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**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)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REQUESTING COMMENTS ON NEW PROCUREMENT TARGETS  
AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES  
PORTFOLIO STANDARD PROGRAM**

**Background**

The California renewables portfolio standard (RPS) program has been the subject of much legislation and many decisions by the Commission.<sup>1</sup> Most recently, Senate Bill (SB) 2 (1x) (Simitian), stats. 2011, ch. 1 was enacted in the First Extraordinary Session of the Legislature. Though signed by the Governor on April 12, 2011, SB 2 (1x) will not become effective until 90 days after the end of the special session in which it was enacted.<sup>2</sup>

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

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<sup>1</sup> See the Order Instituting Rulemaking (OIR) for this proceeding, at 1, 7.

<sup>2</sup> Gov't Code § 9600(a).

aggregators (CCAs) by the end of 2010, to 33% of retail sales of IOUs, ESPs, CCAs and publicly owned utilities (POUs) by the end of 2020.<sup>3</sup> SB 2 (1x) also modifies or changes many details of the RPS program. This ruling seeks comment on three areas.

1. Setting new RPS procurement requirements pursuant to new § 399.15(b), particularly the compliance obligations of RPS-obligated retail sellers for the period 2011-2013, the first compliance period in the new 33% RPS regime.
2. Changing the compliance obligations of RPS-obligated retail sellers through 2010.
3. Developing basic RPS compliance accounting for 2011 and later years, including "banking" rules and minimum quantity of long-term contracts.

### **Plan of this ruling**

Although SB 2 (1x) is not yet in effect, the new statute will have a strong impact on RPS procurement and compliance rules. Because of the complexity of the issues presented and the desirability of expeditious but thorough consideration of them, this ruling presents a number of specific questions or proposals to provide direction for parties' comments. Some proposals are in the form of "straw" interpretations of specific statutory language in SB 2 (1x), to which parties may respond.

Comments should respond to the questions posed in this ruling.

Comments should be as specific and precise as possible. Comments should

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<sup>3</sup> The Commission has jurisdiction, for RPS purposes, over the first three groups of retail sellers; it does not have jurisdiction over POU's. Pub. Util. Code §§ 399.12(j); 399.30(p). All further references to sections are to the Public Utilities Code unless otherwise noted.

include specific publicly available examples of the historic, current, or forecasted compliance position for a retail seller or group of retail sellers (for example, IOUs) that are relevant to the argument being made. Comments should also include specific examples of transactions or commercial arrangements that are relevant to the argument being made. Legal arguments should be supported with specific citations. All comments should use publicly available materials, including RPS compliance reports and any specific examples of RPS procurement transactions (for example, the public description of a transaction in a resolution adopted by the Commission).

Comments should make proposals and provide interpretations that, if adopted by the Commission, would provide clear guidance to market participants and Commission staff on the subjects being addressed. In commenting, parties should also consider the impact of their proposals on the RPS reporting obligations of retail sellers and the RPS verification responsibilities of the California Energy Commission (CEC), set out in current § 399.13 and new § 399.25. Parties may identify issues that are not addressed in the questions below; commenters doing so should clearly explain the relevance of the additional issue(s).

### **Guiding principles**

In responding to the questions below, parties should take into account the following principles:

1. Parties' proposals should further the fair, efficient, and transparent administration of the RPS program. In particular, proposals should facilitate efficient contract review by Energy Division staff; straightforward calculation of RPS compliance obligations; and ease of verifying retail sellers' reports on their RPS compliance.

2. Proposals should lead to RPS market certainty, to the extent possible.
3. Proposals should, to the extent possible, address and resolve issues raised by the transition from the current RPS program to the RPS program as it will be administered pursuant to SB 2 (1x).
4. Proposals should avoid creating new issues in the transition between the current RPS program and the RPS program as it will be administered pursuant to SB 2 (1x).

### **Comments**

Opening comments of not more than 50 pages addressing the issues set forth in this ruling may be filed and served not later than August 30, 2011. Reply comments of not more than 25 pages may be filed and served not later than September 12, 2011. It is not necessary to reproduce the questions in comments, so long as the question being addressed or topic being introduced is clearly identified. Parties are encouraged, but not required, to file and serve opening comments, in order to give all parties the best opportunity to respond to other parties' positions.

### **Issues to address in comments**

Please comment on the following, in accordance with the guidelines for comments set forth in this ruling.

1. Should the transition from the current RPS program (20% of retail sales) from RPS-eligible generation by the end of 2010)(20% program) to the RPS program as revised by SB 2 (1x) (33% of retail sales from RPS-eligible generation by the end of 2020) (33% program) start from the position that the procurement and flexible compliance rules for the 20% program apply through the 2010 compliance year and the procurement and compliance rules for the 33% program

apply beginning with the 2011 compliance year (making allowance for the special provision in new § 399.15(a)?<sup>4</sup>) Please provide detailed support for your position.

2. New § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them. (A copy of new § 399.15(b) is attached as Attachment A.)<sup>5</sup>

A. New § 399.15(b)(2)(B) states that "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..."

- Should compliance targets for intervening years in the 2011-2013 compliance period be set as:
  - 20% of retail sales for the year ending December 31, 2011;
  - 20% of retail sales for the year ending December 31, 2012; ending with
  - 20% of retail sales for the year ending December 31, 2013, such that the RPS obligation (compliance period quantity) of a retail seller for the 2011-2013 compliance period would equal in megawatt-hours (MWh):  $(.20 \times 2011 \text{ retail sales}) + (.20 \times 2012 \text{ retail sales}) + (.20 \times 2013 \text{ retail sales})$ ?

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<sup>4</sup> The last sentence of new § 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 renewable portfolio standard shall not be added to any procurement requirement pursuant to this article.

This provision is also addressed in #3, below.

<sup>5</sup> New § 399.15(b)(5) will be addressed later in this proceeding.

- Should different compliance targets for intervening years be set for this period? Why or why not?
  - Should no compliance targets for intervening years be set for this period? Why or why not?
- B. For the compliance period 2014-2016 and 2017-2020, the Commission is required to set compliance period quantities that "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, 2015, and 33 percent of retail sales by December 31, 2020."
- Should targets for intervening years in the 2014-2016 compliance period be set using a linear trend:
    - 21.5% of retail sales by December 31, 2014;
    - 23.5% of retail sales by December 31, 2015; ending with
    - 25% of retail sales by December 31, 2016,such that the compliance period quantity for the 2014-2016 compliance period would equal in MWh:  $(.215 \times 2014 \text{ retail sales}) + (.235 \times 2015 \text{ retail sales}) + (.25 \times 2016 \text{ retail sales})$ ?
  - Should targets for intervening years in the 2017-2020 be set using a linear trend:
    - 27% of retail sales by December 31, 2017;
    - 29% of retail sales by December 31, 2018;
    - 31% of retail sales by December 31, 2019; ending with
    - 33% of retail sales by December 31, 2020, and thereafter,such that the compliance period quantity for the 2017-2020 compliance period would equal in MWh:  $(.27 \times 2017 \text{ retail sales}) + (.29 \times 2018 \text{ retail sales}) + (.31 \times 2019 \text{ retail sales}) + (.33 \times 2020 \text{ retail sales})$ ?
  - Should different targets for intervening years be set for either of these compliance periods? Why or why not?
- C. New section 399.15(b)(2)(C) provides that "[r]etail 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."

- What are the consequences, if any, of a retail seller attaining the target in the final year of the compliance period (e.g., 25% of retail sales in 2016), but failing to procure "the quantities associated with all intervening years" by the end of that compliance period?

3. New section 399.15(a) provides that "[f]or 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."

A. How should "at least 14 percent of retail sales from eligible renewable energy resources in 2010" be interpreted?

1. At least 14 percent of retail sales must come from renewable energy credits (RECs), from bundled or REC-only contracts, associated with RPS-eligible energy that was generated and delivered in 2010. *or*
2. The 14 % figure may include the allowable deferral of up to 0.25% of a retail seller's annual procurement target (APT) for 2010 under the flexible compliance rules for the 20% RPS program set out in Decision (D.) 06-10-050. *or*
3. The 14% figure may include both the allowable deferral of up to 0.25% APT and deferral of further deficits for 2010 through any allowable reason for current noncompliance, e.g. "earmarking," as set out in D. 06-10-050. *or*
4. The 14% figure may include either the deferral of up to 0.25% of APT for 2010 or deferral of further deficits through any allowable reason for current noncompliance, e.g., earmarking, but not both. *or*
5. The 14% figure should be calculated in some other way. Please provide detailed support for the proposed calculation.

B. How should "the deficits associated with any previous renewables portfolio standard" be interpreted? Please provide detailed support for the proposal.

1. As applying only to deficits in meeting the 2010 target of 20% of retail sales, without the use of flexible compliance;  
*or*
2. As applying only to the 2010 target of 20% of retail sales, using allowable flexible compliance rules in the calculation of any deficit. *or*
3. As applying to any year in which a retail seller has an APT obligation, using allowable flexible compliance rules in the calculation of any deficit. *or*
4. Another interpretation should be used.

C. How should "shall not be added to any procurement requirement pursuant to this article" be interpreted with respect to RPS procurement obligations under the 20% program?

- Does a retail seller need to satisfy its APT requirements for all compliance years through 2010, using the current flexible compliance rules, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources (defined as you proposed in 3.A, above) in 2010?
- Is a retail seller subject to penalties for failing to satisfy its APT requirements for any compliance year(s) through 2010, in accordance with D.03-06-071, D.03-12-065, and D.06-10-050, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources (defined as you proposed in 3.A, above) in 2010?

4. Should new § 399.15(b)(9) be interpreted to mean: "[d]eficits associated with the compliance period in which the deficits occur shall not be added to a future compliance period?" Should this section apply only to compliance year 2011 and future years? Why or why not?

5. If a retail seller has deficits from any compliance year through 2010 that must be satisfied with procurement in 2011 and/or later years, how should the requirement to satisfy the prior deficits be implemented, in light of new § 399.15(b)(9)?



6. New § 399.13(b) amends current § 399.14(b) as indicated below (underlines show additions; strikeouts show deletions):

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

In D. 07-05-028, the Commission implemented current § 399.14(b) by requiring that retail sellers enter into contracts for a minimum quantity of 0.25% of the prior year's retail sales that have a minimum duration of 10 years (long-term contracts), or are with RPS-eligible generation facilities commencing commercial operation on or after January 1, 2005.<sup>6</sup> This obligation ends when a

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<sup>6</sup> Ordering Paragraphs (OP) 1 and 2 of D.07-05-028 provide:

1. Beginning in calendar year 2007, each load-serving entity (LSE) obligated under the RPS program must, in order to be able to count for any RPS compliance purpose energy deliveries from contracts of less than 10 years' duration ("short-term") with RPS-eligible facilities that commenced commercial operation prior to January 1, 2005 ("existing facilities"), in each calendar year enter into contracts of at least 10 years' duration ("longterm") and/or short-term contracts with facilities that commenced commercial operation on or after January 1, 2005 ("new facilities") for energy deliveries equivalent to at least 0.25% of that LSE's prior year's retail sales.

2. If an LSE fails to meet the requirement in any calendar year, beginning with 2007, that it enter into long-term contracts and/or short-term contracts with new facilities for energy deliveries equivalent to at least 0.25% of that LSE's prior year's retail sales, any energy deliveries resulting from contracts the LSE enters into in that calendar year of less than 10 year's duration with existing facilities shall not be used for any RPS compliance purposes in any year.

retail seller reaches the goal of 20% of retail sales obtained from eligible renewable resources. (D.07-05-028, OP 5.)

- How should the Commission determine the minimum quantity under new § 399.13(b)? Please provide a sample calculation using the proposed method.
- Should the minimum quantity include specific minimum quantities of procurement from long-term contracts in any or all of the portfolio content categories identified in new § 399.16(b)?
- Should the minimum quantity requirement under new § 399.13(b) carry forward the requirement in D.07-05-028 that the long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts sought to be counted for RPS compliance? If not, what basis for accounting for the minimum quantity of long-term contracts should be used?
- Should the minimum quantity requirement under new § 399.13(b) have a termination? If so, what should the termination be?
- How should deliveries in 2011 and later years from short-term contracts entered into in 2010 and earlier years, and in compliance with D.07-05-028, be treated?
- Should such deliveries be deducted from actual procurement quantities as part of the calculation of excess procurement that may be applied to a subsequent compliance period pursuant to new § 399.13(a)(4)(B)?
- Should short-term contracts entered into in 2011 but prior to the effective date of SB 2 (1x) be treated differently? Why or why not?

7. New § 399.13(a)(4)(B) requires the Commission to adopt new rules for the calculation and management of RPS procurement that is in excess of the requirements for a given compliance period ("banking"). This new section provides that the Commission must 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.

New § 399.15(b) sets out three metrics for procurement requirements in a compliance period:

1. For the 2011-2013 compliance period, attaining an average of 20% of retail sales in that period.
2. For the 2014-2016 and 2017-2020 compliance periods, attaining a target of a percentage of retail sales by the end of the compliance period (25% by December 31, 2016 and 33% by December 31, 2020).
3. For all compliance periods, procuring no less than the quantities associated with all intervening years by the end of the compliance period.
  - Please propose a method of calculating any excess procurement that may be carried over from the 2011-2013 compliance period to the 2014-2016 compliance period. Please provide a sample calculation.
  - Should the method you propose also be used for calculating any excess procurement that may be carried over from the 2014-2016 compliance period to the 2017-2020 compliance period? If not, please propose another method. Please provide a sample calculation for your method.
  - Please discuss the relationship of the method(s) you propose to your response to #2, above, relating to the calculation of RPS procurement obligations for compliance year 2011 and future years pursuant to new § 399.15(b).

8. Current RPS rules set out a system of procurement banking different from that in new § 399.13(a)(4)(B). Current § 399.14((a)(2)(C)(i) directs the Commission to adopt:

Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

The Commission has adopted rules that, among other things, allow unlimited forward banking of excess RPS procurement and allow inadequate procurement to be deferred, in certain circumstances, for no more than the following three years. (See, e.g., D.03-06-071, D.06-10-050, D.08-02-008.)

With respect to forward banking under the provisions of SB 2 (1x), please comment on the following possibilities. Please provide detailed support and examples. Please specifically address the application of new §§ 399.15(a) and 399.16(d) to your proposal.

- Should the Commission allow unlimited forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for all compliance periods?
- Should the Commission allow no banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for any compliance period later than 2010?
- Should the Commission allow forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts through the 2011-2013 compliance period but not beyond 2013?

- Should the Commission make some other provision for banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts?
- Should any banked procurement be counted in years after 2010 only in accordance with the limits on the use of specific portfolio content categories set out in new § 399.16(c)?

9. If a retail seller did not procure at least 14% of retail sales from RPS-eligible resources in 2010, should its deficit for 2010 be calculated as a shortfall from 20% of retail sales in 2010 or from 14% of retail sales in 2010?

10. Should the Commission continue to apply the current flexible compliance rules to RPS procurement for 2010 and prior compliance years?

11. Since SB 2 (1x) will not become effective until, at the earliest, the last quarter of 2011, should the current flexible compliance rules apply to RPS procurement for 2011?

12. In the current RPS flexible compliance regime, a retail seller is allowed to defer a shortfall of up to 0.25% of APT without explanation, so long as the deficit is made up within three years. Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- For years after 2010, should the Commission eliminate its current rule allowing deferral of 0.25% of APT without explanation, so long as the deficit is made up within three years?

13. In the current RPS flexible compliance regime, a retail seller is allowed to defer a deficit in excess of 0.25% of APT by the use of any allowable reason for noncompliance (e.g., "earmarking.")<sup>7</sup> Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

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<sup>7</sup> Earmarking is a means of flexible compliance in which RPS procurement contracts signed in the same year as the deficit has been incurred, may serve to defer the deficit for up to three years in an amount equal to the projected deliveries from the signed contract in a future year (within the three-year period). See D.05-07-039; D.06-10-050.

- For years after 2010, should the Commission eliminate its current rule allowing deferral of deficits in excess of 0.25% of APT through earmarking?
- How should the Commission treat RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013?
  - Should the RECs be allocated to the portfolio content categories (and their respective limits) of new § 399.16?
  - Should the RECs be allocated to the procurement categories that applied in the year in which the contract was signed? How would these categories connect to the portfolio content categories of new § 399.16?

Please address the application of new § 399.16(d) to your proposals.

14. Should retail sellers be required to apply the RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013 to any deficits in meeting APT in years prior to 2011, regardless of whether the retail seller attained at least 14 percent of retail sales from eligible renewable energy resources in 2010 (new § 399.15(a))? Why or why not?

15. New section 399.31 provides for the procurement of RECs for RPS compliance from local publicly owned utilities (POUs) by retail sellers, under certain conditions.<sup>8</sup> It provides:

A retail seller may procure renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, for purposes of compliance with the renewables portfolio standard requirements, if both of the following conditions are met:

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<sup>8</sup> Cf. current § 399.13(d).

(a) The local publicly owned electric utility has adopted and implemented a renewable energy resources procurement plan that complies with the renewables portfolio standard adopted pursuant to Section 399.30.

(b) The local publicly owned electric utility is procuring sufficient eligible renewable energy resources to satisfy the target standard, and will not fail to satisfy the target standard in the event that the renewable energy credit is sold to the retail seller.

- What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(a)?
- What documentation should the Commission require from ESPs? From CCAs?
- What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(b)?
- What documentation should the Commission require from ESPs? From CCAs?
- In view of the CEC's oversight of POUs' compliance with RPS requirements under SB 2 (1x), how should this Commission coordinate with the CEC to administer and verify your proposed system of documentation?

16. In D.03-06-071 and D.03-12-065, the Commission set the basic parameters for enforcement of RPS obligations. Among other things, the Commission set a penalty amount for retail sellers failing to meet their annual RPS obligations at \$0.05/kilowatt-hour (kWh) for each kWh below the annual procurement target, with an annual cap of \$25,000,000. New § 399.15(b)(2) institutes two three-year compliance periods and one four-year compliance period. New § 399.15(b)(1)(C) specifies that retail sellers "shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."

- To what obligation should a penalty apply?
  - the goal at the end of each compliance period (i.e., average of 20% for 2011-2013; 25% by the end of 2016; 33% by the end of 2020);
  - the compliance period quantity for a particular compliance period;
  - both of the above;
  - another metric or quantity. Please set out the proposal in detail and explain its basis.
- Should the penalty amount of \$0.05/kWh be changed? If so, what method should be used to set a new penalty amount?
- For compliance periods beginning in 2011, should a penalty cap be in place?
- If a penalty cap is imposed, should it cover an entire compliance period?
- What method should be used to set a new penalty cap under SB 2 (1x)?

17. Please identify how the Commission would verify compliance with any proposal you have made, above. Please provide specific mechanisms and examples.

18. Please discuss any issues related to the verification by the CEC of any elements of any proposal you have made, above. Please include discussion of the use of the Western Renewable Energy Generation Information System (WREGIS). Please provide specific mechanisms and examples.

19. The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid-October 2011, at the earliest. In light of this, please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?



**IT IS RULED** that:

1. Comments of not more than 50 pages, addressing the issues identified in this ruling, may be filed and served not later than August 30, 2011.
2. Reply comments of not more than 25 pages may be filed and served not later than September 12, 2011.
3. In addition to service by electronic mail, paper copies of comments and reply comments must be promptly provided to Administrative Law Judge Anne Simon.

Dated July 15, 2011, at San Francisco, California.

          /s/ ANNE E. SIMON            
Anne E. Simon  
Administrative Law Judge

**ATTACHMENT A**  
**New Section 399.15(b) of Public Utilities Code**  
**(Enacted by Senate Bill 2 (1x), Stats. 2011, ch. 1)**

(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.

**(END OF ATTACHMENT A)**