

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**04-24-12
12:11 PM

April 24, 2012

Agenda ID #11283
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 11-05-005

This is the proposed decision of Administrative Law Judge (ALJ) Simon. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to permission of the ALJ, comments shall not exceed 25 pages in length; reply comments shall not exceed 10 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Simon at aes@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ SIMON (Mailed 4/24/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**DECISION SETTING COMPLIANCE RULES FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

TABLE OF CONTENTS

Title	Page
DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES	
PORTFOLIO STANDARD PROGRAM	2
1. Summary	2
2. Procedural History	3
3. Discussion	6
3.1. Legislative Background.....	6
3.2. Plan of this Decision	7
3.3. Treatment of Prior Procurement.....	9
3.3.1. Section 399.15(a): Prior Deficits	10
3.3.1.1. Deficits for Years Prior to 2011	12
3.3.1.1.1. Prior Compliance Process.....	12
3.3.1.1.2. Determining “Deficit Associated With Any Previous Renewables Portfolio Standard”	15
3.3.1.2. Safe Harbor of 14% of 2010 Retail Sales	19
3.3.1.3. Satisfying Prior Deficits	23
3.3.2 Section 399.16(d): Contracts Signed	
Prior to June 1, 2010.....	26
3.3.2.1. Scope of Provision	26
3.3.2.2. Portfolio Content Categories	27
3.3.2.3. Other Statutory Provisions.....	27
3.3.2.3.1. Short Term Contracts	28
3.3.2.3.2. Excess Procurement That May Be Carried Forward	29
3.3.2.3.3. Prior Banked Procurement In Excess of APT.....	30
3.4. Authorization to Use Short Term Contracts	31
3.4.1. Long Term Contracting Requirement	33
3.4.2. Minimum Quantity of Long Term Contracts	35
3.4.3. Carry Over of Long Term Contracts.....	38
3.4.4. Duration of Minimum Quantity Requirement.....	39
3.4.5. Repackaged Contracts and Procurement Entities	41
3.4.6. Small and Multi-Jurisdictional Utilities	42
3.4.7. New Retail Sellers.....	43
3.4.8. Previous Short Term Contracts	44

Title	Page
3.5. Retirement of RECS	46
3.6. Quantitative Procurement Requirements	49
3.6.1. Procurement Quantity Requirements.....	49
3.6.2. Portfolio Balance Requirements	49
3.6.2.1. Section 399.16(c)(2)	52
3.6.2.2. Section 399.16(c)(1)	53
3.7. Excess Procurement.....	59
3.7.1. Exclusions from Excess Procurement Calculation.....	60
3.7.2. Application of Excess Procurement.....	65
3.8. Reporting.....	67
3.8.1. Compliance Reports	67
3.8.2. Special Transitional Reporting	70
3.9. Enforcement.....	71
3.9.1. Waiver of Enforcement of Procurement Quantity Requirement	71
3.9.2. Reduction of Portfolio Balance Requirements	74
3.10. Next Steps	76
4. Categorization and Need for Hearing.....	76
5. Comments on Proposed Decision	76
6. Assignment of Proceeding	77
Findings of Fact.....	77
Conclusions of Law	77
ORDER.....	85
APPENDIX A - Selected RPS Statutory Sections	
APPENDIX B - Sample Closing Calculations	
APPENDIX C - Flow Chart of Excess Procurement Methodology for Compliance Period 1, 2 and 3	

DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

1. Summary

This decision implements changes to the rules for retail sellers' compliance with the renewables portfolio standard (RPS) program made by Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1. This decision also sets the parameters for retail sellers to report to the Commission on their compliance with RPS requirements.

This decision provides rules for retail sellers to:

- Calculate and resolve any net deficits in meeting their RPS annual procurement target (APT) obligations in 2010 and earlier years;
- Make use of the statutory "safe harbor" created by SB 2 (1X) to excuse certain prior APT deficits;
- Apply procurement from RPS procurement contracts or ownership agreements signed prior to June 1, 2010 to RPS procurement obligations in 2011 and later years;
- Carry forward banked procurement from contracts or ownership agreements signed prior to June 1, 2010, subject to certain limitations;
- Use procurement from contracts of less than 10 years' duration to meet RPS procurement requirements;
- Meet the procurement quantity requirements set in Decision 11-12-020;
- Apply excess procurement in one compliance period to future compliance periods, subject to certain limitations;

- Meet the quantitative portfolio content category requirements set forth in Pub. Util. Code § 399.16(c);
- Report annually to the Commission on RPS procurement and compliance;
- Request a reduction of the portfolio content category quantitative requirements and/or a waiver of the procurement quantity requirements at the end of a compliance period.
- Report to the Commission within 60 days of the effective date of this decision on any net deficits in meeting APT for 2010 and prior years and on meeting the statutory safe harbor requirements; and

This decision also authorizes the Director of Energy Division to develop any forms and information requirements necessary for retail sellers to submit the reports required by this decision.

This decision addresses the most immediate compliance requirements, but it does not complete implementation of rules for the enforcement of RPS obligations under SB 2 (1X). In subsequent decisions, the Commission will complete the enforcement rules, including details of the process for seeking reduction or waiver of RPS compliance obligations and the potential imposition of penalties for noncompliance with RPS obligations.

This proceeding remains open.

2. Procedural History

The Order Instituting Rulemaking (OIR) for this proceeding was adopted by the Commission on May 5, 2011. The Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) was issued July 8, 2011. The Scoping Memo noted that Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch.1, makes significant

changes to the renewables portfolio standard (RPS) program.¹ The Scoping Memo identified four “highest priority” issues for immediate attention in the Commission's implementation of the new RPS statute. One of them is “implementing the most urgent new compliance rules and resolving initial ‘seams’ issues between compliance rules for the 20% RPS program and new 33% RPS program compliance rules set by SB 2 (1X).” (Scoping Memo at 3.)

On July 12, 2011, the Administrative Law Judge’s (ALJ’s) Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the RPS Program asked parties to comment on the interpretation of the new statutory provisions in Section 399.16. Comments were filed on August 8, 2011.²

¹ The RPS is codified at Pub. Util. Code § 399.11-399.31. Unless otherwise noted, all further references to statutory sections are to the Public Utilities Code.

² Comments were filed by Alliance for Retail Energy Markets (AReM); Arizona Public Service Company (APS); BP Wind Energy North America Inc. (BP); California Municipal Utilities Association (CMUA); California Wastewater Climate Change Group; Calpine Corporation (Calpine); Center for Energy Efficiency and Renewable Technologies (CEERT); Center for Resource Solutions (CRS); City and County of San Francisco (CCSF); Clean Energy Renewable Fuels, LLC (Clean Energy); Coalition of California Utility Employees (CUE); County Sanitation Districts of Los Angeles County (Sanitation Districts); Davenport Newberry Holdings LLC (Davenport); Division of Ratepayer Advocates (DRA); Duke Energy Corporation (Duke Energy); enXco Development Corporation (enXco); Evolution Markets; Green Power Institute (GPI); Iberdrola Renewables, Inc. (Iberdrola); Independent Energy Producers Association (IEP); Large Scale Solar Association (LSA); Los Angeles Department of Water and Power (LADWP); LS Power Associates, L.P. (LS Power); Marin Energy Authority (Marin Energy); NextEra Energy Resources, LLC (NextEra); Noble Americas Energy Solutions LLC (Noble Solutions); Northwest Energy Systems Company; NV Energy, Inc.; Ormat Technologies Inc. (Ormat); Pacific Gas and Electric Company (PG&E); Powerex Corporation (Powerex); San Diego Gas & Electric Company (SDG&E); Semptra Generation; Shell Energy North America (US), L.P. (Shell); Sierra Club California; SolarReserve, LLC; Southern California Edison Company (SCE); The Utility Reform Network (TURN); TransWest Express LLC (TransWest); Union of Concerned Scientists (UCS); and Western Power Trading Forum (WPTF).

Reply comments were filed on August 19, 2011.³ On July 15, 2011, the ALJ's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program asked parties to comment on the interpretation of several new statutory provisions, including the new provisions related to RPS compliance. Comments were filed on August 30, 2011.⁴ Reply comments were filed on September 12, 2011.⁵ The ALJ's Ruling Requesting Supplemental Comments on Reporting and Compliance Requirements for the Renewables Portfolio Standard Program (February 1, 2012) gave parties the opportunity to comment on additional issue related to RPS compliance under SB 2 (1X). Supplemental comments were filed on

³ Reply comments were filed by AReM; CMUA; California Wastewater Climate Change Group; Calpine; CCSF; CUE; Sanitation Districts; Davenport; DRA; Duke Energy; Iberdrola; LSA; LS Power; Noble Solutions; NV Energy; PG&E; PacifiCorp; Powerex; SDG&E; SolarReserve; SCE; Solar Alliance, California Solar Industries Association, Vote Solar (jointly; collectively, Solar Alliance); TURN; TransWest; UCS; and WPTF.

⁴ Comments were filed by AReM; CMUA; California Pacific Electric Company (CalPeco); California Wind Energy Association and LSA (jointly) (collectively, CalWEA/LSA); Calpine; CCSF; DRA; GPI; IEP; LADWP; Marin Energy; Noble Solutions; PacifiCorp; PG&E; L. Jan Reid (Reid); SDG&E; Shell; Sierra Club California; Southern California Edison Company (SCE); TURN and CUE (jointly) (collectively, TURN/CUE); TransWest; and UCS.

⁵ Reply comments were filed by AReM; CalPeco; CalWEA/LSA; Calpine; CEERT; CCSF; DRA; GPI; Noble Solutions; PG&E; PacifiCorp; Reid; SDG&E; SCE; and TURN/CUE.

February 10, 2012.⁶ Supplemental reply comments were filed on February 21, 2012.⁷

The issues addressed in this decision were submitted on February 22, 2012.⁸

3. Discussion

3.1. Legislative Background

The RPS program has been the subject of much legislation and many decisions by this Commission.⁹ Most recently, SB 2 (1X) was enacted in the First Extraordinary Session of the Legislature.¹⁰ SB 2 (1X) became effective December 10, 2011, 90 days after the end of the special session in which it was enacted.¹¹

⁶ Supplemental Comments were filed by AReM; Bear Valley Electric Service and CalPeco (jointly); CMUA; CalWEA; Calpine; CCSF; DRA; GPI; LADWP; Marin Energy; Noble Solutions; PacifiCorp; PG&E; Powerex; SDG&E; SCE; and TURN.

⁷ Supplemental reply comments were filed by California Association of Small and Multi-Jurisdictional Utilities (SMJU Association); CalWEA; CCSF; GPI; Noble Solutions; PG&E; SDG&E; and SCE.

⁸ See Rule 13.14 of the Commission's Rules of Practice and Procedure.

⁹ The RPS program was initiated by SB 1078 (Sher), Stats. 2002, ch. 516, which set a goal for retail sellers of providing 20 percent of their retail sales from eligible renewable energy resources by 2017. SB 107 (Simitian), Stats. 2006, ch. 464, accelerated the 20% goal to 2010, as well as making other changes in the RPS program. (See also the OIR for this proceeding, at 1, 7.)

¹⁰ SB 2 (1X) is substantially similar to SB 722 (Simitian), introduced in the 2009-2010 session of the Legislature but not enacted.

¹¹ Gov.'t Code § 9600(a).

SB 2 (1X) makes numerous changes to the RPS program, most notably extending the RPS goal from 20% of retail sales of all California investor-owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs) by the end of 2010, to 33% of retail sales of IOUs, ESPs, CCAs and publicly owned utilities by the end of 2020.¹² SB 2 (1X) also makes wide-ranging revisions to RPS compliance requirements and the RPS compliance reporting process. The statutory sections most important to this decision are reproduced in Appendix A.

3.2. Plan of this Decision

This decision implements the new rules for RPS compliance set by SB 2 (1X). The decision follows the path of the RPS compliance process. It begins by setting out the transition from compliance obligations prior to 2011 to compliance obligations in 2011 and later years. The decision then discusses RPS procurement from contracts signed prior to June 1, 2010. The decision then turns to the new rules for allowing the use of contracts of less than 10 years' duration (short term contracts) to count for RPS compliance once a minimum quantity of procurement from contracts of 10 years or longer (long term contracts) has been established. Next, the decision clarifies the relationship of minimum procurement meeting the requirements of Section 399.16(b)(1), as set out in Section 399.16 (c), to the overall procurement quantity requirements described in Section 399.15 (b) and implemented in Decision (D.)11-12-020.

¹² The Commission has jurisdiction, for RPS purposes, over the first three groups of retail sellers; it does not have jurisdiction over publicly owned utilities. (See §§ 399.12(j); 399.30(p).)

(Section 399.13(b).) The decision then sets out the process for applying excess procurement from one compliance period to a later compliance period.

This decision also sets the fundamental requirements for reporting on RPS compliance and directs Energy Division staff to implement the reporting requirements in consultation with the parties. Finally, the basic outline for the enforcement of these rules is set forth. The details of the enforcement process will be provided through later decisions, based on further comment from parties and proposals from staff.

Deferred to later decisions are the details of the enforcement process, including the amounts of any penalties, and details of the process by which retail sellers may request reductions in their portfolio content category minimums (Section 399.16(e)) or waivers of any deficits in their compliance period procurement quantity requirements. (Section 399.15(b)(5).)

Since the principal task of this decision is implementing new statutory provisions, the decision is guided by the basic principles of statutory construction. 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 the presumption that the Legislature intends

reasonable results consistent with the apparent purpose of the legislation.¹³

Although the courts remain the ultimate arbiters of statutory meaning, they accord deference to the Commission's reasonable interpretation of statutes.¹⁴

3.3. Treatment of Prior Procurement

SB 2 (1X) makes significant changes to the RPS compliance rules, but does not include any provisions expressly providing for a systematic transition from the RPS compliance requirements prior to January 1, 2011 to the new requirements set out in SB 2 (1X).¹⁵ The new statute contains two provisions that address particular aspects of the shift from the prior requirements to the current RPS requirements. One is the provision in Section 399.15(a) directed to past RPS procurement deficits.¹⁶ The other is Section 399.16(d), which creates a special rule for RPS procurement from contracts signed prior to June 1, 2010.¹⁷

¹³ *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 727, 735.)

¹⁴ *Greyhound Lines, Inc. v. Public Utilities Commission* (1968) 68 Cal.2d 406, 410; *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1090-1091.

¹⁵ In D.11-12-020, the Commission determined that retail sellers must meet the procurement and compliance requirements of SB 2 (1X) for all compliance periods, beginning January 1, 2011.

¹⁶ Section 399.15(a) provides:

In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of total kilowatt-hours sold to their retail end-use customers each compliance period to achieve the targets established under this article. For any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous

Footnote continued on next page

3.3.1. Section 399.15(a): Prior Deficits

The last sentence of Section 399.15(a) addresses RPS compliance deficits existing on December 31, 2010.¹⁸ On its face, the statutory language both states that deficits for 2010 and earlier years must be made up in years after 2010, and provides a limited safe harbor from the deficit make-up requirement. A more detailed examination of this provision is required, however, because two other parts of Section 399.15 contain potentially conflicting requirements: Section 399.15(b)(9)¹⁹ and Section 399.15 (b)(3).²⁰

renewables portfolio standard shall not be added to any procurement requirement pursuant to this article.

¹⁷ Section 399.16(d) provides:

Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards 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.

¹⁸ The last sentence of Section 399.15(a) provides:

For any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article.

¹⁹ Section 399.15(b)(9) provides:

Deficits associated with the compliance period shall not be added to a future compliance period.

Most parties agree that Section 399.15(b)(9) refers to compliance deficits for a compliance period set by SB 2 (1X), *i.e.*, 2011-2013, 2014-2016, 2017-2020, or 2021 and later years.²¹ As SCE and SDG&E point out, the language of this section is the language of the new compliance period framework. By contrast, the language of Section 399.15(a) refers to “any previous renewables portfolio standard.” This linguistic difference is meaningful. Section 399.15(b)(9) looks forward to the administration of the new RPS requirements, while Section 399.15(a), as GPI notes, addresses the orderly closing of the prior RPS requirements for 2010 and earlier years. This comparison demonstrates that neither the language nor the effect of these two sections conflict.

TURN/CUE contends that because Section 399.15(b)(3) prohibits the Commission from “requir[ing] the procurement of eligible renewable energy resources in excess of the quantities identified in [Section 399.15(b)(2)],” it necessarily prohibits the Commission from requiring that procurement deficits from 2010 and earlier years be made up at any time after January 1, 2011. According to this argument, also embraced by AReM and UCS, the Commission may take enforcement action for deficits from 2010 and prior years if a retail seller has not attained the RPS procurement safe harbor of 14% of retail sales in 2010 (discussed in Section 3.3.1.2 below), but the Commission may not require

²⁰ Section 399.15(b)(3) provides:

The commission shall not require the procurement of eligible renewable energy resources in excess of the quantities identified in paragraph (2). A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.

²¹ AReM, DRA, GPI, IEP, PG&E, Reid, SCE, SDG&E, Shell, TURN/CUE, and UCS take this position.

that the prior procurement deficits be made up through procurement after January 1, 2011.

SDG&E asserts that the TURN/CUE position would effectively negate the last sentence in Section 399.15(a), contrary to the basic principle that a statute should be construed so that each provision has a meaning and performs a useful function in the statutory scheme.²² If no deficits could be carried forward, SDG&E claims, then the 14% safe harbor provision would also be unnecessary.

It is possible to harmonize the operation of Section 399.15(a) and Section 399.15(b)(3), while preserving a role for each of these statutory directives.²³ Section 399.15(b)(3), like Section 399.15(b)(9), applies to the new procurement quantity requirements established in Sections 399.15(b)(1) and (2), and implemented by the Commission in D.11-12-020. Section 399.15(a) applies to “the deficits associated with any previous renewables portfolio standard.” Section 399.15(b)(3) does not apply to, and thus does not bar, the resolution of RPS procurement deficits in 2010 and prior years in accordance with Section 399.15(a).

3.3.1.1. Deficits for Years Prior to 2011

In implementing Section 399.15(a), it is necessary to begin with a discussion of the RPS compliance rules for years prior to 2011.

3.3.1.1.1. Prior Compliance Process

Under prior RPS law, retail sellers were required to meet their RPS annual procurement target (APT) each year. The APT was calculated as the sum of the

²² See, e.g., *California Mfrs. Assn. v. Public Utilities Com.*, 24 Cal. 3d 836, 844 (1979); *Rosenfield v. Superior Court*, 143 Cal. App. 3d 198, 202 (1983).

²³ See, e.g., *Walnut Creek Manor v. Fair Employment & Housing Com.*, 54 Cal. 3d 245, 268.

retail seller's prior year's APT plus one percent of the prior year's retail sales (referred to as the incremental procurement target (IPT)) for each year prior to 2010. For 2010 and later years, APT was set at 20 percent of retail sales. Table 1 illustrates the prior compliance process.

Table 1: Example of Prior APT-based Compliance Process

All units in MWh	2007	2008	2009	2010	Calculations	Variables and Inputs:
Annual Retail Sales	N/A	10,000	10,000	10,000	Input	<ul style="list-style-type: none"> • 2007 APT = 1,000 MWh • 2008 retail sales = 10,000 MWh
Incremental Procurement Target (IPT)	N/A	100	100	N/A	1% of prior year's retail sales until 2010 when APT must equal 20% of 2010 retail sales	<ul style="list-style-type: none"> • 2008 IPT = 100 MWh • 2008 APT = 1,100 MWh
Annual Procurement Target (APT)	1,000	1,100	1,200	2,000	Prior year's APT plus 1% of prior year's retail sales (IPT) until 2010 when APT equals 20% of 2010 retail sales	<ul style="list-style-type: none"> • 2009 retail sales = 10,000 MWh • 2009 IPT = 100 MWh • 2009 APT = 1,200 MWh (1100 + 100) • 2010 retail sales = 10,000 MWh • 2010 APT = 2,000 MWh (10,000 * 20%)

A deficit in meeting APT in any year, including 2010, could be deferred for up to three years through the use of flexible compliance mechanisms authorized by statute and developed by the Commission.²⁴ Thus, a deficit in meeting the 2010 APT could be satisfied up to the end of 2013. A retail seller could also “bank” any procurement retired for RPS compliance that was in excess of its APT (and any required deficit make-up) in any year, for use in any future year.²⁵ Banked procurement could be used to meet the APT for a particular year, or to reduce or eliminate a prior year’s deficit that had been deferred.

The Commission’s determination of whether a retail seller met its APT or had a deficit for a particular year relies on the verification of procurement by the California Energy Commission (CEC). (See prior Section 399.13; current Section 399.21.) The CEC’s most recent final report on verified procurement was adopted in June 2011 and addresses procurement for the 2007 compliance year.²⁶ Thus, at the time SB 2 (1X) was signed by the Governor in April 2011, the Commission had not yet made final RPS compliance determinations for any year after 2006.

²⁴ There were two principal deferral mechanisms. A retail seller could claim an automatic deferral for three years of 25% of IPT, without needing to provide a reason for the deferral. (D.03-06-071, OP 22.) A retail seller could also defer a deficit of any amount greater than 25% of IPT through “earmarking.” “Earmarking” was a flexible compliance mechanism by which deliveries from a future RPS procurement contract could be designated to make up, within three years, shortfalls in RPS procurement in the same year in which the earmarked contract was signed. (D.05-07-039, OP 14.)

²⁵ See prior Section 399.14(a)(2)(C); D.03-06-071; D.06-10-050; D.08-02-008.

²⁶ *Renewables Portfolio Standard 2007 Procurement Verification: Final Commission Report* (June 2011). It may be found at <http://www.energy.ca.gov/2011publications/CEC-300-2011-002/CEC-300-2011-002-CMF.pdf>.

3.3.1.1.2. Determining “Deficit Associated With Any Previous Renewables Portfolio Standard”

Section 399.15(a) brings forward into 2011 and later years the process of making up “the deficits associated with any previous renewables portfolio standard,” unless a retail seller qualifies for the statutory safe harbor.²⁷ This provision states the intention to “close the books” on prior RPS compliance. By referring to “*the* deficits,” the language implies that any deficits in prior compliance are fixed quantities. However, retail sellers’ ability to use flexible compliance mechanisms in 2010 and prior years in practice leaves the books open on compliance for 2010 and earlier years under the prior flexible compliance regime.²⁸

In order to implement the new requirements of SB 2 (1X) and settle prior RPS procurement deficits fairly and efficiently, it is therefore necessary to apply a uniform and transparent method of determining past deficits subject to Section 399.15(a).

²⁷ The last sentence of Section 399.15(a) provides:

For any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article.

²⁸ For example, procurement in 2013 could be used to comply with the 2010 compliance year.

One possible method to determine a retail seller's prior deficit would be to treat it according to the prior flexible compliance rules, as suggested by several parties.²⁹ This would allow a retail seller to use banked procurement and to make up APT deficits that were deferred through earmarking from the earmarked contracts, within three years of the year the deficit was incurred. Thus, any deferred APT deficits from 2010 would have to be made up by the end of 2013.

However, maintaining the earmarking feature of the prior flexible compliance structure through the end of the first new compliance period under SB 2 (1X), solely in order to determine deficits from years prior to 2011, is not consistent with the general approach of SB 2 (1X) to close the books on prior years and move forward toward the 33 percent goal. It is also not necessary, because it is possible to "close the books" on 2010 and earlier years in a more direct way.

²⁹ These include DRA, IEP, PacifiCorp, SCE, and UCS. PG&E supports the use of banked surplus procurement, but not earmarking, in determining any deficits. GPI properly points out that any method of determining deficits should prevent double-counting of procurement earmarked to apply to deficits in 2010 and earlier years.

The most direct and transparent method for closing the books, as suggested by AReM, PG&E, and Reid, is a process by which a retail seller would “net out” its APT deficits for 2010 and all earlier years.³⁰ The retail seller could not use any flexible compliance mechanisms for deferring an APT deficit, but would be able to apply banked procurement for any year for which it was available, as PG&E proposes. For example, a retail seller with a deficit of 100 MWh in 2009 (which had been deferred under the prior flexible compliance rules to the end of 2012) and banked procurement in 2008 of 25 MWh, could apply the banked procurement to reduce the 2009 APT deficit to 75 MWh. This process could be used for each year of APT deficit, leaving a “net” APT deficit that is the sum of all deficits for years prior to 2011, plus all banked procurement applied to those deficits.

In order to allow retail sellers to make full use of the “netting out” procedure, the Commission will allow retail sellers to submit calculations of their netted out positions (closing report) for all years in which they had an APT obligation. For years from 2004 through 2007, as relevant to each retail seller, for which retail sellers have already submitted final compliance reports based on the CEC *Verification Report* for the applicable year. A retail seller must use the CEC-verified procurement data for the closing report calculation for those years.

³⁰ The number of APTs is not the same for all retail sellers. The three large IOUs have APTs beginning in 2004. ESPs registered with the Commission in 2006 have APTs beginning in 2006; ESPs registering in later years have APTs beginning in the second year of operation (See D.06-10-019 as modified by D.07-07-025.) Small and multi-jurisdictional utilities have APTs beginning in 2007 (D.08-05-029, OP 7). Marin Energy, the only CCA in operation in any year prior to 2011, would have had an APT beginning in 2011, because it began serving customers in 2010. Because the APT-based compliance system does not carry over to 2011, Marin Energy effectively has no APT.

For 2008, 2009, and 2010, the closing report must be prepared on the basis of the CEC's verified procurement if it is available. Closing reports that must be submitted prior to the availability of the relevant *Verification Report* will be provisionally accepted if they meet all other requirements, subject to being updated once the appropriate *Verification Report* is available.

In making calculations for its closing report, a retail seller may use only procurement (whether banked or procured in that year) that complies with all RPS requirements in effect for the compliance year to which the procurement is being applied. Thus, in order to use procurement from a short term contract, a retail seller must demonstrate that the minimum quantity of long term contracting required by D.07-05-028 has been met. Further, a retail seller must demonstrate that any limitations on the use of tradable renewable energy credits set by D.10-03-021, as modified by D.11-01-025, have been complied with in the calculation.

The closing report must be submitted by all retail sellers, whether or not they are eligible for the safe harbor discussed in section 3.3.1.2, below. The closing report may enable some retail sellers to determine that they have surplus banked procurement associated with contracts or ownership agreements signed prior to June 1, 2010 that may be carried forward, as explained in Section 3.3.2.3.3., below. Submission of uniform closing reports by all retail sellers will also enhance the transparency of the closure of the prior RPS program and enable retail sellers, the Commission, and the public to better understand the current status of the RPS program.

The Director of Energy Division is authorized to develop instructions and requirements for the closing report and to require the submission of any documentation that is necessary to support the calculations. Each retail seller

must file a closing report with Energy Division and send it to the service list of this proceeding not later than 60 days from the date of this decision.³¹ After reviewing the closing report submitted by a retail seller, the Director of Energy Division may accept the calculation (if it is based on procurement verified by the CEC and meets all other requirements); may provisionally accept the calculation (if it is based on procurement that has not yet been verified by the CEC and meets all other requirements); or may require the retail seller to submit additional information. A retail seller must update any calculation that has been provisionally accepted not later than 30 days after the CEC's transmittal of the final *Verification Report* for the relevant year to the Commission.

3.3.1.2. Safe Harbor of 14% of 2010 Retail Sales

A retail seller does not need to satisfy a prior RPS program deficit calculated as set forth above if the retail seller procures "at least 14% of retail sales from eligible renewable energy resources in 2010." The safe harbor applies two significant discounts to prior RPS compliance obligations. First, the safe harbor in effect wipes out all prior APT deficits, no matter how large.³² Second, the 14% of retail sales in 2010 that is required for a retail seller to enter the safe harbor constitutes only 70% of the 2010 APT of 20% of retail sales.

Parties propose a variety of methods for determining entry into the safe harbor. Some advocate that only actual procurement in 2010 may count toward the 14% safe harbor requirement.³³ Others argue that banked procurement from

³¹ Sample calculations are included as Appendix B. These calculations are illustrative only; the calculation for each retail seller will be particular to its own situation.

³² GPI and AReM make this point.

³³ These include DRA, IEP, PacifiCorp, Reid, and TURN/CUE.

prior years may be added to current procurement in 2010.³⁴ Other parties urge that retail sellers should be able to use some or all of the deferral mechanisms available under the prior flexible compliance rules to attain the 14% of retail sales in 2010 safe harbor.³⁵

Although SB2 (1X) does not use the “clean slate” terminology adopted by some of the parties, attaining the safe harbor ends the obligations of a retail seller under the prior APT requirements. Since the safe harbor provision provides a potentially large benefit to retail sellers, it is reasonable to conclude that the Legislature did not intend this benefit to be too easily available. As SCE points out, if a retail seller could use flexible compliance mechanisms to defer any part of the procurement required to reach the 14% safe harbor for up to three future years, the provision would have little value in distinguishing retail sellers that attain the safe harbor from those that do not.

Further, as a practical matter, allowing the use of flexible compliance deferrals to meet the “14% in 2010” safe harbor would delay until at least the end of 2013 (which is also the end of the first new compliance period) the determination of whether a retail seller was entitled to the safe harbor, and thus excused from making up APT deficits for 2010 and prior years. The retail seller would begin the *second* compliance period under SB 2 (1X) without knowing whether its deficits for years prior to 2011 would need to be made up. This drawn-out scenario is not consistent with either the legislative intent to close the books on 2010 and prior years or the efficient administration of the ongoing RPS program.

³⁴ PG&E, SCE, SDG&E, UCS, and CEERT.

Several parties propose that the Commission should allow a retail seller to add banked RPS procurement from prior years to current RPS procurement in 2010 in order to meet the safe harbor requirement of 14% of retail sales in 2010.³⁶ Allowing the addition of previously banked procurement to current 2010 procurement could open the safe harbor to retail sellers who were not adding to their RPS procurement in 2010. TURN argues that there is no indication that SB 2(1X) intended to allow the use of banked procurement for this purpose.

It is reasonable to interpret the legislative language as requiring that a retail seller at least have enough in 2010 current RPS procurement to approach its APT obligation in 2010, in order to use the safe harbor. It is therefore not reasonable to include procurement from prior years that was banked for future RPS compliance in the “14% of retail sales in 2010” required for the safe harbor.³⁷ Rather, all retail sellers must meet the same goal to be able to use the safe harbor: procurement of eligible renewable energy resources for 14% of retail sales in 2010. This does not deprive a retail seller of the value of its prior banked procurement. Procurement banked under the prior flexible compliance rules may be used by a retail seller as part of the process of “netting out” prior APT deficits, as explained in Section 3.3.1.1, above. Further, as explained in Section 3.3.2.3.3, below, a retail seller that has met all APT requirements or has

³⁵ AReM, Calpine, and Noble Solutions make such proposals.

³⁶ These include AReM, PG&E, SCE, SDG&E, and UCS. (See prior Section 399.14(a)(2)(c)(i).)

³⁷ AReM asserts that the safe harbor provision implies that the 2010 APT has been “reset” to 14%. As TURN/CUE points out, this reading would in effect negate the significance of both the safe harbor and the 14% requirement for attaining it. AReM offers no support from the statutory language for its proposal, which we decline to adopt.

netted out all deficits – including the 20% APT in 2010, or has netted out all prior deficits and has any remaining banked procurement from contracts signed prior to June 1, 2010 may carry any such remaining banked procurement into the 2011-2013 compliance period and subsequent compliance periods.

The Director of Energy Division is authorized to develop instructions and requirements for each retail seller to calculate its 2010 procurement for the purposes of determining whether it has attained the safe harbor, in accordance with the methods set forth in this decision. The Director of Energy Division is authorized to require the submission of any documentation that is necessary to support the calculation. Each retail seller must file its safe harbor calculation³⁸ with Energy Division and send it to the service list of this proceeding with its closing report. Because both the closing report and the safe harbor calculation will present information about retail sales and RPS procurement more than one year in the past, there is no need for confidentiality protections for this information.

After reviewing the safe harbor calculation submitted by a retail seller, the Director of Energy Division may accept the calculation (if it is based on procurement verified by the CEC and meets all other requirements); may provisionally accept the calculation (if it is based on procurement that has not yet been verified by the CEC and meets all other requirements); or may require the retail seller to submit additional information. A retail seller must update any

³⁸ The safe harbor calculation requires a retail seller to take its 2010 RPS-eligible procurement (as defined for purposes of the safe harbor calculation) and divide it by the retail seller's total 2010 retail sales.

calculation that has been provisionally accepted not later than 30 days after the publication of the CEC's final *Verification Report* for the relevant year.

3.3.1.3. Satisfying Prior Deficits

The final issue to be determined about deficits for years prior to 2011 is the manner in which a retail seller whose closing report shows a net deficit at the end of 2010 and does not attain the safe harbor of 14% of retail sales from RPS-eligible procurement in 2010 should make up its deficit. Calpine, GPI, IEP, SCE, SDG&E, Shell, and UCS all propose some type of deficit make-up plan, though their proposals differ. Some proposals rely on the prior flexible compliance system, including satisfaction of prior earmarks.³⁹ Since earmarked contracts must be used to make up the prior deficit within three years, these proposals would require any deficits to be made up at the end of 2013, at the latest (three years after 2010, the last year of APT obligations).

SDG&E and SCE propose a more direct approach. They urge the Commission to allow a retail seller to make up a net deficit with any RPS-eligible procurement, independent of prior flexible compliance classifications. This approach is consistent both with the netting out of prior deficits adopted in this decision, and with the statutory intention to close out prior deficits as simply as possible. SCE and SDG&E do not propose a time frame within which deficits should be made up. It is reasonable to conclude, however, that deficits

³⁹ Calpine, IEP, and Shell tie their proposals to the implementation date of SB 2 (1X). GPI and UCS advocate use of the prior system without regard to the implementation date. DRA opposes using procurement in 2011 and later years to satisfy earmarks.

Because the Commission has previously determined that the rules of SB 2 (1X) apply to the compliance period beginning January 1, 2011 and later compliance periods, parties' arguments relating deficit make-up to the effective date of the statute are no longer relevant.

remaining from 2010 and earlier years should be made up no later than they would have been under the prior flexible compliance system, i.e., the end of 2013.

Because the prior deficits will be determined on a netted out basis, it is not reasonable to allocate deficit make-up to individual years, as would have been the case under the prior flexible compliance system (three years from the APT shortfall in each compliance year). The entire net deficit, calculated in accordance with the requirements of section 3.3.1.1.2, above, must be satisfied by the end of 2013, which coincides with the end of the first new compliance period.

Because the deficits were incurred under the prior RPS procurement rules, it is not reasonable to apply the portfolio content categories or the short term contracting rules set by SB 2 (1X) to making up the prior deficits. Any RPS-eligible procurement may be used to make up deficits without regard to portfolio content categories or the requirements for the use of short term contracts set forth in this decision. A retail seller may apply procurement to a compliance requirement only once, either to deficit make-up or to the procurement quantity requirements of the initial compliance period.

Several parties contend that penalties may be assessed for failure to make up prior deficits, although they have differing views about when and how such penalties could be assessed.⁴⁰ SDG&E argues that penalties may not be imposed for failure to make up deficits because Section 399.15(b)(8) authorizes penalties only for failure to comply with the new current procurement requirements.⁴¹

⁴⁰ Parties supporting penalties in some form include AReM, IEP and UCS.

⁴¹ Section 399.15(b)(8) provides:

If a retail seller fails to procure sufficient eligible renewable energy resources to comply with a procurement requirement pursuant to paragraphs (1) and (2) and fails to obtain

Footnote continued on next page

SDG&E draws an unwarranted inference from the language of Section 399.15(b)(8). That section requires the Commission to take enforcement action in a particular situation; it does not prevent the Commission from taking enforcement action, including the imposition of penalties, in other situations. It is possible for the Commission to impose penalties if a retail seller fails to make up prior deficits by the end of the 2011-2013 compliance period, as explained in this decision. However, because the possible imposition of penalties in this circumstance should be considered with along with possible penalties in relation to other RPS compliance requirements as well, this decision will not address the details of enforcement if a retail seller fails to make up a prior deficit. A later decision, informed by additional party participation, will take up the issues related to penalties for noncompliance with RPS obligations.

The Director of Energy Division is authorized to develop reporting formats and information requirements to allow retail sellers to report RPS-eligible procurement applied to make up prior deficits.

an order from the commission waiving enforcement pursuant to paragraph (5), the commission shall exercise its authority pursuant to Section 2113.

3.3.2 Section 399.16(d): Contracts Signed Prior to June 1, 2010

3.3.2.1. Scope of Provision

This provision of SB 2 (1X) declares that RPS procurement from all contracts or ownership agreements “originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article . . .”⁴² This sweeping direction is by its terms limited only by the three conditions related to the contract set out in the rest of the section.⁴³

⁴² Section 399.16(d) provides in full:

Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards 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.

IOUs’ contracts must be approved by the Commission in accordance with the standards for approval in effect at the time the contracts were approved, regardless of whether the contracts were approved before or after June 1, 2010.

⁴³ Unless otherwise indicated, the discussion in this decision assumes that all three conditions set out in Section 399.16(d)(1), (2), and (3) are met, and does not further discuss these conditions.

Because other sections of SB 2 (1X) establish specific requirements for the use of different elements of procurement (e.g., short term contracts), it is necessary to examine the relationship between the broad sweep of Section 399.16(d) and the more specific requirements of several other statutory sections. The areas discussed are:

- portfolio content category requirements;
- procurement after January 1, 2011 associated with short-term contracts signed prior to June 1, 2010;
- excess procurement that may be applied from one compliance period to a later compliance period; and
- procurement from contracts signed prior to June 1, 2010 that was banked under the prior flexible compliance rules and is not needed to net out prior APT deficits.

3.3.2.2. Portfolio Content Categories

The Commission has already determined that Section 399.16(d) allows procurement from contracts signed prior to June 1, 2010 to count for RPS compliance without regard to portfolio content category or minimum or maximum quantity requirements for procurement meeting the requirements of Section 399.16(b)(1) or Section 399.16(b)(3), respectively. (D.11-12-052, Ordering Paragraph (OP) 17.)

3.3.2.3. Other Statutory Provisions

A number of parties assert that the “count in full” directive means that none of the other restrictions or conditions on procurement set by SB 2 (1X) apply to any procurement from contracts signed prior to June 1, 2010.⁴⁴

⁴⁴ These include DRA, GPI, CMUA, IEP, Marin Energy, Noble Solutions, PG&E, SCE, SDG&E, Shell, and WPTF.

This broad position is opposed by LSA, TURN, and UCS on the basis that the placement of Section 399.16(d) in Section 399.16, related to portfolio content categories, confines its scope to the application of the portfolio content categories to procurement from contracts prior to June 1, 2010. The language of Section 399.16(d) does not support this more limited view of its application. The section by its terms applies to “procurement requirements established pursuant to this article,” *i.e.*, Article 16 of the Public Utilities Code (the RPS statute). It does not refer to “procurement requirements established pursuant to this section,” *i.e.*, Section 399.16, which establishes the portfolio content requirements.

Moreover, if the only application of section 399.16(d) were to allow procurement without regard to portfolio content categories, it would be superfluous. The requirements for quantitative portfolio content category procurement set out in Section 399.16(c) apply in terms to “contracts executed after June 1, 2010.” There would be no need for a separate Section 399.16(d), which applies only to contracts signed before June 1, 2010. Therefore, the application of Section 399.16(d) must extend further than the portfolio content categories.

3.3.2.3.1. Short Term Contracts

TURN and UCS urge that short term contracts signed prior to June 1, 2010 should be subject to the new rules on the use of short term contracts found in Section 399.13(b). AReM, Calpine, DRA, Marin Energy, PG&E, SCE, SDG&E, and Shell oppose applying the new rules to contracts signed prior to June 1, 2010.

There is no basis in the statutory language to read into the “count in full” direction an exception, “except for short term contracts.” The Legislature could have included such a qualification, but did not do so. This omission is especially significant because SB 2 (1X) changed the rules for the use of procurement from

short term contracts.⁴⁵ In the absence of any other statutory direction, it is reasonable to conclude that procurement from short-term contracts signed prior to June 1, 2010 that complied with the rules for counting procurement from short term contracts at the time the contracts were signed, continues to count for RPS compliance independent of any changes to the requirements for the use of short-term contracts made by SB 2 (1X). (The new rules for the use of short term contracts for RPS compliance are discussed in Section 3.4, below.)

3.3.2.3.2. Excess Procurement That May Be Carried Forward

Section 399.13(a)(4)(B) excludes procurement that meets the requirements of Section 399.16(b)(3) and procurement from short term contracts from “excess procurement” that can be applied to any subsequent compliance period.⁴⁶ TURN and UCS argue that these exclusions apply to procurement from contracts signed prior to June 1, 2010 as well as later contracts. IEP, PG&E, SCE, and SDG&E contend that these restrictions should not be applied to procurement from contracts signed prior to June 1, 2010. With respect to restrictions on applying

⁴⁵ 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. 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 section eliminates the provision in prior Section 399.14(b) that allowed procurement through contracts with “new facilities commencing commercial operations on or after January 1, 2005” to count for RPS compliance without meeting a minimum procurement quantities.

⁴⁶ The rules for determining “excess procurement” are set out in Section 3.7, below.

excess procurement to subsequent compliance periods, the Legislature similarly could have qualified the broad scope of the language of 399.16(d), but did not do so. Thus, procurement from contracts signed prior to June 1, 2010 will “count in full” and not be subject to the excess procurement rules set forth in Section 3.7, below.

3.3.2.3.3. Prior Banked Procurement In Excess of APT

The last area in which the meaning of Section 399.16(d) should be examined is with respect to the use of procurement from contracts signed prior to June 1, 2010 that was banked as surplus procurement under the prior flexible compliance rules in any year prior to 2011, and either was not needed to meet APT in any year prior to 2011, or was not needed to net out any APT deficits under the procedure described in Section 3.3.1.1 above.

Some parties assert that the language in Section 399.13(a)(4)(B) that the Commission must establish “[r]ules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period” simply precludes any surplus procurement prior to January 1, 2011 from being counted at all after January 1, 2011.⁴⁷ Other parties, including AReM, Calpine, DRA, Noble Solutions, PacifiCorp, Reid, and Shell, argue that prior banked procurement may be carried over to 2011 and later years in at least some circumstances.

⁴⁷ These include CalWEA/LSA, DRA, IEP, PG&E, SCE, SDG&E, and TURN/CUE.

The most reasonable way to reconcile the broad language of Section 399.16(d) with the restrictions in Section 399.13(a)(4)(B) is to treat those restrictions as applying to procurement from contracts signed after June 1, 2010. As Calpine points out, there is no express prohibition on allowing banked procurement from contracts signed prior to June 1, 2010 to count for RPS compliance after January 1, 2011. Moreover, as Calpine and AReM note, the value of the “count in full” direction in Section 399.16(d) would be diminished if previously banked procurement from contracts signed prior to June 1, 2010 was stranded, unneeded for compliance in 2010 and prior years, and unable to be used in 2011 or later years. Thus, the broad scope of Section 399.16(d) operates to preserve the value for RPS compliance of procurement from contracts signed prior to June 1, 2010. The quantity of procurement that can be carried forward will be identified in a retail seller’s closing report.

3.4. Authorization to Use Short Term Contracts

Like the prior RPS statute, SB 2 (1X) allows for RPS procurement through short term contracts once the Commission has set certain requirements.

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. 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.

The new statute differs from prior Section 399.14(b) by removing contracts with “new facilities commencing commercial operations on or after January 1, 2005”

from the resources that may be procured to meet the minimum quantity requirement.⁴⁸

The Commission implemented prior Section 399.14(b) in D.07-05-028. The Commission concluded that, in order to use procurement from a short-term contract with a facility that entered commercial operation prior to January 1, 2005 (old facility) to meet its APT obligation, a retail seller was required to sign a minimum quantity of contracts of at least 10 years' duration (long term contracts) and/or short term contracts with generation facilities that entered commercial operation after January 1, 2005 (new facilities) with expected generation equal to 0.25% of its prior year's retail sales, in the year in which it procured the short term contract for RPS compliance. If the retail seller failed to meet the minimum quantity requirement in any year, then the procurement from short term contracts with old facilities in that year could not be used for RPS compliance in any year. (D.07-05-028, OP 1 and 2.) To facilitate the administration of the minimum quantity requirement, the Commission also decided that if the expected generation from a retail seller's contracts that could be used to meet the minimum quantity requirement exceeded 0.25% of its prior year's retail sales, the additional amount could be carried forward to meet part or all of the minimum quantity requirement in a later year. (D.07-05-028, OP 3.)

⁴⁸ Prior Section 399.14(b) provided:

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 either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

In determining the new minimum quantity of long term contracting required for short term contracts to count for RPS compliance, three new elements of SB 2 (1X) should be considered.

1. The new provision allows only long term contracts to count toward the “minimum quantity” for the authorization of the use of short term contracts; short term contracts with new facilities are now treated simply as short term contracts subject to Section 399.13(b).
2. Section 399.13(a)(4)(B) prevents a retail seller from counting procurement from short term contracts as excess procurement that may be applied in a later compliance period.
3. Section 399.15(b)(1) adopts multi-year compliance periods, in place of the previous annual compliance periods.

3.4.1. Long Term Contracting Requirement

The minimum quantity requirement in D.07-05-028 is based on contracts signed by the retail seller in the year in which it procures short term contracts for RPS compliance, rather than on acquisition of the energy from the contract. Most parties support continuing the contract signing basis of the minimum quantity requirement.⁴⁹ UCS and TURN/CUE, however, each propose a procurement-based method.

UCS, supported by CalWEA/LSA, proposes that, in each compliance period, at least 75% of all procurement that meets the requirements of Section 399.16(b)(1) or (2) should be from long term contracts in order for a retail seller to count any procurement from short term contracts.⁵⁰ TURN/CUE

⁴⁹ AReM, Calpine, CalWEA/LSA, CCSF, DRA, IEP, Marin Energy, PacifiCorp, PG&E, Noble Solutions, Reid, SCE, SDG&E, and Sierra Club California.

⁵⁰ UCS Comments (August 30, 2011), at 7.

proposes that at least 25% of the procurement quantity requirement in each compliance period must be met with procurement from long term contracts.

Shifting the minimum quantity requirement to count procurement used for RPS compliance, rather than procurement promised by contracts signed, would significantly change prior rules. UCS argues that the purposes of the RPS program are advanced by long term contracts for RPS-eligible generation and not by short term contracts. TURN/CUE urges that basing the minimum quantity requirement on procurement used for RPS compliance would eliminate the possibility that long term contracts would turn out to be “illusory” and would not in fact perform.⁵¹

Noble Solutions, PG&E, and SCE oppose the UCS proposal, arguing that such a significant change is not mandated by the relatively slight alteration to the statutory language and that UCS provides no basis to conclude that the previous minimum quantity requirement based on contracting is not working. We agree that the UCS proposal is not needed to encourage long term contracting. SB 2 (1X) already incorporates two significant disincentives to the excessive use of short term contracts. First, as discussed above, under SB 2 (1X) short term contracts with facilities entering commercial operation after January 1, 2005 are included with other short term contracts, and must be supported by the minimum quantity of long term contracts. Second, as discussed in Section 3.7 below, procurement from short term contracts cannot be considered “excess procurement” in one compliance period that may be applied to a later

⁵¹ Because this suggestion was made in reply comments, other parties did not address it. We note that TURN/CUE provides no evidence that “illusory” long term contracts have been or will be a problem in RPS procurement.

compliance period. These built-in downgrades to the utility of short term contracts provide sufficient incentives for retail sellers not to place excessive reliance on short term contracts. It is not necessary to retool the minimum quantity requirement to achieve the same end.

3.4.2. Minimum Quantity of Long Term Contracts

First, the period covered by a new minimum quantity requirement must be determined. Noting that SB 2 (1X) provides for multi-year compliance periods, several parties propose or assume that the minimum quantity requirement should encompass the entire compliance period, rather than an annual period.⁵² This proposal is sensible and consistent with both the new and prior statutory compliance frameworks, and is adopted.

DRA and Sierra Club California each propose an increased minimum quantity within the contract-based requirements. DRA urges that 25% of the contracts executed in a compliance period be long term contracts. Sierra Club California proposes that the minimum quantity be increased to one per cent of the prior year's retail sales from 0.25%, but only until the retail seller meets the procurement quantity requirement for the compliance period.

DRA asserts that its 25% criterion is similar to the previous 0.25% of the prior year's retail sales, since the prior IPT required an increase of at least one per cent of retail sales. However, the quantity of contracts signed is not necessarily related to the procurement required to meet the procurement quantity requirement for a compliance period. Total contracting in any compliance period could vary greatly, between compliance periods and among retail sellers. DRA's

⁵² These include DRA, SCE, SDG&E, Shell, TURN/CUE, and UCS.

suggestion is therefore not a reasonable transition from the old to the new RPS program framework.

Sierra Club California proposes increasing the total long term contracting required, but does not provide a justification for the four-fold increase it proposes. Further, as PG&E points out, this proposal would be difficult to administer, since it would require monitoring when each retail seller meets its procurement quantity requirement. Sierra Club California does not show a good reason to add this complexity and additional contracting burden to the minimum quantity requirement, and none appears on the record. This proposal is therefore not adopted.

UCS, alone among the parties, asserts that long term contracts for unbundled renewable energy credits (RECs) (see Section 399.16(b)(3)) should not be counted toward the minimum quantity. UCS argues that unbundled REC contracts are less likely to support the development of new RPS-eligible generation. This argument necessarily lacks factual support, since the possibility of long term contracts for unbundled RECs is recent. (*See* D.11-01-025.) Moreover, it is also possible that long term contracts for unbundled RECs associated with customer-side RPS-eligible distributed generation (DG) could provide incentives for the development of such DG installations. UCS does not advance any compelling reason to exclude long term contracts for unbundled RECs from the minimum quantity calculation.

In sum, adapting the prior quantitative requirement of signing long term contracts that promise MWh equal to at least 0.25% of the prior year's retail sales to the new multi-year compliance periods reasonably implements the new statutory minimum quantity requirement without creating significant additional burdens on RPS procurement and contracting. We adopt the suggestion of IEP,

SDG&E, Shell, and UCS that the compliance period is the proper period to which the minimum quantity requirement applies.⁵³

We therefore implement Section 399.15(b) by requiring each retail seller, in order to count for RPS compliance the procurement from any short term contract signed after June 1, 2010, to meet the following minimum quantity requirements for expected generation from long term contracts signed in the compliance period in which the short term contracts are signed.⁵⁴

Table 2: Long-Term Contract Minimum Quantity Requirement⁵⁵

Compliance Period	Minimum Quantity Requirement from Long-Term Contracts (MWh)
2011-2013	0.25% of Total Retail Sales in 2010
2014-2016	0.25% of Total Retail Sales in 2011-2013
2017-2020	0.25% of Total Retail Sales in 2014-2016

It is important to note that the first period in Table 2 is different from the other two. For 2011-2013, the previous “compliance period” was 2010, under the prior APT system. This is not commensurate with the three-year 2011-2013

⁵³ PG&E suggests that the Commission should count as long term contracts those contracts that are less than 10 years in duration but that reflect a “long term contractual relationship.” This suggestion is not appropriate for the purpose of setting the long term contract minimum quantity. The minimum quantity should be transparent and easy to calculate. The complex determination of a contractual relationship is not necessary for this purpose, and would divert party and staff effort needed for ensuring RPS compliance. PG&E’s suggestion is not adopted.

⁵⁴ Contracts signed prior to June 1, 2010 are subject to the special rules in Section 399.16(d); See Section 3.3.2, below.

⁵⁵ For multi-jurisdictional utilities, these requirements apply to retail sales to California customers. (See Section 3.4.6, below.)

compliance period. It is a fair and reasonable adjustment, however, because this decision setting the rules for the use of short term contracts is being issued halfway through the 2011-2013 compliance period. This adjustment still allows objective measurement by utilizing a prior year's retail sales, but does not penalize retail sellers for unavoidable time lag in implementing the new statutory requirements.

3.4.3. Carry Over of Long Term Contracts

In D.07-05-028, the Commission allowed retail sellers to carry forward energy contracted for to meet the minimum quantity requirement that was in excess of the requirement in the year that the contract was signed. The retail seller could use the excess contracted MWh to meet the minimum quantity requirement in a later year. (D.07-05-028, OP 3.)⁵⁶ CCSF, Marin Energy, and SCE suggest that this carry-over be continued under Section 399.13(b).

The carry over provision had its origin in the annual nature of the minimum quantity requirement, which was set in accordance with the previous annual RPS compliance requirements. The Commission recognized that retail sellers' contracting might not match the annual requirements perfectly, and concluded that retail sellers should be able to carry over excess contracted MWh from one year's minimum quantity contracts to the next. Under SB 2 (1X), however, compliance periods are multi-year. As the Commission explained in D.11-12-020 (at 14-15), the new compliance periods reduce or eliminate the significance of "lumpy" RPS procurement that was prominent in the annual compliance regime. Similarly, the carry-over of MWh for the minimum quantity

⁵⁶ A deficit in meeting the minimum quantity requirement could not be deferred to later years. (D.07-05-028, OP 3.)

calculation is no longer necessary when the period in which the minimum quantity is calculated is a compliance period, not a year. The minimum quantity calculation, like the counting of short term contracts for RPS compliance, should start fresh each compliance period.

D.07-05-028 provides that projected procurement from long term contracts and contracts with new facilities signed in a particular RPS compliance year that is in excess of the minimum quantity requirement for that year may be applied to the minimum quantity requirement for later years. SCE suggests that, because the new SB 2 (1X) requirements are different from the prior requirements, any excess in the minimum quantity in 2010 and earlier years should not be carried forward to meet the minimum quantity requirement in the 2011-2013 compliance period and later compliance periods. SCE's proposal is sound. Retail sellers must meet the minimum quantity requirement for the 2011-2013 compliance period with long term contracts signed in that compliance period. Retail sellers may not use any remaining "banked" excess projected MWh from contracts signed prior to January 1, 2011 to meet the long term contract minimum quantity requirement set by this decision.

3.4.4. Duration of Minimum Quantity Requirement

Most parties propose, by analogy to the previous requirements,⁵⁷ that a retail seller no longer needs to meet the minimum quantity requirement once that retail seller has RPS-eligible procurement equal to 33% of retail sales in a

⁵⁷ D.07-05-028, OP 5 provides that:

The minimum quantity requirement shall continue until an LSE reaches the goal of 20% of retail sales obtained from eligible renewable resources, and shall terminate the calendar year after the LSE attains the 20% goal.

compliance period.⁵⁸ CCSF proposes that the requirement should apply until the retail seller attains the procurement quantity requirement in each compliance period; SDG&E asks the Commission to reevaluate the utility of the minimum quantity requirement at the end of each compliance period. DRA proposes that the minimum quantity requirement should end in 2020.

DRA's proposal is clear, simple, uniform, and connects well to the statutory structure. It is the same for all retail sellers, and does not require review of the procurement status of an individual retail seller in order to determine whether the minimum quantity requirement applies. It is not likely that DRA's proposal would produce a substantially different outcome from ending the requirement for each retail seller after it attains 33% of retail sales, since attainment of the procurement quantity requirement for a compliance period is measured at the end of the compliance period. But using a date certain for the expiration of the minimum quantity requirement removes possible ambiguities. Because it is not possible to predict market conditions, or how successful retail sellers will be in meeting the 33% procurement requirement in the 2017-2020 compliance period, it is also not sensible to try now to set any requirements for the years after 2020.⁵⁹ We therefore determine that the minimum quantity requirement set by this decision will end December 31, 2020.

⁵⁸ These include AReM, Marin Energy, Noble Solutions, PG&E, Reid, SCE, and Shell. IEP and UCS argue against a fixed termination date.

⁵⁹ The compliance periods become annual beginning in 2021, and the compliance requirement remains at 33% of retail sales for each of those annual compliance periods. (See D.11-12-020, at 19.)

3.4.5. Repackaged Contracts and Procurement Entities

Marin Energy urges the Commission to continue the provision of D.07-05-028 allowing a retail seller to use contracts that have been “repackaged” from contracts signed by other entities with RPS-eligible generation facilities in order to comply with the minimum quantity requirement. (D.07-05-028, OP 4.) The idea of repackaging is to allow a larger entity to enter into a long-term contract, and repackage the contracted-for energy into contracts that could meet the minimum quantity needs of other retail sellers. For example, one 10-year contract for 500 MWh/year could be divided up to yield five 10-year contracts for 100 MWh/year; the repackaged pieces could then be sold to five other retail sellers and would count toward the minimum quantity requirement for each of those five retail sellers.

This process should be carried forward into the new minimum quantity requirement under SB 2 (1X). Unlike the original repackaging concept in D.07-05-028, only long term contracts may be repackaged, into smaller long term contracts, for compliance with the minimum quantity requirement under Section 399.13(b). The requirement of D.07-05-028 that the CEC must verify the eligibility of both the generation facility from the original contract and the repackaged contracts should also be carried over to the new minimum quantity requirement.

The potential complexities and transaction costs that may be involved in the use of repackaged contracts can be avoided by the use of a procurement entity, authorized by Section 399.13(f).⁶⁰ The procurement entity could contract directly on behalf of a retail seller's customers, eliminating the need for another entity to enter into the original long term contract and then repackage it for (presumably) smaller retail sellers. Notably, the statute allows recovery of the costs through retail rates of the end-use customers, subject to the Commission's review and approval. 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.

3.4.6. Small and Multi-Jurisdictional Utilities

SB 2 (1X) directs that the minimum quantity rules "shall apply equally to all retail sellers." BVES, the only retail seller now described by Section 399.18, must comply with the minimum quantity requirement without qualification or nuance.

For PacifiCorp, a multi-jurisdictional utility, and CalPeco, a successor to a multi-jurisdictional utility, as described by Section 399.17, further elaboration is

⁶⁰ Section 399.13(f) provides:

(1) The commission may authorize a procurement entity to 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. The commission shall not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

required. Section 399.17(c), carrying forward prior RPS law, assigns a procurement quantity requirement to the retail sellers described in Section 399.17(a) “as a specified percentage of total kilowatt hours sold by the electrical corporation to its retail end-use customers in California in a compliance period.” Thus, as we did in D.08-05-029, we set the minimum quantity requirement for PacifiCorp as 0.25% of its retail sales *to its California customers* in the previous compliance period, in accordance with Table 2, above. This same formula applies by statute to CalPeco. However, since all of CalPeco’s retail sales are made to California customers, the formula yields the same result for CalPeco as for BVES and the other California retail sellers, as shown in Table 2.

3.4.7. New Retail Sellers

There is one circumstance in which some variation on the minimum quantity rules is required: a retail seller newly entering the California market. Such a retail seller, by definition, does not have California retail sales in the prior compliance period, or even in the prior year, by which to measure the minimum quantity of long term contracts necessary for it to count short term contracts in the current compliance period.

In D.07-05-028, the Commission concluded that the minimum quantity requirement would apply to a retail seller “newly commencing operations in California, beginning in its second calendar year of retail operations.” (D.07-05-028, OP 6.) As CCSF suggests, that determination should also be used in applying the minimum quantity requirement under Section 399.13(b) to new retail sellers. It is somewhat more difficult to fit a new retail seller into the new multi-year compliance period framework than the old annual compliance system, but it can be done. There may be a slight lag in the first compliance

period for the new retail seller, but in the second compliance period of operation, the new retail seller should be like all other retail sellers.

Table 3: Long-Term Contract Minimum Quantity Requirement for New Retail Sellers

Compliance Period	Minimum Quantity Requirement from Long-Term Contracts (MWh)
First Compliance Period of Operation	0.25% of Total Retail Sales in First Year of Operation
Second Compliance Period of Operation	0.25% of Total Retail Sales in First Compliance Period of Operation
Third Compliance Period of Operation	0.25% of Total Retail Sales in Second Compliance Period of Operation

The Director of Energy Division is authorized to consult with new retail sellers and determine how the minimum quantity requirement will initially be applied to each new retail seller.

3.4.8. Previous Short Term Contracts

As explained in Section 3.3.2 above, procurement from contracts signed prior to June 1, 2010 counts for compliance with the new RPS procurement requirements set by SB 2 (1X) without regard to any other limitations set by SB 2 (1X), so long as the statutory conditions on the contracts are met. Thus, procurement from short term contracts signed prior to June 1, 2010 will count toward the procurement quantity requirements set by D.11-12-020 and may be counted as “excess procurement” that can be applied from one compliance period to a later compliance period. (See Section 3.7, below.)

However, as set forth in Section 3.3.1.1, above, in order for a retail seller to count procurement from a short term contract in netting out any procurement

deficits in 2010 and earlier years, the retail seller must have complied with the minimum quantity requirement in the year for which it seeks to count the procurement from the short term contract pursuant to D.07-05-028. Similarly, in order for a retail seller to count procurement from a short term contract toward its showing of 14% of 2010 retail sales to meet the safe harbor requirement of Section 399.15(a), the retail seller must have complied with the minimum quantity requirement in 2010.⁶¹

⁶¹ In accordance with the then-existing rules set out in D.07-05-028, the minimum quantity requirement can be met with properly carried over MWh from long term contracts or short term contracts with new facilities signed in earlier years.

3.5. Retirement of RECS

Section 399.21(a)(6) sets a 36-month time limit on the retirement of RECs for RPS compliance.⁶² This limit is different from the time limit of three compliance years, inclusive of the year of the generation, on the retirement of RECs set by the Commission in D.10-03-021, OP 10. Like other new compliance rules set in SB 2 (1X), the new REC retirement limit applies as of January 1, 2011. That is, any REC retired for RPS compliance by a retail seller on or after January 1, 2011, must be retired within 36 months of the initial date of the associated generation, regardless of whether the associated electricity was generated before or after January 1, 2011. Thus, a REC retired in June 2011 must be associated with electricity generated not earlier than July 2008; a REC retired in December 2013 must be associated with electricity generated not earlier than January 2011.

PG&E asserts that Section 399.21(a)(6) allows RECs acquired by a retail seller in one compliance period to be retired for RPS compliance in a later compliance period, so long as the retirement occurs within 36 months of the date of the generation associated with the REC.⁶³

⁶² Section 399.21(a)(6) provides:

A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity.

⁶³ DRA, SCE, and SDG&E agree with this position.

TURN/CUE and UCS, supported by CalWEA, oppose this interpretation. TURN/CUE argues that PG&E's proposal is a device to circumvent the prohibition on counting procurement meeting the criteria of Section 399.16(b)(3) as excess procurement that can be applied to a later compliance period.⁶⁴ UCS asserts that Section 399.21(a)(6) does not create a right for a REC to have a "shelf life" of 36 months if that would conflict with the limitations on excess procurement in Section 399.13(a)(4)(B).

In considering this issue, it is important to keep in mind that Section 399.21 applies to all RECs used for RPS compliance; *i.e.*, to all RPS procurement that is tracked in WREGIS. TURN/CUE and UCS seek to carve out an exception to the general rule. TURN/CUE and UCS assert this exception is necessary in order to prevent retail sellers from improperly carrying over unbundled RECs (as well as RECs associated with any other procurement meeting the criteria of Section 399.16(b)(3)) from one compliance period to the next by acquiring them late in one compliance period but retiring them for RPS compliance in the next compliance period.

Although the concern of TURN/CUE and UCS is understandable, it appears to conflate acquiring a REC with using that REC for RPS compliance. These are, however, two different processes. PG&E correctly notes that a REC maintained in a retail seller's "active" WREGIS subaccount may be sold or transferred at any time before it is retired for RPS compliance.⁶⁵ The retail seller

⁶⁴ Such procurement is likely to consist largely of unbundled RECs; *see* D.11-12-052, OP 3.

⁶⁵ A general overview of the WREGIS accounting and retirement process is presented in D.10-03-021, at 66-67.

has not yet committed to use that REC for RPS compliance; it may determine that the REC is not needed for RPS compliance and sell it at any time.⁶⁶ Only when the REC has been retired in WREGIS for RPS compliance does it enter into the RPS compliance system. A REC that has been retired for RPS compliance is indeed subject to any applicable prohibition or limitation on being counted as “excess procurement” that can be applied to the next compliance period.

Moreover, the exception proposed by TURN/CUE and UCS is not supported by the statutory language. Section 399.21(a)(6) imposes an absolute limit on the retirement of RECs, measured in months from the initial date of the associated generation. Implementing the proposed exception would require setting a variable time limit on the retirement of RECs, depending on the date of their acquisition. Thus, for example, a REC associated with electricity generated in February 2011 would need to be retired by December 31, 2013, a period of 34 months. A REC associated with electricity generated in February 2012 would also need to be retired by December 31, 2013, a period of 22 months. If Section 399.21(a)(6) intended this result, it is reasonable to believe that it would have been written to say (changed language in italics):

A renewable energy credit shall not be eligible for compliance . . . unless it is retired in [WREGIS] by the retail seller or local publicly owned electric utility *within the same compliance period as the initial date of generation of the associated electricity.*

The TURN/CUE proposal is therefore not adopted.

⁶⁶ Section 399.21(a)(3) requires that IOUs must credit any revenues from the sale of RECs to the benefit of ratepayers.

3.6. Quantitative Procurement Requirements

3.6.1. Procurement Quantity Requirements

In D.11-12-020, the Commission implemented the new RPS procurement quantity requirements set in Section 399.15(b) for the three statutorily designated compliance periods⁶⁷ and for the years subsequent to 2020. In D.11-12-052, the Commission implemented the new portfolio content categories set out in Section 399.16. These procurement quantity requirements and portfolio content categories provide the basic framework for RPS procurement obligations under SB 2 (1X). Nothing in this decision alters any requirements set in D.11-12-020 or D.11-12-052. This decision implements the additional requirements for the proportion of procurement in each portfolio content category that may be used to meet the procurement quantity requirements set in D.11-12-020.

3.6.2. Portfolio Balance Requirements

SB 2 (1X) requires retail sellers to balance their portfolios by complying with minimum and maximum quantities of procurement meeting the criteria of particular portfolio content categories in each compliance period.⁶⁸ The portfolio

⁶⁷ The compliance periods are 2011-203; 2014-2016; and 2017-2020.

⁶⁸ Section 399.16(c) provides that:

In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement credited towards 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 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

Footnote continued on next page

balance requirements are bounded by two conditions. The first condition is that the requirements apply “for all procurement *credited towards* each compliance period.” (Emphasis supplied.) The statutory language focuses on the procurement that will actually be counted for compliance in the compliance period. RECs that are retired for RPS compliance by a retail seller in a particular compliance period, but are not applied to its RPS compliance obligations in that compliance period, are outside the quantitative portfolio balance requirements.

December 31, 2016, and 10 percent 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).

To consider an example: A retail seller retires 3,000 RECs from contracts or ownership agreements signed after June 1, 2010 for RPS compliance during the 2014-2016 compliance period. The retail seller's procurement quantity requirement for that period is 2,500 RECs.⁶⁹ The 2,500 RECs credited towards the procurement quantity requirement are subject to the quantitative portfolio content requirements of Section 399.16(c). The 500 additional RECs may or may not be eligible to be counted as excess procurement pursuant to Section 399.13(a)(4)(B),⁷⁰ but they are not part of the quantitative portfolio content category calculation for this compliance period.

The second condition is that the portfolio balance requirements apply to procurement "associated with contracts executed after June 1, 2010." Thus, in the prior example, the retail seller could, in the 2014-2016 period, retire 500 RECs from procurement associated with contracts or ownership agreements executed prior to June 1, 2010 and credit those towards its procurement quantity requirement for that compliance period. The portfolio balance requirements would then apply to the remaining 2,000 RECs credited towards the procurement quantity requirement.

⁶⁹ The quantity of RECs retired by a retail seller may be greater than RECs credited to the retail seller's compliance period procurement quantity requirement for a number of reasons; e.g., because of difficulties in estimating the ultimate compliance obligation, or because RECs are retired to meet the requirement that RECs must be retired within 36 months of the date of the original generation, as explained in section 3.5, above.

⁷⁰ See section 3.7, below.

3.6.2.1. Section 399.16(c)(2)

The maximum limitation contained in Section 399.16(c)(2) is a straightforward proportion of the procurement quantity requirement that may be satisfied with procurement meeting the criteria of Section 399.16(b)(3).⁷¹ This limitation can be determined by multiplying the percentage limitation for the compliance period by the total procurement credited toward the compliance period from contracts or ownership agreements signed after June 1, 2010.⁷²

A retail seller cannot count toward the procurement quantity requirement any unbundled RECs that exceed the statutorily mandated maximum. As AReM points out, such procurement would then never be counted toward the retail seller's RPS obligations, because it cannot be counted as "excess procurement" that can be applied to a later compliance period. (Section 399.13(a)(4)(B); *see* Section 3.7, below.)

⁷¹ These are:

Eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2).

For ease of reading, this discussion will refer to this category as "unbundled RECs," though the portfolio content category may include other types of procurement. See D.11-12-052 at 54-55.

⁷² For the 2011-2013 compliance period, this would be: $.25 * (\text{total credited procurement} - \text{credited pre-June 1, 2010 procurement})$.

3.6.2.2. Section 399.16(c)(1)

Parties are divided about the significance of the quantitative requirements of Section 399.16(c)(1), which imposes a minimum proportion of procurement meeting the criteria of Section 399.16(b)(1) (Category 1) in each compliance period.⁷³ AReM, DRA, GPI, and TURN assert that this requirement has independent significance and failure to meet it is a form of noncompliance about which the Commission could take enforcement action. Calpine, Noble Solutions, PG&E, SCE, and SDG&E argue that a retail seller's failure to meet this portfolio balance requirement should not be considered noncompliance with RPS procurement requirements. They argue that the procurement quantity requirements set in Section 399.15(a) and D.11-12-020 are the fundamental requirements, and the requirements of Section 399.16(c) are secondary.

Section 399.16(c) states that "all retail sellers shall meet the following requirements for all procurement credited towards each compliance period[.]"

⁷³ These criteria are:

Eligible renewable energy resource electricity products that meet either of the following criteria:

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

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

This language sets mandatory quantitative requirements for the portfolio content categories.

TURN argues that the portfolio balance mandate governs all the procurement that may be counted toward procurement quantity requirements. TURN contends that, since procurement meeting the criteria of Section 399.16(b)(1) must be “not less than 50 percent” of “all procurement credited towards each compliance period,” a retail seller may receive credit for procurement totaling no more than two times the quantity of procurement meeting the criteria of Section 399.16(b)(1). TURN also suggests that any procurement that would, as a result, not count toward the procurement quantity requirement should not be permitted to be counted as “excess procurement” that can be applied in the next compliance period pursuant to Section 399.13(4)(B).

TURN’s recommendation would, as PG&E notes, essentially convert a retail seller’s failure to comply with Section 399.16(c)(1) into a failure to comply with *both* the portfolio balance requirements of Section 399.16(c) *and* the procurement quantity requirements set by D.11-12-020. If Category 1 procurement is less than 50 percent of the required procurement from contracts signed after June 1, 2010, reducing total credited procurement to be equal to twice the amount of Category 1 is likely to lead to the retail seller failing to meet the procurement quantity requirement, as well.⁷⁴ Illustrative examples are provided in Table 4.

⁷⁴ Because procurement from contracts or ownership agreements signed prior to June 1, 2010 is not subject to the portfolio content categories, it is possible that a retail seller could meet the procurement quantity requirement by adding procurement from pre-June 1, 2010 contracts to the procurement from contracts signed after June 1, 2010 that is subject to the quantitative requirements of Section 399.16(c).

Table 4: Portfolio Balance Requirements - TURN Proposal

Row		Column A		
	Compliance Period (CP) 1 (2011 - 2013)	Quantity of RECs	Percentage Amounts	Notes & Calculations
1	Procurement Quantity Requirement (PQR)	2,000		
	Procurement Classification⁷⁵			
2	Category 1	800	40%	$A2 / (A2 + A3 + A4)$
3	Category 2	700	35%	$A3 / (A2 + A3 + A4)$
4	Category 3	500	25%	$A4 / (A2 + A3 + A4)$
5	Total Procurement Credited Towards CP 1	2,000	100%	$(A2 + A3 + A4)$
6	Category 1 Minimum Requirement	1,000	50%	$(A2 + A3 + A4) * 50\%$
7	Category 1 shortfall	200		$A6 - A2$
	Results			
8	Adjusted Total Procurement Credited Towards CP 1	1,600		<i>A2 * 2 if minimum Category 1 is not met so that Category 1 procurement equals 50% of total procurement from contracts executed after June 1, 2010</i>
9	Adjusted Category 3 Maximum	400		$A8 * 25\%$
10	Category 3 Disallowance	100		$A4 - A9$, if minimum Category 1 is not met
11	Adjusted Category 2 Allowance	400		$A8 - (A2 + A9)$, if minimum Category 1 is not met
12	Category 2 Disallowance	300		$A3 - A11$
13	Total Procurement Disallowance	400		$A10 + A12$
	Procurement Credited to Compliance Period			
14	Category 1	800		A2
15	Category 2	400		$A3 - A12$
16	Category 3	400		$A4 - A10$

⁷⁵ Category 1, 2 and 3 RECs meet the criteria of Sections 399.16(b)(1), 399.16(b)(2) 399.16(b)(3), respectively.

PG&E, SCE, and SDG&E, as well as Calpine, assert that TURN's proposal would penalize ratepayers by denying any RPS compliance credit for all procurement that is disallowed (for both the current compliance period and any later compliance period) because a retail seller failed to meet the quantitative portfolio content requirement of Section 399.16(c)(1).

TURN fails to demonstrate that the Legislature intended that a shortfall in meeting the quantitative portfolio content requirement for procurement meeting the criteria of Section 399.16(b)(1) should lead to a shortfall of double that amount in meeting the procurement quantity requirement for the compliance period. Nothing in the statutory language makes this harsh result a necessary or intended part of the statutory scheme, and TURN does not provide a reason to infer that it should be.

Although we do not adopt TURN's proposal, this does not mean that the portfolio balance requirements are inconsequential or unenforceable. AReM, DRA, and GPI properly point out that, to be meaningful, these requirements must be enforceable. It is possible to construe the Section 399.16(c) requirements as binding on retail sellers, without having the consequence of creating or increasing a retail seller's shortfall in meeting the procurement quantity requirement. We therefore conclude that a shortfall in meeting the portfolio balance requirement for procurement meeting the criteria of Section 399.16(b)(1) is a failure to comply with an RPS compliance obligation, subject to enforcement action, but that such a shortfall should be determined independent of any failure to meet the procurement quantity requirement set by D.11-02-020. An illustrative example is provided by Table 5.

Table 5: Example Calculation for Adopted Portfolio Balance Requirement

Row		Column A		
	Compliance Period 1 (2011 - 2013)	Quantity of RECs	Percentage Amounts	Notes & Calculations
1	Procurement Quantity Requirement (PQR)	2,000		
	Procurement Classification⁷⁶			
2	Category 1	800	40%	$A2 / (A2 + A3 + A4)$
3	Category 2	700	35%	$A3 / (A2 + A3 + A4)$
4	Category 3	500	25%	$A4 / (A2 + A3 + A4)$
5	Total Procurement Credited Towards Compliance Period 1	2,000	100%	$(A2 + A3 + A4)$
6	Portfolio Content Category Limits			
7	Category 1 Minimum	1,000	50%	$(A2 + A3 + A4) * 50\%$
8	Category 1 Shortfall	200		$A7 - A2$
9	Category 3 Maximum	500	25%	$(A2 + A3 + A4) * 25\%$
10	Ineligible Category 3	0		$A9 - A4$
	Results			
11	Retail Seller is out of compliance with minimum Portfolio Balance requirements (399.16(c)(1)) and subject to enforcement by the Commission			

Parties advance a variety of proposals for dealing with a retail seller's failure to meet the Section 399.16(c)(1) requirements. DRA and GPI assert that retail sellers should be subject to Commission enforcement for any Section 399.16(c)(1) quantitative shortfall. PG&E, SCE, SDG&E, and Calpine argue that the Commission has the discretion to evaluate the reasons for noncompliance with Section 399.16(c)(1) and to choose from among a variety of

⁷⁶ Category 1, 2 and 3 RECs meet the criteria of Sections 399.16(b)(1), 399.16(b)(2) 399.16(3), respectively.

remedies for any deficiency. AReM believes that the retail seller would be out of compliance, but that the Commission would have to consider numerous factors, including whether waiver or reduction in the portfolio content category requirements is warranted. CalWEA asserts that all the proposals ignore the central role of Section 399.16(e), which allows a retail seller to seek a reduction of the Section 399.16(c)(1) requirements.⁷⁷

Failing to meet the Section 399.16(c)(1) requirements leads to noncompliance with an RPS obligation. However, CalWEA identifies an important element in enforcement of that obligation: the statutory provision for seeking a reduction of the obligation. As discussed more fully in Section 3.9, below, we conclude that it is premature to determine in this decision the enforcement consequences for retail sellers that fail to meet the Section 399.16(c)(1) requirements, because further work is required, with participation of the parties, to specify the details of both the process for requesting a reduction of the Section 399.16(c)(1) requirements and the standards for evaluating such a request.

⁷⁷ Section 399.16(e) provides:

A retail seller may apply to the commission for a reduction of a procurement content requirement of subdivision (c). The commission may reduce a procurement content requirement of subdivision (c) to the extent the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15. The commission shall not, under any circumstance, reduce the obligation specified in paragraph (1) of subdivision (c) below 65 percent for any compliance obligation after December 31, 2016.

3.7. Excess Procurement

SB 2 (1X) provides a new framework allowing a retail seller to carry over procurement from one compliance period to the next, with certain restrictions.⁷⁸ The statute uses the term, “excess procurement,” but does not provide a definition for it. It is reasonable to give the words their ordinary meaning and implement this term as identifying “procurement in an amount greater than the amount needed to comply with the procurement quantity requirement in a given compliance period.”

Parties make several proposals for calculating the amount of excess procurement in one compliance period that can be applied to a later compliance period. All proposals are expressed in terms of one all-encompassing formula. Before turning to the merits of the parties’ proposals, it is useful to break down the calculation of excess procurement into separate steps.

⁷⁸ Section 399.13(a)(4)(B) directs the Commission to adopt

[r]ules 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 deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.

The initial step of determining “excess” procurement must be taken by subtracting the procurement quantity requirement for a compliance period from all complying procurement applied to that compliance period by a retail seller, by retiring in the Western Renewable Generation Information System (WREGIS) the RECs to be applied to the compliance period.⁷⁹ The second step is determining the RECs that are eligible to be designated as excess procurement.⁸⁰ It is with respect to this step that the parties present differing views.

3.7.1. Exclusions from Excess Procurement Calculation

PG&E, SDG&E, and PacifiCorp urge that, while procurement from short-term contracts is excluded from excess procurement, procurement meeting the criteria of Section 399.16(b)(3) (principally unbundled RECs) should not be. They assert that the differing statements in the last two sentences of Section 399.13(a)(4)(B) lead to different outcomes for the two types of procurement. It is clear that the instruction that the Commission “shall deduct

⁷⁹ RPS procurement and compliance obligations are denominated in RECs, not MWh. (See Section 399.25.) (WREGIS calls RECs “WREGIS” Certificates.) References in this discussion “RECs” are to RECs in general, not to unbundled RECs (Section 399.16(b)(3)).

⁸⁰ Section 399.13(a)(4)(B) directs in part that:

In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.

As discussed in Section 3.3.2.3.2 above, the restrictions on procurement allowed to be counted as excess do not apply to procurement from RPS contracts signed prior to June 1, 2010, so the restrictions on excess procurement apply only to contracts signed after June 1, 2010.

the total amount of procurement associated with contracts of less than 10 years in duration” prevents procurement from short term contracts signed later than June 1, 2010 from being counted as excess procurement. But, PG&E argues, the separate instruction that “in no event shall [procurement from contracts signed after June 1, 2010 and meeting the criteria of Section 399.16(b)(3)] be counted as excess procurement” should be interpreted to allow such procurement to be counted *first* in determining the total amount of procurement that could be counted as excess. PG&E employs the metaphor of filling a pail. The procurement that spills out after the pail is full is excess procurement; to ensure that such excess procurement is not procurement meeting the criteria of Section 399.16(b)(3), the unbundled RECs go into the pail first.

Most parties argue that procurement from both short term contracts⁸¹ and long term contracts for procurement meeting the criteria of Section 399.16(b)(3) should be completely excluded from the calculation of excess procurement.⁸² TURN/CUE characterizes PG&E’s proposal as an effort to circumvent the restrictions on excess procurement. According to TURN/CUE, by in effect, counting unbundled RECs first, while counting procurement meeting the other portfolio content category criteria as the actual excess procurement, the PG&E proposal brings unbundled RECs into the excess procurement calculation by boosting the total amount of procurement that is eligible to be considered “excess.”

⁸¹ With the caveat that procurement from contracts signed prior to June 1, 2010 may count without limitation as excess procurement, as explained in Section 3.3.2.3.2, above.

⁸² These include CalWEA/LSA, IEP, Reid, SCE, TURN/CUE, and UCS.

PG&E's proposal is not consistent with the statutory language. Although the last two sentences of Section 399.13(a)(4)(B) are different, they both express the same idea: certain types of procurement are excluded from being counted as excess procurement. PG&E's proposed excess procurement calculation method would subtract procurement associated with short term contracts, but would make no adjustment for procurement of unbundled RECs.⁸³ This proposal simply reads out of the statute the direction that "in no event" should procurement meeting the criteria of Section 399.16(b)(3) be counted as excess.

On the other hand, the position that all procurement from short term contracts signed after June 1, 2010 and unbundled RECs from long term contracts signed after June 1, 2010 should be "taken off the top" before calculating excess procurement does not take into account the somewhat differing directions in the two statutory sentences. This position reads the statute as saying:

In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration and the total amount of. ~~In no event shall~~ electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 ~~be counted as excess procurement.~~ associated with contracts of 10 years or more in duration.

But the statutory language implies two distinct operations: taking procurement from short term contracts off the top; and not counting procurement meeting the criteria of Section 399.16(b)(3) as excess.

⁸³ PG&E Comments (August 30, 2011), at 20.

AReM identifies a way to harmonize the two statutory exclusions that is consistent with the calculation of retail sellers' procurement quantity requirements. Like other parties, AReM would deduct procurement from short term contracts signed after June 1, 2010 from the procurement eligible to be considered excess. But, instead of either allowing all procurement meeting the criteria of Section 399.16(b)(3) into the calculation (as PG&E does), or excluding all of it (as SCE and TURN/CUE do), AReM proposes that RECs meeting the criteria of Section 399.16(b)(3) that have been retired in the compliance period – but exceed the allowable quantitative portfolio content category amount – may not be counted as excess procurement, and must be subtracted in the excess procurement calculation. Thus, no procurement meeting the criteria of Section 399.16(b)(3) will be counted as excess, but the excess procurement amount will be reduced only by the quantity of RECs meeting the criteria of Section 399.16(b)(3) retired in the compliance period that are greater than the quantity that may be credited towards compliance pursuant to Section 399.16(c)(2).

We conclude that AReM's analysis provides a balanced approach to implementing the idea expressed in the legislative language. It allows both operative sentences to be implemented without either omission or duplication. This approach is illustrated in Table 6.

Table 6: Example Excess Procurement Calculation (Compliance Period 1)

Note: Category 1, 2 and 3 RECs meet the criteria of Sections 399.16(b)(1), 399.16(b)(2) 399.16(b)(3), respectively; Short-term contracts are less than 10 years in length

Data Table	Quantity of RECs	Portfolio Content Category Requirements for Compliance Period 1
Procurement Quantity Requirement	2,500	N/A
RECs from contracts executed prior to June 1, 2010	1,000	N/A
RECs from contracts executed after June 1, 2010	2,000	N/A
Long-Term Category 1	900	Minimum Category 1 is 1,000 RECs (2,000 * 50%)
Short-Term Category 1	100	
Long-Term Category 2	400	N/A
Short-Term Category 2	0	
Long-Term Category 3	600	Maximum Category 3 is 500 RECs (2,000 * 25%)
Short-Term Category 3	0	
Total RECs Retired in Compliance Period 1 (2011 - 2013)	3,000	N/A
Example Excess Procurement Calculation for Compliance Period 1	Quantity of RECs	Calculation
Total RECs Retired in the Compliance Period	3,000	
<i>minus</i> All RECs from Short-Term Contracts Signed after June 1, 2010	- 100	
<i>minus</i> Portion of RECs from Category 3 Contracts above the Maximum Limit	- 100	Total Category 3 RECs minus Maximum Allowed (600 - 500 = 100)
<i>equals</i> RECs Eligible for Excess Procurement	= 2,800	
<i>minus</i> Procurement Quantity Requirement for the Compliance Period	- 2,500	
<i>equals</i> Excess Procurement from the Compliance Period	= 300	

In sum, the method shown in Table 5 allows a retail seller to apply procurement in excess of its procurement quantity requirement in one compliance period to the next, while preventing any procurement from contracts of less than 10 years' duration signed after June 1, 2010 to be counted as excess procurement and not allowing any procurement from contracts signed after June 1, 2010 that meets the criteria of Pub. Util. Code § 399.16(b)(3) to be counted as excess procurement.

3.7.2. Application of Excess Procurement

The method for calculating excess procurement set forth above governs how excess procurement will be determined in one compliance period, but issues remain with respect to the application of the excess procurement to a subsequent compliance period. In particular, the treatment of excess procurement with respect to the date of the contract (Section 3.3.2, above) and the portfolio balance requirements discussed in Section 3.6.2, above, must be specified.

Parties have largely focused their attention on the initial calculation, not on the ultimate application of the excess procurement to RPS compliance in a later compliance period. In its Supplemental Comments, PG&E proposes a method of preserving the portfolio content category of some procurement when it is applied to a later compliance period. TURN opposes PG&E's proposal, asserting that the result would be to circumvent the portfolio balance requirements in the initial compliance period. TURN correctly identifies the effect of the PG&E proposal, and we decline to adopt it.

Nonetheless, it is necessary to determine how excess procurement will meet the requirements in the later compliance period when it is applied to RPS compliance. As determined in Section 3.3.2, above, procurement from contracts

signed before June 1, 2010 counts without limitation for RPS compliance. Thus, to the extent that procurement from contracts signed prior to June 1, 2010 is excess procurement that is applied to a later compliance period, it will count in full toward the procurement quantity requirement. Such procurement is not subject to the portfolio balance requirements.

With respect to procurement from contracts signed after June 1, 2010, the situation is more complex. The statutory language of the portfolio balance requirement (Section 399.16(c)) provides the starting point.

In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement [associated with contracts executed after June 1, 2010] credited towards each compliance period. . .

Since the requirements apply to “all procurement credited towards each compliance period,” the excess procurement credited towards a later compliance period must meet the portfolio balance requirements.⁸⁴

In order to “map” excess procurement into the appropriate portfolio content category in the later compliance period in which it is credited towards RPS compliance, retail sellers must account for two aspects of all RECs counted as excess procurement. First, the contract with which the RECs are associated must be identified as having been signed either before June 1, 2010 or after June 1, 2010, in order to determine whether the portfolio balance requirements apply. Second, the portfolio content category of the RECs at the time they were retired for RPS compliance must be recorded in the retail seller’s excess

⁸⁴ The only relevant portfolio balance requirement is the minimum proportion of Category 1 procurement, since no Category 3 procurement may be counted as excess procurement.

procurement calculation. Both the contract date and the portfolio content category for all RECs from excess procurement counted for compliance must be identified in the compliance report for the compliance period in which the excess procurement is applied.

3.8. Reporting

3.8.1. Compliance Reports

Section 399.13(a)(3) requires that retail sellers file annual compliance reports that include at least the information set out in the statute.⁸⁵ Additional information necessary to monitor compliance with the quantitative requirements discussed in this decision will also be required, as will sufficient information to allow Energy Division staff to administer the statutory requirements with respect

⁸⁵ Section 399.13(a)(3) provides:

The commission shall direct each retail seller to prepare and submit an annual compliance report that includes all of the following:

(A) The current status and progress made during the prior year toward procurement of eligible renewable energy resources as a percentage of retail sales, including, if applicable, the status of any necessary siting and permitting approvals from federal, state, and local agencies for those eligible renewable energy resources procured by the retail seller, and the current status of compliance with the portfolio content requirements of subdivision (c) of Section 399.16, including procurement of eligible renewable energy resources located outside the state and within the WECC and unbundled renewable energy credits.

(B) If the retail seller is an electrical corporation, the current status and progress made during the prior year toward construction of, and upgrades to, transmission and distribution facilities and other electrical system components it owns to interconnect eligible renewable energy resources and to supply the electricity generated by those resources to load, including the status of planning, siting, and permitting transmission facilities by federal, state, and local agencies.

(C) Recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements established pursuant to this article.

to excess procurement and the minimum quantity of procurement from long term contracts necessary in order for a retail seller to be able to count procurement from short term contracts for RPS compliance.

Parties generally support an annual compliance report, rather than the semiannual compliance reporting process under the prior RPS rules, although they propose different times for the submission of an annual report.⁸⁶ GPI and SCE also urge the Commission to simplify the reporting requirements and formats.

Since SB 2 (1X) institutes multi-year compliance periods, an annual compliance report interval should allow retail sellers to provide sufficient information for Energy Division staff to be able to understand a retail seller's compliance progress. Simply cumulating the annual reports will not, however, allow the Commission to determine whether a retail seller has met all the requirements for a compliance period. Therefore, the report for the final year of a compliance period must include a separate section providing all information necessary to determine compliance for that compliance period and allowable excess procurement that may be applied to a later compliance period.

Parties propose a variety of dates for the annual report. GPI and Marin Energy propose a date of May 1 of the year following the year being reported. Calpine and Noble Solutions propose June 1. PG&E, SCE, and SDG&E propose that annual reports should be due August 1. AReM proposes August 15. The SMJUs propose October 1.

⁸⁶ AReM, BVES/ CalPeco, Calpine, CalWEA, CCSF, GPI, Marin Energy, Noble Solutions, PG&E, PacifiCorp, SCE, and SDG&E support an annual reporting period.

Footnote continued on next page

June 1 of the year following the year being reported on is an appropriate time for submitting the annual RPS compliance reports. This date allows ample time for retail sellers to prepare their reports. Transactions are settled in WREGIS within 90 days, so all transactions for a calendar year will be settled by the following April 1.⁸⁷ Retail sellers will then have more than two months to review WREGIS data and resolve any problems before they must prepare and submit their RPS compliance reports.

Retail sellers must revise any compliance report that is submitted prior to the adoption of the CEC's *Verification Report* covering the period of the compliance report.⁸⁸ The Director of Energy Division is authorized to set requirements and timeframes for submitting revised compliance reports.

The Commission concurs that simplicity is a desirable goal. As can be seen from the balance of this decision, however, the RPS compliance requirements about which retail sellers must report are far from simple. The reporting formats and any additional information to support a retail seller's report must capture all the information necessary to allow determination of a retail seller's compliance with all RPS requirements, as well as the narrative elements set forth in Section 399.13(a)(3). The Director of Energy Division is authorized, in consultation with the parties, to develop appropriate information requirements

DRA and TURN support continuing a semiannual period. (See D.05-07-039, OP 17 for the requirements for semiannual compliance reports.)

⁸⁷ WREGIS Operating Rules Section 12.2, at 37 (December 2010), found at <http://www.wregis.org/uploads/files/851/WREGIS%20Operating%20Rules%20v%2012%209%2010.pdf>.

⁸⁸ D.06-10-050, OP 3.

and reporting formats to determine compliance with all requirements of the RPS statute.

In view of the complexity of the issues addressed in RPS compliance reports and the significant public interest in the state's RPS program, the Director of Energy Division is also authorized to require retail sellers to provide additional information and clarification of their reported information at any time. The Director of Energy Division is also authorized to require retail sellers to submit supplemental reports or progress reports in addition to the annual compliance report.

All reports and information required to be submitted to the Director of Energy Division by this decision, including any supplemental material requested by the Director of Energy Division, is submitted subject to the Commission's confidentiality rules. These rules are presently set out in D.06-06-066, as modified by D.08-04-023. We noted in D.06-06-066 that, owing to the public importance of the RPS program, there should be greater public access to RPS data than to many other types of data.⁸⁹ The Commission expects all retail sellers to ensure the greatest public accessibility possible of their RPS compliance reports and other RPS information, consistent with the Commission's confidentiality rules.

3.8.2. Special Transitional Reporting

As discussed in Section 3.3.1 above, each retail seller must provide closing calculations for its procurement obligations for years prior to 2011, as well as calculations demonstrating whether it may use the safe harbor set forth in Section 399.15(a). The Director of Energy Division is authorized to develop

appropriate formats for retail sellers to perform and submit these calculations. These calculations are subject to revision after the CEC's *Verification Report* for the relevant compliance years is adopted.

3.9. Enforcement

The new multi-year compliance periods, new procurement quantity requirements, and new portfolio balance requirements create the context in which the Commission might take enforcement action against a retail seller. SB 2 (1X) eliminates the prior flexible compliance rules, but allows retail sellers to request a waiver of the procurement quantity requirements (Section 399.15(b)(5)) and/or a reduction in the portfolio balance requirements (Section 399.16(e).)

3.9.1. Waiver of Enforcement of Procurement Quantity Requirement

Section 399.15(b)(5) provides for waiver of enforcement of the procurement quantity requirements set in D.11-12-020 if the Commission “finds that the retail seller has demonstrated any of . . . [three] conditions” set out in the statute, and the retail seller has demonstrated “that it has taken all reasonable actions under its control, as set forth in paragraph (5), to achieve full compliance.” (Section 399.15(b)(7).)

The statute is reasonably detailed about what events may justify a waiver of enforcement of the procurement quantity requirements but it does not specify when a waiver request can or cannot be made. Many parties assume without discussion that a request for a waiver would occur at the end of compliance

⁸⁹ D.06-06-066, at 59-60.

period.⁹⁰ This assumption is reasonable, in view of the complex elements a retail seller is required to demonstrate.

A request for a waiver, and therefore a decision on the request, should be made after the close of the compliance period for which the waiver is requested. The waiver request may be submitted before CEC verification of procurement for the compliance period is available, but the Commission will not make a final determination until verified procurement data are provided.

The showing required of the retail seller, and the evaluation of that showing by the Commission, can only be made after the compliance period has concluded. The phrase in section 399.15(b)(5) that the condition(s) demonstrated by the retail seller “will prevent compliance” is not to the contrary. Reading the statute to allow prospective waiver requests could deprive the retail seller of the opportunity to make a complete demonstration of its efforts to achieve full compliance, since many elements of RPS procurement and compliance take years to develop fully. Such a reading could also lead to unequal results among retail sellers, because the timing of the waiver request could have a significant impact on the available evidence. Moreover, as AReM points out, requiring a waiver request to be made at the end of a compliance period will ensure that all retail sellers have the maximum incentive to achieve full compliance throughout the compliance period. Maintaining a level playing field among retail sellers requires a uniform date and method for requesting waivers.

As a practical matter, it is simply not possible for a retail seller, or the Commission, to know in advance of the end of a compliance period that:

⁹⁰ These include AReM, IEP, PacifiCorp, SCE, SDG&E, and TURN/CUE.

- a. The retail seller will not meet the procurement quantity requirement for that compliance period;
- b. Any of the conditions set out in Section 399.15(b)(5) actually exists and is beyond the control of the retail seller for that compliance period; and
- c. The retail seller has taken “all reasonable actions under its control . . . to achieve full compliance.”

Moreover, the fair and efficient administration of the RPS program would be compromised if retail sellers were allowed to make waiver requests at their discretion. The time and resources of Commission staff and the parties would be diverted to litigation based on a retail seller’s prediction that it might fail to meet its procurement quantity requirement. The requirements of this section will be quite complex to administer even when a full compliance picture is available at the end of a compliance period. It would be virtually impossible for the Commission to make a reasoned determination on a waiver based on speculation about possible future delays in transmission, interconnection, or permitting that involve numerous other agencies and government authorities, as well as predictions about what actions the retail seller may take to try to achieve compliance.⁹¹

In order to provide an opportunity for parties and the Commission to consider the issues related to waiver of the procurement quantity requirement in the context of the Commission’s implementation of SB 2 (1X), the details of the process for seeking a waiver of procurement quantity requirements will be addressed in a subsequent decision.

⁹¹ Cf. D.06-05-023, in which the Commission concluded that it could not determine whether a retail seller could be relieved of a penalty obligation before it was clear that the retail seller would fail to meet its APT under the prior RPS flexible compliance rules.

3.9.2. Reduction of Portfolio Balance Requirements

Section 399.16(e) provides:

A retail seller may apply to the commission for a reduction of a procurement content requirement of subdivision (c). The commission may reduce a procurement content requirement of subdivision (c) to the extent the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15. The commission shall not, under any circumstance, reduce the obligation specified in paragraph (1) of subdivision (c) below 65 percent for any compliance obligation after December 31, 2016.

As an initial matter, we note that this section addresses “reduction” of a quantitative portfolio content requirement. Although it would have been possible for the legislative language to authorize the Commission to “change” or “alter” a quantitative portfolio content requirement, it did not do so. Therefore, this section allows the Commission to lower the requirement of a minimum level of procurement meeting the criteria of Section 399.16(b)(1), with the limitation on certain reductions expressed in the last sentence of the section. It does not authorize the Commission to *increase* the limit on procurement meeting the criteria of Section 399.16(b)(3).

CCSF, PG&E, SCE, and SDG&E urge the Commission to allow a retail seller to seek a reduction of the quantitative portfolio content requirement for a compliance period at any time. Marin Energy and Noble Solutions propose a time near the end of a compliance period. AReM and TURN argue that the only

allowable time to submit a request for a reduction is at the end of a compliance period.⁹²

The retail seller's situation with respect to a request for reduction of a portfolio balance requirement is similar to that of a waiver of procurement quantity requirements. Until the compliance period is over and the retail seller has submitted its compliance report, neither the retail seller nor the Commission can be sure that a reduction is even relevant, much less should be authorized. Since the statute requires the retail seller to make the same showing it would make for a request for a waiver under Section 399.15(b)(5), as a practical matter the request for a reduction is subject to the same contingencies as are identified for the waiver request, above. Each type of request must be made with the compliance report at the end of the compliance period for which either a waiver of procurement quantity requirements or a reduction of quantitative portfolio content requirements is requested.

⁹² TURN also asserts that a request for reduction of quantitative portfolio content requirements must be accompanied by a request for a waiver of procurement quantity requirements pursuant to Section 399.15(b)(5). In view of the determination in this decision that the two requirements are independent and separately subject to Commission enforcement action, a retail seller may submit a request for a waiver but not a reduction, or a reduction but not a waiver, or may request both a waiver and a reduction.

3.10. Next Steps

The Director of Energy Division should promptly develop the reporting requirements and templates necessary to determine a retail seller's prior APT deficit (if any) and whether the retail seller qualifies for the safe harbor by procuring 14% of its retail sales from RPS-eligible resources in 2010. The Director of Energy Division should begin work on developing the requirements and templates for annual compliance reports and reports for a compliance period.

It would be useful to have additional comment from parties focused on enforcement issues, now that the complete parameters of procurement and compliance have been set by this decision and others implementing SB 2 (1X). The assigned Commissioner and ALJ are encouraged to seek additional comment on enforcement issues, with a view to completing the enforcement and reporting structure early in 2013, the last year of the initial compliance period.

4. Categorization and Need for Hearing

The Scoping Memo confirmed the categorization of this proceeding as ratesetting and that hearings are needed. Although no hearings were necessary on the issues addressed in this decision, the proceeding remains open and hearings may be needed on other issues in this proceeding.

5. Comments on Proposed Decision

The proposed decision (PD) of 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. In view of the complex issues addressed in the PD, parties may file comments of not more than 25 pages and reply comments of not more than 10 pages.

Comments were filed on ____, by ____, and reply comments were filed on ____ by ____.

6. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Anne E. Simon is the assigned ALJ in this portion of this proceeding.

Findings of Fact

1. SB 2 (1X) became effective December 10, 2011.
2. SB 2 (1X) establishes three multi-year RPS compliance periods (2011-2013; 2014-2016; and 2017-2020) and annual compliance periods for 2021 and later years.
3. In D.11-12-020, the Commission determined that the provisions of SB 2 (1X) govern RPS compliance as of January 1, 2011.
4. SB 2 (1X) changes the prior requirements for retail sellers to be able to count procurement from short term contracts for RPS compliance.
5. Many retail sellers have contracts or ownership agreements originally executed prior to June 1, 2010 that will provide RPS-eligible procurement for 2011 and later years.

Conclusions of Law

1. In order to close the books on compliance with RPS requirements for 2010 and prior years in a transparent and efficient manner, all retail sellers should be required to calculate their deficits, if any, in meeting their APT obligations for all years prior to 2011 and submit their calculations to the Director of Energy Division within 60 days of the effective date of this decision.
2. In calculating their deficits, if any, in meeting their APT obligations for all years prior to 2011, retail sellers should be allowed to count only procurement

that complies with all RPS requirements for the year in which is claimed to meet APT obligations for any year prior to 2011.

3. In calculating their deficits, if any, in meeting their APT obligations for all years prior to 2011, retail sellers should not be allowed to use any mechanisms for deferring shortfalls under the flexible compliance rules in effect for all years prior to 2011.

4. In calculating their deficits, if any, in meeting their APT obligations for all years prior to 2011, retail sellers should be allowed to count surplus procurement under the prior flexible compliance rules to meet their APT obligations in any year prior to 2011 in which the surplus procurement may be applied.

5. After calculating its deficits, if any, in meeting its APT obligations for all years prior to 2011, a retail seller that has met all its APT obligations should be allowed to carry forward any procurement from contracts or ownership agreements originally executed prior to June 1, 2010 (and, for retail sellers that are IOUs but not MJUs, that were approved by the Commission in accordance with the standards for approval at the time of Commission approval) that is not necessary to meet its APT obligations in years prior to 2011 for use in any compliance period after 2010, without limitation.

6. All retail sellers should be required to calculate the percentage of their retail sales provided by RPS-eligible procurement in 2010 and submit their calculation to the Director of Energy Division within 60 days of the effective date of this decision.

7. Retail sellers should update any closing report based on procurement information that has not been verified by the CEC not later than 30 days after the CEC's transmittal of the final *Verification Report* for the relevant year to the Commission.

8. In calculating the percentage of their retail sales provided by RPS-eligible procurement in 2010, retail sellers should not be allowed to use any mechanisms to defer shortfalls under the flexible compliance rules for all years prior to 2011.

9. In calculating the percentage of their retail sales provided by RPS-eligible procurement in 2010, retail sellers should not be allowed to count surplus procurement not necessary to meet APT obligations in prior years.

10. Any retail seller whose RPS-eligible procurement in 2010, as specified by this decision, is equal to or greater than 14% of its total retail sales, should not have to make up deficits, if any, in meeting APT requirements in 2010 and prior years.

11. In order to conform to statutory requirements and preserve value for retail sellers and ratepayers, retail sellers should be allowed to use contracts for RPS procurement signed prior to June 1, 2010 for all compliance purposes, so long as the contracts conformed to all applicable RPS requirements at the time they were signed, and so long as any contract amendments or modifications occurring after June 1, 2010 to a contract that did not have an original duration of 15 years or more, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource; and provided that any such contracts or ownership agreements of IOUs were approved by the Commission in accordance with standards for approval at the time the contracts or ownership agreements were approved, even if that approval occurs after June 1, 2010.

12. In order to count procurement from short term contracts signed after June 1, 2010 for RPS compliance in a compliance period, retail sellers should be required to sign in the compliance period in which the short term contract is

signed, long term contracts with expected generation equal to at least 0.25% of their retail sales in the immediately prior compliance period.

13. In order to count procurement from short term contracts signed after June 1, 2010 for RPS compliance in the 2011-2013 compliance period, retail sellers should be required to sign in the compliance period in which the short term contract is signed, long term contracts with expected generation equal to at least 0.25% of their retail sales in 2010.

14. The requirements for the use of short term contracts should apply to multi-jurisdictional utilities with respect to their retail sales to their California customers.

15. In order to count procurement from short term contracts signed after June 1, 2010 for RPS compliance in a compliance period, retail sellers newly commencing operations in California should be required to sign in the first compliance period of their operation in which any short term contract is signed, long term contracts with expected generation equal to at least 0.25% of their retail sales in the first year of their retail operations in California. For all later compliance periods, such retail sellers should be required to sign in that compliance period long term contracts equal to at least 0.25% of their retail sales in the immediately prior compliance period. The Director of Energy Division should be authorized to consult with retail sellers about the application of this requirement.

16. In order to provide additional ways for smaller retail sellers to comply with the requirements for the use of procurement from short term contracts, retail sellers should be able to use long term contracts that have been repackaged from long term contracts entered into by other retail sellers to meet the requirement of signing in the compliance period in which the short term contract

is signed, long term contracts with expected generation equal to at least 0.25% of their retail sales in the immediately prior compliance period.

17. Because the compliance periods change in 2021 and later years, the requirements for the use of procurement from short term contracts set by this decision should end as of December 31, 2020.

18. Retail sellers should be allowed to count for RPS compliance only renewable energy credits that have been retired for RPS compliance not more than 36 months from the original date of the generation with which the REC is associated.

19. In order to avoid double-counting of compliance shortfalls, compliance with the portfolio balance requirements set in Section 399.16(c) should be determined separately from compliance with the procurement quantity requirements set by Section 399.15(b).

20. In order to implement a balanced portfolio, the maximum limitation set in Section 399.16(c)(2) on the use of procurement meeting the criteria of Section 399.16(b)(3) should be determined by multiplying the percentage limitation for a particular compliance period by the total procurement credited toward the compliance period from contracts or ownership agreements signed after June 1, 2010.

21. In order to implement a balanced portfolio, the minimum requirement for the use of procurement meeting the criteria of Section 399.16(b)(1) set in Section 399.16(c)(1) should be determined by multiplying the minimum percentage for a particular compliance period by the total procurement credited toward the compliance period from contracts or ownership agreements signed after June 1, 2010.

22. In calculating excess procurement in one compliance period that may be applied to a later compliance period, retail sellers should subtract from the total quantity of renewable energy credits they retire in that compliance period, all renewable energy credits associated with short term contracts signed after June 1, 2010.

23. In calculating excess procurement in one compliance period that may be applied to a later compliance period, retail sellers should subtract from the total quantity of renewable energy credits they retire in that compliance period, all renewable energy credits associated with contracts signed after June 1, 2010 meeting the criteria of Section 399.16(b)(3) that are more than the number allowed under the limitation set out in Section 399.16(c)(2).

24. In calculating excess procurement in one compliance period that may be applied to a later compliance period, retail sellers should subtract from the total quantity of renewable energy credits they retire in that compliance period, all renewable energy credits necessary to meet their procurement quantity requirement for that compliance period.

25. In order to comply with the portfolio balance requirements, when retail sellers apply excess procurement to RPS compliance in a later compliance period, they should apply procurement associated with contracts signed after June 1, 2010 according to the portfolio balance requirements set out in Section 399.16(c).

26. In order to comply with the portfolio balance requirements, when retail sellers apply excess procurement to RPS compliance in a later compliance period, they should apply excess procurement that meets the criteria of Section 399.16(b)(1) to the minimum requirement set by Section 399.16(c)(1).

27. In order to promote effective administration of the RPS program, each retail seller should be required to submit an annual RPS compliance report by June 1 of the year following the year being reported on. The report should contain the information required by Section 399.13(a), as well as any additional information required by this decision, or any other Commission decision, or requested by the Director of Energy Division.

28. The annual report submitted by a retail seller by June 1 of the year following the last year of a compliance period should include a separate section providing all the information required to determine compliance with all obligations for that compliance period, including portfolio balance requirements for any excess procurement applied from an earlier compliance period, as well to determine the amount, if any, of excess procurement in that compliance period that may be applied to a later compliance period.

29. In order to promote fair and efficient administration of the RPS program, a retail seller should be allowed to request a waiver of the procurement quantity requirements set by D.11-12-020 only at the time the retail seller submits its annual report for the last year of the compliance period for which it seeks the waiver.

30. In order to promote fair and efficient administration of the RPS program, a retail seller should be allowed to request a reduction of the quantitative portfolio content requirements set by this decision only at the time the retail seller submits its annual report for the last year of the compliance period for which it seeks the reduction.

31. The Director of Energy Division should be authorized to develop appropriate reporting formats and information requirements for all reports necessary to implement the requirements of this decision.

32. The Director of Energy Division should be authorized to require retail sellers to submit appropriate documentation, including but not limited to copies of RPS procurement contracts, to support the information in any report submitted in accordance with the requirements of this decision.

33. In order to facilitate administration of RPS requirements, the Director of Energy Division is authorized to grant extensions of time to submit any reports or other documents required by this decision.

34. In order to promote fair and efficient compliance with the new RPS requirements of SB 2 (1X), this order should be effective immediately.

O R D E R**IT IS ORDERED** that:

1. All retail sellers as defined in Public Utilities Code Section 399.12(j) must calculate their deficits, if any, in meeting their annual procurement targets under the California renewables portfolio standard for all years prior to 2011 and submit their calculation to the Director of Energy Division within 60 days of the effective date of this decision. Any calculations based on procurement information that has not been verified by the California Energy Commission (CEC) must be updated not later than 30 days after the CEC's transmittal of the final *Verification Report* for the relevant year to the Commission.

2. In calculating their deficits, if any, in meeting their annual procurement targets for all years prior to 2011, retail sellers as defined in Public Utilities Code Section 399.12(j) may count only procurement that complies with all procurement and compliance requirements of the California renewables portfolio standard for the year in which is claimed to meet the annual procurement target for any year prior to 2011.

3. In calculating their deficits, if any, in meeting their annual procurement targets for all years prior to 2011, retail sellers as defined in Public Utilities Code Section 399.12(j) should not be allowed to use any mechanisms for deferring shortfalls under the flexible compliance rules in effect for all years prior to 2011.

4. In calculating their deficits, if any, in meeting their annual procurement targets for all years prior to 2011, retail sellers as defined in Public Utilities Code Section 399.12(j) may not count surplus procurement from previous years to meet their annual procurement targets in any year prior to 2011 in which the surplus procurement may be applied.

5. After calculating its deficits, if any, in meeting its annual procurement targets for all years prior to 2011, a retail seller as defined in Public Utilities Code Section 399.12(j) that has met all its annual procurement targets may carry forward any procurement from contracts or ownership agreements signed prior to June 1, 2010 that is not necessary to meet its annual procurement target obligations in years prior to 2011 for use in any compliance period after 2010, without limitation, provided that such contracts of investor-owned utilities (other than multi-jurisdictional investor-owned utilities) were approved by the Commission, even if that approval occurred after June 1, 2010.

6. All retail sellers as defined in Public Utilities Code Section 399.12(j) must calculate the percentage of their retail sales provided by procurement from eligible renewable energy resources in 2010 and submit their calculation to the Director of Energy Division within 60 days of the effective date of this decision. Any calculations based on procurement information that has not been verified by the California Energy Commission (CEC) must be updated not later than 30 days after the CEC's transmittal of the final *Verification Report* for the relevant year to the Commission.

7. In calculating the percentage of their retail sales procured by eligible renewable energy resources in 2010, retail sellers as defined in Public Utilities Code Section 399.12(j) may not use any mechanisms to defer shortfalls under the flexible compliance rules in effect for all years prior to 2011.

8. In calculating the percentage of their retail sales provided by procurement of eligible renewable energy resources procurement in 2010, retail sellers as defined in Public Utilities Code Section 399.12(j) may not count surplus procurement not necessary to meet annual procurement target obligations in prior years.

9. Any retail seller as defined in Public Utilities Code Section 399.12(j) whose procurement of eligible renewable energy resources in 2010, without use of flexible compliance deferrals or banked procurement, is greater than or equal to 14 percent of its total retail sales is not required to make up any deficits in meeting annual procurement targets in 2010 or prior years.

10. Retail sellers as defined in Public Utilities Code Section 399.12(j) may use contracts or ownership agreements for renewables portfolio standard (RPS) procurement signed prior to June 1, 2010 for all compliance purposes, so long as the contracts conformed to all applicable RPS requirements at the time they were signed, and so long as any contract amendments or modifications occurring after June 1, 2010 to a contract that did not have an original duration of 15 years or more, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource; and provided that any such contracts of investor-owned utilities (other than multi-jurisdictional utilities) were approved by the Commission even if that approval occurs after June 1, 2010.

11. In order to count procurement from contracts of less than 10 years duration signed after June 1, 2010 for compliance with the California renewables portfolio standard in a compliance period, retail sellers as defined in Public Utilities Code Section 399.12(j) must sign in the compliance period in which the short term contract is signed, contracts of at least 10 years in duration with expected generation equal to at least 0.25 percent of their retail sales in the immediately prior compliance period.

12. In order to count procurement from contracts of less than 10 years in duration signed after June 1, 2010 for compliance with the California renewables portfolio standard in the 2011-2013 compliance period, retail sellers as defined in

Public Utilities Code Section 399.12(j) must sign in the compliance period in which the short term contract is signed, contracts of at least 10 years in duration with expected generation equal to at least 0.25 percent of their retail sales in 2010.

13. Multi-jurisdictional utilities may base their compliance with the requirements for the use of procurement associated with contracts of less than 10 years' duration for compliance with the California renewables portfolio standard on their retail sales to their California customers.

14. In order to count procurement from short term contracts signed after June 1, 2010 for compliance with the California renewables portfolio standard in a compliance period, retail sellers newly commencing operations in California should be required to sign in the first compliance period of their operation in which any short term contract is signed, long term contracts with expected generation equal to at least 0.25 percent of their retail sales in the first year of their retail operations in California. For all later compliance periods, such retail sellers are required to sign in that compliance period long term contracts equal to at least 0.25% of their retail sales in the immediately prior compliance period. The Director of Energy Division is authorized to consult with retail sellers about the application of this requirement.

15. In complying with the requirements for use of short term contracts, retail sellers as defined in Public Utilities Code Section 399.12(j) may use contracts of 10 or more years in duration (long term contracts) that are contracts smaller in volume created from long term contracts entered into by other retail sellers, so long as the use of such contracts is properly documented and reported to the Commission, and the eligibility of the generation under the California renewables portfolio standard for both the original contract and the smaller contract is verified by the California Energy Commission.

16. The requirements for the use of procurement from contracts less than 10 years in duration will terminate as of December 31, 2020.

17. Retail sellers as defined in Public Utilities Code Section 399.12(j) may count for compliance only renewable energy credits that have been retired in the Western Renewable Generation Information System for compliance not more than 36 months from the original date of the generation with which the renewable energy credit is associated.

18. Compliance with the portfolio balance requirements set in Section 399.16(c) will be determined separately from compliance with the procurement quantity requirements set by Section 399.15(b).

19. The maximum limitation on the use of procurement meeting the criteria of Section 399.16(b)(3) contained in Section 399.16(c)(2) is determined by multiplying the percentage limitation for a particular compliance period by the total procurement credited toward the compliance period from contracts or ownership agreements signed after June 1, 2010.

20. The minimum requirement for the use of procurement meeting the criteria of Section 399.16(b)(1) contained in Section 399.16(c)(1) is determined by multiplying the minimum percentage for a particular compliance period by the total procurement credited toward the compliance period from contracts or ownership agreements signed after June 1, 2010.

21. In calculating excess procurement in one compliance period that may be applied to a later compliance period, retail sellers must subtract from the total quantity of renewable energy credits they retire in that compliance period, all renewable energy credits associated with short term contracts signed after June 1, 2010.

22. In calculating excess procurement in one compliance period that may be applied to a later compliance period, retail sellers must subtract from the total quantity of renewable energy credits they retire in that compliance period, all renewable energy credits associated with contracts signed after June 1, 2010 meeting the criteria of Section 399.16(b)(3) that are more than the number allowed under the limitation set out in Section 399.16(c)(2).

23. In calculating excess procurement in one compliance period that may be applied to a later compliance period, retail sellers must subtract from the total quantity of renewable energy credits they retire in that compliance period, all renewable energy credits necessary to meet their procurement quantity requirement for that compliance period.

24. If a retail seller applies excess procurement in one compliance period to compliance in a later compliance period, it must apply procurement associated with contracts signed after June 1, 2010 according to the portfolio balance requirements set out in Section 399.16(c).

25. If a retail seller applies excess procurement in one compliance period to compliance in a later compliance period, it must apply excess procurement that meets the criteria of Section 399.16(b)(1) to the minimum requirement set by Section 399.16(c)(1).

26. Each retail seller must submit an annual report on its compliance with the California renewable portfolio standard by June 1 of the year following the year being reported on. The report must contain all the information required by Section 399.13(a), as well as any additional information required by this decision, or any other Commission decision, or requested by the Director of Energy Division. Any compliance report based on procurement information that has not been verified by the California Energy Commission (CEC) must be updated not

later than 30 days after the CEC's transmittal of the final *Verification Report* for the relevant year to the Commission.

27. The annual report submitted by a retail seller by June 1 of the year following the last year of a compliance period must include a separate section providing all the information required to determine compliance with all obligations for that compliance period, as well to determine the amount, if any, of excess procurement in that compliance period that may be applied to a later compliance period.

28. The Director of Energy Division is authorized to require retail sellers to submit supplemental reports or progress reports in addition to the annual compliance report.

29. A retail seller may request a waiver of the procurement quantity requirements set by Decision 11-12-020 only at the time the retail seller submits its annual report for the last year of the compliance period for which it seeks the waiver.

30. A retail seller may request a reduction of the portfolio balance requirements set by Section 399.16(c) only at the time the retail seller submits its annual report for the last year of the compliance period for which it seeks the reduction.

31. The Director of Energy Division is authorized to develop appropriate reporting formats and information requirements for all reports required to implement this decision.

32. The Director of Energy Division is authorized to require retail sellers to submit appropriate documentation, including but not limited to copies of renewables portfolio standard procurement contracts, to support the information in any report submitted in accordance with the requirements of this decision.

33. The Director of Energy Division is authorized, for good cause, to grant extensions of time to submit any reports or other documents required by this decision.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
SELECTED RPS STATUTORY SECTIONS

Section 399.13(a)(3)

The commission shall direct each retail seller to prepare and submit an annual compliance report that includes all of the following:

(A) The current status and progress made during the prior year toward procurement of eligible renewable energy resources as a percentage of retail sales, including, if applicable, the status of any necessary siting and permitting approvals from federal, state, and local agencies for those eligible renewable energy resources procured by the retail seller, and the current status of compliance with the portfolio content requirements of subdivision

(c) of Section 399.16, including procurement of eligible renewable energy resources located outside the state and within the WECC and unbundled renewable energy credits.

(B) If the retail seller is an electrical corporation, the current status and progress made during the prior year toward construction of, and upgrades to, transmission and distribution facilities and other electrical system components it owns to interconnect eligible renewable energy resources and to supply the electricity generated by those resources to load, including the status of planning, siting, and permitting transmission facilities by federal, state, and local agencies.

(C) Recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements established pursuant to this article.

Section 399.13(a)(4)(B)

[The Commission shall adopt. . .] 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 deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.

Section 399.13(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.

Section 399.15(a)

In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each compliance period to achieve the targets established under this article. For any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article.

Section 399.15(b)

The commission shall implement renewables portfolio standard procurement requirements only as follows:

(1) Each retail seller shall procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:

(A) January 1, 2011, to December 31, 2013, inclusive.

(B) January 1, 2014, to December 31, 2016, inclusive.

(C) January 1, 2017, to December 31, 2020, inclusive.

(2) (A) No later than January 1, 2012, the commission shall establish the quantity of electricity products from eligible renewable energy resources to be procured by the retail seller for each compliance period. These quantities shall be established in the same manner for all retail sellers and result in the same percentages used to establish compliance period quantities for all retail sellers.

(B) In establishing quantities for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020. The commission shall require retail sellers

to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years.

(C) Retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.

(3) The commission shall not require the procurement of eligible renewable energy resources in excess of the quantities identified in paragraph (2). A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.

(4) Only for purposes of establishing the renewables portfolio standard procurement requirements of paragraph (1) and determining the quantities pursuant to paragraph (2), the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code in the calculation of retail sales by an electrical corporation.

(5) The commission shall waive enforcement of this section if it finds that the retail seller has demonstrated any of the following conditions are beyond the control of the retail seller and will prevent compliance:

(A) There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator. In making its findings relative to the existence of this condition with respect to a retail seller that owns transmission lines, the commission shall consider both of the following:

(i) Whether the retail seller has undertaken, in a timely fashion, reasonable measures under its control and consistent with its obligations under local, state, and federal laws and regulations, to develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources. In determining the reasonableness of a retail seller's actions, the commission shall consider the retail seller's expectations for full-cost recovery for these transmission lines and upgrades.

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

(B) Permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the retail seller. In making a finding that this condition prevents timely compliance, the commission shall consider whether the retail seller has done all of the following:

(i) Prudently managed portfolio risks, including relying on a sufficient number of viable projects.

(ii) Sought to develop one of the following: its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage

used to integrate eligible renewable energy resources. This clause shall not require an electrical corporation to pursue development of eligible renewable energy resources pursuant to Section 399.14.

(iii) Procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply.

(iv) Taken reasonable measures, under the control of the retail seller, to procure cost-effective distributed generation and allowable unbundled renewable energy credits.

(C) Unanticipated curtailment of eligible renewable energy resources necessary to address the needs of a balancing authority.

(6) If the commission waives the compliance requirements of this section, the commission shall establish additional reporting requirements on the retail seller to demonstrate that all reasonable actions under the control of the retail seller are taken in each of the intervening years sufficient to satisfy future procurement requirements.

(7) The commission shall not waive enforcement pursuant to this section, unless the retail seller demonstrates that it has taken all reasonable actions under its control, as set forth in paragraph (5), to achieve full compliance.

(8) If a retail seller fails to procure sufficient eligible renewable energy resources to comply with a procurement requirement pursuant to paragraphs (1) and (2) and fails to obtain an order from the commission waiving enforcement pursuant to paragraph (5), the commission shall exercise its authority pursuant to Section 2113.

(9) Deficits associated with the compliance period shall not be added to a future compliance period.

Section 399.16(c)

In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement credited towards 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 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 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).

Section 399.16(d)

Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards 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.

Section 399.16(e)

A retail seller may apply to the commission for a reduction of a procurement content requirement of subdivision (c). The commission may reduce a procurement content requirement of subdivision (c) to the extent the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15. The commission shall not, under any circumstance, reduce the obligation specified in paragraph (1) of subdivision (c) below 65 percent for any compliance obligation after December 31, 2016.

Section 399.21(a)(6)

A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity.

(END OF APPENDIX A)

APPENDIX B
Sample Closing Calculations

B.1 Example Retail Seller that Procured Greater than 14% in 2010 and has a "net deficit"

RPS Procurement and Targets (MWh)	2003	2004	2005	2006	2007	2008	2009	2010
Bundled Retail Sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total RPS Eligible Procurement	1,300	1,300	1,300	1,300	1,300	1,400	1,500	1,900
Annual Procurement Target (APT)	1,100	1,200	1,300	1,400	1,500	1,600	1,700	2,000
Incremental Procurement Target (IPT)	N/A	100	100	100	100	100	100	N/A
Preliminary Procurement Surplus/(Deficit)	200	100	0	(100)	(200)	(200)	(200)	(100)
2010 Actual Procurement Percentage								19%
Surplus Procurement Bank Balance as of Prior Year	200	200	300	300	200	0	0	0
Application of Banked Surplus Procurement to Current Year Deficit		0	0	100	200	0	0	0
Cumulative Surplus Procurement Bank Balance	200	300	300	200	0	0	0	0
Net Surplus/(Deficit)	200	300	300	200	0	(200)	(400)	(500)
2010 Cumulative Deficit from Contracts Signed Prior to June 1, 2010 that may be Waived								(500)

**B.2 Example Retail Seller that Procured Less
Than 14% in 2010 and has a “net deficit”**

RPS Procurement and Targets (MWh)	2003	2004	2005	2006	2007	2008	2009	2010
Bundled Retail Sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total RPS Eligible Procurement	1,100	1,300	1,400	1,500	1,400	1,500	1,500	1,000
Annual Procurement Target (APT)	1,100	1,200	1,300	1,400	1,500	1,600	1,700	2,000
Incremental Procurement Target (IPT)	N/A	100	100	100	100	100	100	N/A
Preliminary Procurement Surplus/(Deficit)	0	100	100	100	(100)	(100)	(200)	(1,000)
2010 Actual Procurement Percentage								10%
Surplus Procurement Bank Balance as of Prior Year	0	100	100	200	300	200	100	0
Application of Banked Surplus Procurement to Current Year Deficit		0	0	0	100	100	100	0
Cumulative Surplus Procurement Bank Balance	0	100	200	300	200	100	0	0
Net Surplus/(Deficit)	0	100	200	300	200	100	(100)	(1,100)
2010 Cumulative Deficit from Contracts Signed Prior to June 1, 2010 that may be Carried Forward								(1,100)

**B.3 Example Retail Seller that Procured
Greater than 14% in 2010 and has a "net surplus"**

RPS Procurement and Targets (MWh)	2003	2004	2005	2006	2007	2008	2009	2010
Bundled Retail Sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total RPS Eligible Procurement	1,300	1,300	1,500	1,500	1,000	1,800	1,800	1,900
Annual Procurement Target (APT)	1,100	1,200	1,300	1,400	1,500	1,600	1,700	2,000
Incremental Procurement Target (IPT)	N/A	100	100	100	100	100	100	N/A
Preliminary Procurement Surplus/(Deficit)	200	100	200	100	(500)	200	100	(100)
2010 Actual Procurement Percentage								19%
Surplus Procurement Bank Balance as of Prior Year	200	200	300	500	600	100	300	400
Application of Banked Surplus Procurement to Current Year Deficit		0	0	0	500	0	0	100
Cumulative Surplus Procurement Bank Balance	200	300	500	600	100	300	400	300
Net Surplus/(Deficit)	200	300	500	600	100	300	400	300
2010 Cumulative Surplus from Contracts Signed Prior to June 1, 2010 that may be Carried Forward								300

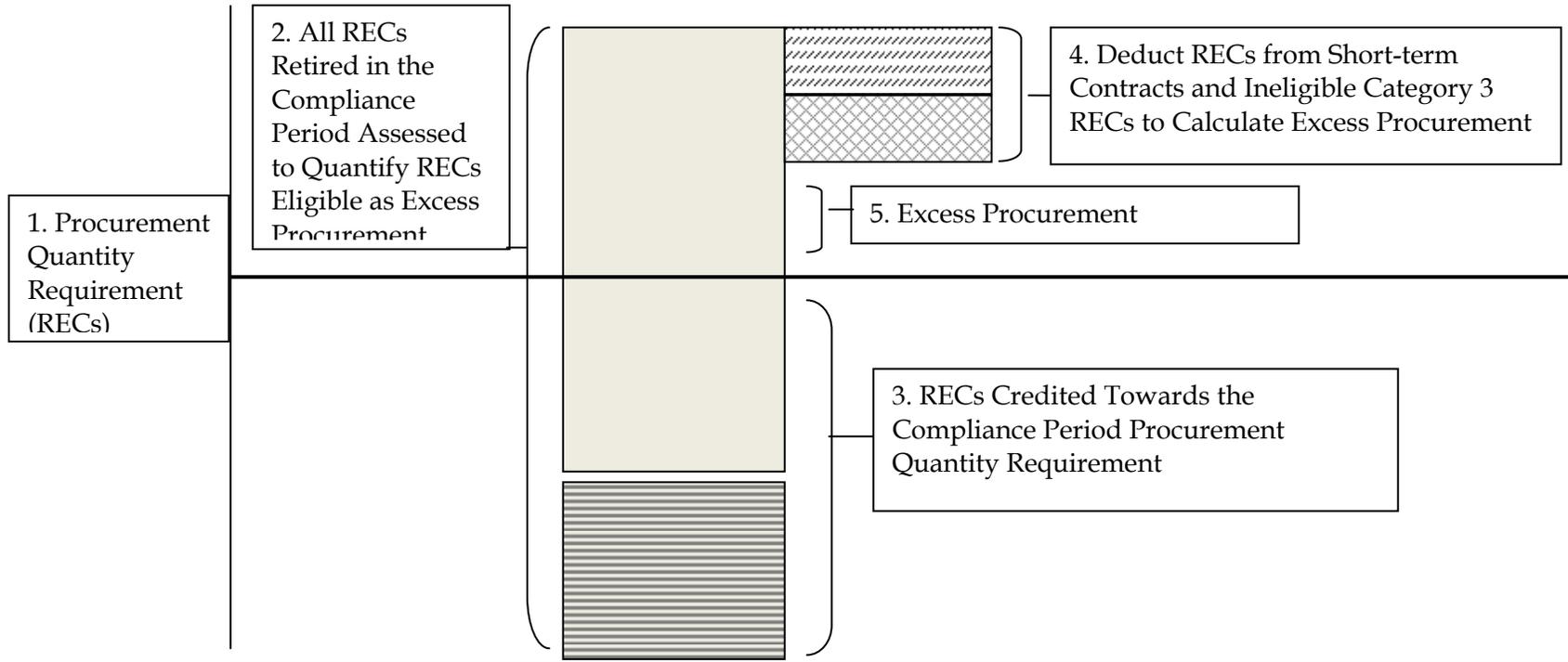
**B.4 Example Retail Seller that Procured
Less Than 14% in 2010 and has a “net surplus”**

RPS Procurement and Targets (MWh)	2003	2004	2005	2006	2007	2008	2009	2010
Bundled Retail Sales	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Total RPS Eligible Procurement	1,300	1,300	1,500	1,500	1,800	1,800	1,800	1,000
Annual Procurement Target (APT)	1,100	1,200	1,300	1,400	1,500	1,600	1,700	2,000
Incremental Procurement Target (IPT)	N/A	100	100	100	100	100	100	N/A
Preliminary Procurement Surplus/(Deficit)	200	100	200	100	300	200	100	(1,000)
2010 Actual Procurement Percentage								10%
Surplus Procurement Bank Balance as of Prior Year	200	200	300	500	600	900	1,100	1,200
Application of Banked Surplus Procurement to Current Year Deficit		0	0	0	0	0	0	1,000
Cumulative Surplus Procurement Bank Balance	200	300	500	600	900	1,100	1,200	200
Net Surplus/(Deficit)	200	300	500	600	900	1,100	1,200	200
2010 Cumulative Surplus from Contracts Signed Prior to June 1, 2010 that may be Carried Forward								200

(END OF APPENDIX B)

Flow Chart of Excess Procurement Methodology for Compliance Period 1

Note: Category 1, 2 & 3 RECs meet the criteria of Section 399.16(b)(3); Short-term contracts are less than 10 years in length

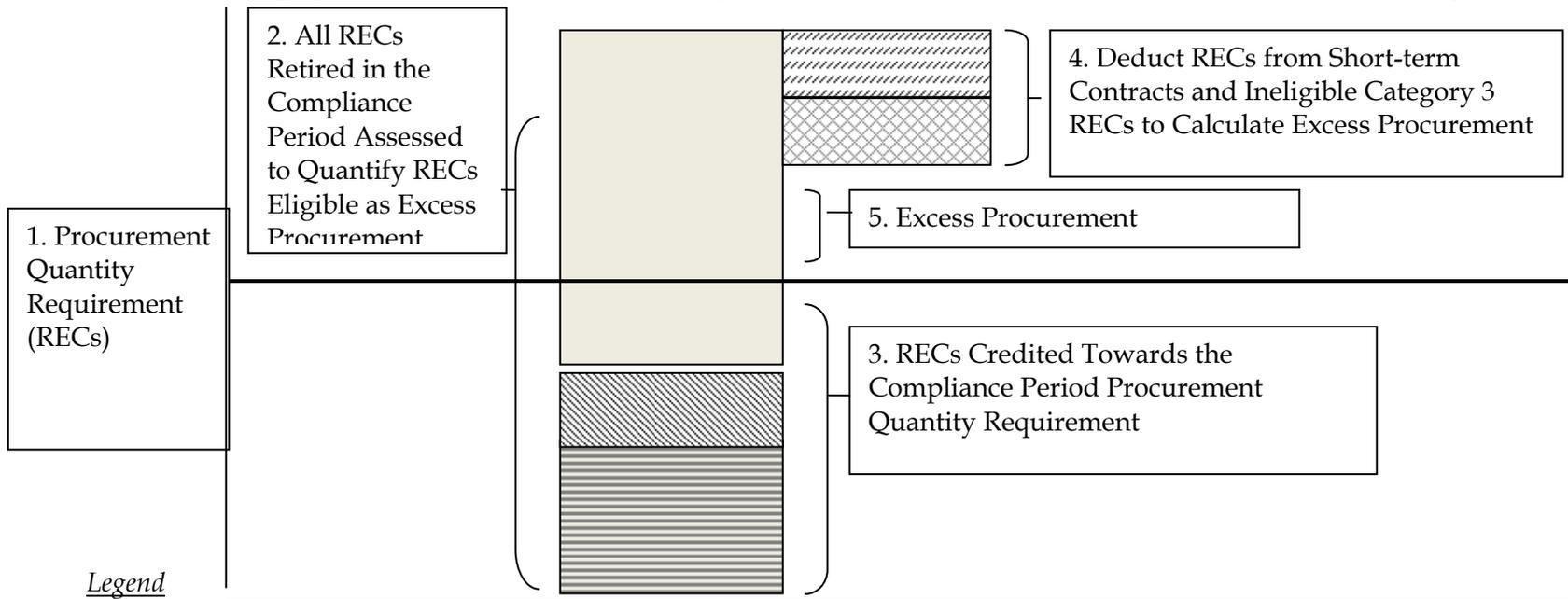


Legend

	RECs from contracts executed prior to June 1, 2010
	RECs from contracts executed post June 1, 2010 (Category 1, 2 and 3)
	RECs from Short-term (post June 1, 2010 contract)
	Category 3 RECs greater than portfolio content category limitation (post June 1, 2010)

Flow Chart of Excess Procurement Methodology for Compliance Period 2 & 3

Note: Category 1, 2 & 3 RECs meet the criteria of Section 399.16(b)(3); Short-term contracts are less than 10 years in length



Legend

	RECs from contracts executed prior to June 1, 2010
	Excess Procurement from prior compliance period(s)
	RECs from contracts executed post June 1, 2010 (Category 1, 2 and 3)
	RECs from Short-term (post June 1, 2010 contract)
	Category 3 RECs greater than portfolio content category limitation (post June 1, 2010)

(END OF APPENDIX C)