewable energy credits claimed by the retail seller are associated with

the repackaged long term contract; the complete repackaged contract is submitted with the retail seller's initial compliance report using the repackaged contract; this Commission is able to confirm that the compliance claim based on the repackaged long term contract is accurate; and all other requirements for compliance with renewables portfolio standard procurement requirements are met.

10. A retail seller may count renewable energy credits from eligible renewable energy resources wholly owned by that retail seller as part of its demonstration of compliance with the requirements of Pub. Util. Code § 399.13(b) in any compliance period beginning with the 2021-2024 compliance period, or beginning with the 2017-2020 compliance period if the retail seller chooses early compliance with Section 399.13(b).

11. A retail seller may, if it demonstrates to the Director of Energy Division that the retail seller has an ownership arrangement that has been recognized by the Commission as being structured to allow a retail seller to have significant control over an eligible renewable energy generation facility and to lead to the retail seller becoming the permanent owner of the generation facility, count renewable energy credits (RECs) from that generation facility as RECs associated with ownership of an eligible renewable energy resource for purposes of compliance with the California renewables portfolio standard in any compliance period beginning with the 2021-2024 compliance period, or beginning with the 2017-2020 compliance period if the retail seller chooses early compliance with Section 399.13(b).

12. A retail seller may count renewable energy credits from eligible renewable energy resources in which the retail seller has an ownership interest that is at least 10 years in duration as part of its demonstration of compliance with the

requirements of Pub. Util. Code § 399.13(b) in any compliance period beginning with the 2021-2024 compliance period, so long as the California Energy Commission is able to verify that the renewable energy credits claimed by the retail seller are associated with the ownership interest; the complete agreement for the ownership interest is submitted with the compliance report; this Commission is able to confirm that the compliance claim based on the ownership agreement is accurate; and all other requirements for compliance with renewables portfolio standard procurement requirements are met.

13. A retail seller that chooses early compliance with Pub. Util. Code § 399.13(b) may count renewable energy credits from eligible renewable energy resources in which the retail seller has an ownership interest that is at least 10 years in duration as part of its demonstration of compliance with the requirements of Section 399.13(b) in any compliance period beginning with the 2017 - 2020 compliance period, so long as the California Energy Commission is able to verify that the renewable energy credits claimed by the retail seller are associated with the ownership interest; the complete agreement for the ownership interest is submitted with the compliance report; this Commission is able to confirm that the compliance claim based on the ownership agreement is accurate; and all other requirements for compliance with renewables portfolio standard procurement requirements are met.

14. A retail seller may not count any renewable energy credits (RECs) retired for compliance with the renewables portfolio standard in one compliance period as excess procurement that may be applied in a later compliance period unless the retail seller has met its procurement quantity requirement in the compliance period for which the RECs are retired.

15. Beginning with the 2021-2024 compliance period, or the 2017-2020 compliance period if a retail seller chooses early compliance with Pub. Util. Code § 399.13(b), a retail seller may count as excess procurement all renewable energy credits (RECs) meeting the requirements of Pub. Util. Code § 399.16(b)(1) (Category 1) associated with long term contracts, and all Category 1 RECs associated with short term contracts, so long as the retail seller has complied with the requirements of Section 399.13(b) for the current compliance period, has met it its procurement quantity requirement for the current compliance period, and the Category 1 RECs conform to all other requirements for excess procurement.

16. Beginning with the 2021-2024 compliance period, a retail seller may count renewable energy credits (RECs) meeting the requirements of Pub. Util. Code § 399.16(b)(2) (Category 2) for compliance in the 2021-2024 compliance period (or the 2017-2020 compliance period if a retail sellers chooses early compliance with Pub. Util. Code § 399.13(b)) that were properly counted as excess procurement in an earlier compliance period, so long as the Category 2 RECs are counted in accordance with the requirements of Section 399.13(b) and the retail seller's portfolio balance requirement for the 2021-2024 compliance period.

17. A retail seller that chooses early compliance with Pub. Util. Code § 399.13(b), may count renewable energy credits (RECs) meeting the requirements of Pub. Util. Code § 399.16(b)(2) (Category 2) for compliance in the 2017-2020 compliance period that were properly counted as excess procurement in an earlier compliance period, so long as the Category 2 RECs are counted in accordance with the requirements of Section 399.13(b) and the retail seller's portfolio balance requirement for the 2017-2020 compliance period.

18. A retail seller that does not choose early compliance with Pub. Util. Code § 399.13(b) may not count any renewable energy credits (RECs) meeting the requirements of Pub. Util. Code § 399.16(b)(2) (Category 2) as excess procurement for use in any compliance period after the 2021-2024 compliance period, even if the Category 2 RECs were properly carried forward as excess procurement in an earlier compliance period.

19. A retail seller that chooses early compliance with Pub. Util. Code § 399.13(b) may not count any renewable energy credits (RECs) meeting the requirements of Pub. Util. Code § 399.16(b)(2) (Category 2) as excess procurement for use in any compliance period after the 2017-2020 compliance period, even if the Category 2 RECs were properly carried forward as excess procurement in an earlier compliance period.

20. Beginning with the 2021-2024 compliance period, or the 2017-2020 compliance period if a retail seller chooses early compliance with Pub. Util. Code § 399.13(b), a retail seller may not count any renewable energy credits meeting the requirements of Pub. Util. Code § 399.16(b)(3) as excess procurement to be applied in a later compliance period.

21. Beginning with the 2021-2024 compliance period, or the 2017-2020 compliance period if a retail seller chooses early compliance with Pub. Util. Code § 399.13(b), a retail seller will not be required to subtract the quantity of renewable energy credits (RECs) meeting the requirements of Section 399.16(b)(2) (Category2) or Section 399.16(b)(3) (Category 3) counted for compliance in the current compliance period from the retail seller's procurement for purposes of calculating excess procurement, so long as the retail seller has met its procurement quantity requirement for the current compliance period and thus may count RECs as excess procurement in that compliance period.

22. A retail seller may count renewable energy credits (RECs) associated with procurement contracts signed by investor owned utilities prior to June 1, 2010 or by electric service providers prior to January 14, 2011 as excess procurement without limitation, so long as the RECs are in excess of the retail seller's procurement quantity requirement (PQR) and the retail seller has met its PQR for the current compliance period.

23. A retail seller electing to comply with the requirements of Section 399.13(b) in the compliance period 2017-2020 must give notice of its election by a letter sent to the Director of Energy Division not later than 60 days from the effective date of this decision that is simultaneously served on the service list of this proceeding. Once it has made the election to comply early, the retail seller may not revoke or change that choice.

24. A retail seller making the early election in 2017 must file a motion to update its 2017 renewables portfolio standard procurement plan to reflect the election not later than the deadline for filing motions to update such plans.

25. A retail seller that commences service in the 2017-2020 compliance period and chooses to elect early compliance must make the election by letter to the Director of Energy Division within 60 days of commencing service and serve the letter simultaneously on the service list of this proceeding (or its successor).

26. Any retail seller electing early compliance with Pub. Util. Code § 399.13(b) must state the fact that it has chosen early compliance, the date the election was made, and the impact of the early compliance on its plans for procurement to meet the renewables portfolio standard (RPS) procurement requirements in all RPS procurement plans that it files during the 2017-2020 compliance period.

27. The Director of Energy Division is authorized to make any changes necessary to reporting and compliance documents for the California renewables portfolio standard in order to facilitate compliance with this order.

28. The Director of Energy Division is authorized to request and review documentation from any retail seller to aid in determining compliance with this order and to identify any potential issues for continuing compliance that may arise in the future.

29. Rulemaking 15-02-020 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
Selected Public Utilities Code Sections

Section 399.13(a)(4)(B)

Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall retain the rules adopted by the commission and in effect as of January 1, 2015, for the compliance period specified in subparagraphs (A) to (C), inclusive, of paragraph (1) of subdivision (b) of Section 399.15. For any subsequent compliance period, the rules shall allow the following:
(i) For electricity products meeting the portfolio content requirements of paragraph (1) of subdivision (b) of Section 399.16, contracts of any duration may count as excess procurement.
(ii) Electricity products meeting the portfolio content requirements of paragraph (2) or (3) of subdivision (b) of Section 399.16 shall not be counted as excess procurement. Contracts of any duration for electricity products meeting the portfolio content requirements of paragraph (2) or (3) of subdivision (b) of Section 399.16 that are credited towards a compliance period shall not be deducted from a retail seller's procurement for purposes of calculating excess procurement.
(iii) If a retail seller notifies the commission that it will comply with the provisions of subdivision (b) for the compliance period beginning January 1, 2017, the provisions of clauses (i) and (ii) shall take effect for that retail seller for that compliance period.

Section 399.13(a)(6)

(6) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years duration, unless the commission approves of a contract of shorter duration.

Section 399.13(b)

(b) A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.

Section 399.16(c)

(c) In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement credited toward each compliance period:
(1) Not less than 50 percent for the compliance period ending December 31, 2013, 65 percent for the compliance period ending December 31, 2016, and 75 percent for each compliance period thereafter, of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (1) of subdivision (b).
(2) Not more than 25 percent for the compliance period ending December 31, 2013, 15 percent for the compliance period ending December 31, 2016, and 10 percent for each compliance period thereafter, of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (3) of subdivision (b).
(3) Any renewable energy resources contracts executed on or after June 1, 2010, not subject to the limitations of paragraph (1) or (2), shall meet the product content requirements of paragraph (2) of subdivision (b).
(4) For purposes of electric service providers only, the restrictions in this subdivision on crediting eligible renewable energy resource electricity products to each compliance period shall apply to contracts executed after January 13, 2011.

Section 399.16(d)

(d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward the procurement requirements established pursuant to this article, 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) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
(3) 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. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

(End of Appendix A)