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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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R1807003

Order Instituting Rulemaking To Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.

Rulemaking 18-07-003

**ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON VOLUNTARY ALLOCATIONS OF RENEWABLES PORTFOLIO STANDARD RESOURCES AND PORTFOLIO CONTENT CATEGORY ISSUES**

**Summary**

This ruling seeks comments from parties on the Voluntary Allocations of Renewables Portfolio Standard (RPS) resources, and the Portfolio Content Category (PCC) classification of Renewable Energy Credits (RECs) under the Voluntary Allocation and/or Market Offer (VAMO) process.<sup>1</sup>

Parties are directed to file and serve comments on the specific questions listed in this ruling no later than 10 calendar days from the issuance date of this ruling. No further reply comments may be filed.

**1. Procedural Background**

On May 20, 2021, the California Public Utilities Commission (CPUC or Commission) adopted Decision (D.) 21-05-003 in Rulemaking (R.) 17-06-026, setting rules to implement the Voluntary Allocation, Market Offer, and Request for Information (RFI) processes for RPS contracts subject to the Power Charge

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<sup>1</sup> Voluntary Allocation and Market Offer (VAMO) process was adopted via D.21-05-003 in R.17-06-026.

Indifference Adjustment (PCIA) mechanism. Pursuant to D.21-05-030, the investor-owned utilities (IOUs) must file RPS VAMO proposals in their 2022 RPS Procurement Plans (RPS Plans), while all LSEs are required to report VAMO participation in their 2022 RPS Plans for deliveries in 2023 and in RPS compliance reports.<sup>2</sup> Voluntary Allocation contracting will commence 21 days after Commission approval of final 2022 RPS Plans.<sup>3</sup>

On August 23, 2021, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (Joint IOUs) filed a Joint Tier 2 Advice Letter proposing that all Renewable Energy Credits (RECs) allocated through the Voluntary Allocation process retain their original PCC classification.

On October 25, 2021, the Director of Energy Division partially approved the Joint Tier 2 Advice Letter but rejected the Joint IOUs' PCC classification proposal as outside the Tier 2 Advice Letter scope.

On December 8, 2022, pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, the Joint IOUs filed a Joint Motion requesting the Commission to (a) expand the scope of this proceeding to include VAMO issues, (b) address PCC classification of RECs allocated under the Voluntary Allocation process adopted in D.21-05-030, and (c) clarify the timing and review process for Voluntary Allocation Pro Forma Contracts and executed Voluntary Allocation contracts. (Joint Motion)

Responses to the Joint Motion were filed by Alliance for Retail Energy Markets (AReM), California Community Choice Association

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<sup>2</sup> D.21-05-030, Table 2 at 38 and Ordering Paragraph (OP) 6. The VAMO process may occur as often as once per RPS compliance period per D.21-05-030.

<sup>3</sup> D.21-05-030, Table 2 at 38.

(CalCCA), Coalition of California Utility Employees (CUE), The Utility Reform Network (TURN), and Public Advocates Office at the California Public Utilities Commission (Cal Advocates) on December 23, 2021.

On April 6, 2022, the assigned Commissioner issued an Amended Scoping Memo and Ruling amending the scope of this proceeding to address VAMO issues related to the RPS program. (Amended Scoping Memo)

## **2. PCC Classification and Voluntary Allocation Process Background**

In D.11-12-052, the Commission implemented PCC rules pursuant to Public Utilities (Pub. Util.) Code Section 399.16 (b) and Senate Bill 2 (1X). The RPS program classifies all renewable energy procurement acquired from contracts executed on or after June 1, 2010, into one of three PCC. RECs from contracts executed prior to June 1, 2010, are not given a PCC classification and are sometimes referred to as “PCC 0” RECs. Whether RECs are classified as PCC 1, 2, or 3 for compliance with the RPS program is based on certain criteria and done after the end of each compliance period in the RPS compliance determination process. Pursuant to Pub. Util. Code Section 399.16, RECs generated pursuant to contracts executed before June 1, 2010 “count in full” for RPS compliance; accordingly, they qualify for RPS compliance without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).<sup>4</sup> In D.11-12-052, the Commission determined that a “resale” from a pre-June 1, 2020 contract removes the PCC-0 designation, and the RECs would no longer be eligible for this special treatment.

The VAMO process was adopted in D. 21-05-030 in the PCIA proceeding (R.17-06-026). In D.21-05-030, the Commission adopted a Voluntary Allocation

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<sup>4</sup> D.11-12-052, OP 17

process that requires IOUs to offer "allocations" that comprise a "slice" of their PCIA-eligible RPS portfolio to all the LSEs<sup>5</sup>. An LSE may accept its allocation in 10 percent increments or choose not to take any allocation. Pursuant to D.21-05-030, LSEs are required to confirm Voluntary Allocations in their 2022 RPS Plans for deliveries in 2023.<sup>6</sup> The Commission further states that the RPS proceeding shall provide guidance on the timing and process for these filings.<sup>7</sup>

### **3. Summary of Joint Motion and Responses**

#### **3.1. Joint Motion**

The Joint Motion sought to 1.) expand the scope of the instant proceeding to include VAMO issues; 2.) request guidance on the PCC Classification for RECs allocated to other LSEs under the VAMO process; and 3.) request clarification on the timing and approval process for Voluntary Allocation proforma contracts and executed contracts.

The April 6, 2022, Amended Scoping Memo resolved the issue on scope, so we will not discuss it further in this ruling.

For the PCC classification, the Joint Motion seeks to clarify that:

- (i) The RPS attributes (*i.e.*, RECs) of each IOU's PCIA-eligible portfolio can only be allocated once from the IOU's PCIA-eligible portfolio to other LSEs of PCIA-eligible customers with no subsequent downstream allocations permitted.
- (ii) The REC allocation process should not result in reclassifying the PCC status of any RECs in the IOU portfolios directly allocated to LSEs of PCIA-eligible customers for whom the RECs were initially procured.<sup>8</sup>

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<sup>5</sup> D.21-05-030, OP 2(a).

<sup>6</sup> See D.21-05-030 Table 2, Timeline for First RPS VAMO and RFI

<sup>7</sup> See D.21-05-030, OP 6.

<sup>8</sup> See Joint Motion at 6.

### **3.2. Responses on the Issues in Joint Motion**

Regarding the PCC classification issue in the Joint Motion, CalCCA supports the Joint Motion. CalCCA states that voluntary allocations under VAMO are not "resales" that would require reclassification of RECs allocated to non-IOU LSEs. It further states that the VAMO allocation structure is an inherently different construct than the "resales" contemplated by D.11-12-052, and there is no Commission decision requiring RECs allocated under VAMO to be so considered.

TURN and CUE support an expedited resolution of the Joint Motion but state their concerns that the Joint IOUs' proposal fails to conform to Commission precedent implementing the governing statutory requirements. They state that if the Commission permits IOU PCC-0 resources to retain this classification for volumes allocated to LSEs through the VAMO process, it should affirmatively prohibit this treatment for any subsequent allocations or resales. They further contend that the Commission should affirm that any treatment provided to VAMO participants will not open the door to a wide range of other schemes designed by LSEs to skirt the resale rules by transferring or trading RPS compliance attributes through new "allocation" methods.

AReM requests that the Joint Motion be denied. In stating its concerns, AReM recommends that the Commission should not allow the Joint Motion to hinder the VAMO structure within the RPS proceeding by approving the proposal. AReM states that to avoid unintended consequences of rushed implementation, the Commission should ensure that REC transfer is not done at the PCC-1 benchmark prices but rather that it be done at a fair and accurate benchmark price that reflects how IOUs' PCC-0 RECs are actually counted toward compliance.

Cal Advocates do not provide specific comments on the issues presented in the Joint Motion but request that the Parties should have the opportunity to be heard and to build a complete record for Commission consideration.

No party filed comments on the Joint Motion's issue on executing pro forma Voluntary Allocation contracts' timing and approval process.

#### **4. Discussion**

The expanded scope of the RPS proceeding allows us to consider the activities of Voluntary Allocations that impact an LSE's renewables portfolio obligations established in the RPS proceeding. Moreover, the Commission has concluded in D.21-05-030 that "the Commission should review, approve, and monitor the RPS VAMO and RPS RFI activities through the Commission's RPS proceeding and compliance processes."<sup>9</sup> Therefore, it is reasonable to review Voluntary Allocations and PCC classification issues for compliance purposes via this ruling in the RPS proceeding. A proposed decision will be issued for Commission consideration resolving these issues.

The Joint Motion will be considered in this proceeding to allow parties to confirm Voluntary Allocations in their 2022 RPS Plans for deliveries in 2023. Depending on the timing of the proposed decision, and subject to further direction, it may be necessary for the parties to confirm Voluntary Allocation milestones anticipated during the 2022 RPS Plans cycle in the update to the draft 2022 RPS Plans due on August 15, 2022.<sup>10</sup>

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<sup>9</sup> See D.21-05-030 Conclusion of Law 14.

<sup>10</sup> See assigned Commissioner and assigned Administrative Law Judge's April 6, 2022, ruling setting schedule of review for 2022 RPS Plans, Attachment A. If any change is necessary, it will be addressed in a future ruling or decision.

This ruling asks parties to respond to questions in the next section. The Joint IOUs may also respond to these questions from their perspective; they may have already addressed the substance in their Joint Motion and may also point to the relevant section in their comments.

Regarding the issue on the timing and approval process of Voluntary Allocation pro forma contracts and executed contracts, these issues are already resolved and no further Commission action is needed. In D.22-01-004, the Commission authorized each IOU to file Tier 2 advice letters proposing Voluntary Allocation of PCIA renewable energy resource pro forma contracts within 10 days of submission of its Final 2021 RPS Plan (RPS Plan) and Market Offer pro forma contracts within 45 days of submission of Final 2021 RPS Plan, respectively.<sup>11</sup> In addition, D.21-05-030 directs Tier 2 Advice letter submission of Voluntary Allocation contracts.<sup>12</sup>

## **5. Questions for Parties (If Necessary)**

This ruling seeks comments from parties on the following questions. All interested parties may file and serve comments on all questions no later than 10 calendar days from the issuance date of this ruling. No further reply comments may be filed.

1. Should the Voluntary Allocation under the VAMO process be considered “resales” for purposes of determining PCC classifications? Why or why not?
  - a. If the Voluntary Allocation should be considered a resale, how should PCC classification for pre-June 1, 2010 RPS contract RECs be determined?

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<sup>11</sup> See D.22-01-004 OP 4.

<sup>12</sup> See D.21-05-030, at 38.

- b. If the Voluntary Allocation is not considered a resale, how should PCC classification for pre-June 1, 2010 RPS contract RECs be determined?
2. If the Commission determines that PCC-0 designation should be retained for this initial Voluntary Allocation from IOUs to LSEs, how should subsequent resale of these contracts by an LSE affect their REC PCC classification?
3. While D.21-05-030 (Table 2) provides a schedule for the VAMO process, it also authorizes the RPS proceeding to adjust the timing and process for the filings. Does our consideration of Voluntary Allocations and PCC classification issues necessitate a change in that schedule? If so, propose a revised schedule and justification for the need to make changes.

**IT IS RULED that:**

1. Interested parties may file and serve comments in response to this ruling and the questions in Section 5 no later than 10 calendar days from the issuance date of this ruling.
2. Unless authorized by the Administrative Law Judge, no further reply comments may be filed.

Dated April 18, 2022, at San Francisco, California.

/s/ MANISHA LAKHANPAL  
Manisha Lakhanpal  
Administrative Law Judge