

**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)

**JOINT PETITION OF BEAR VALLEY ELECTRIC SERVICE (U 913 E), A DIVISION
OF GOLDEN STATE WATER COMPANY, CALIFORNIA PACIFIC ELECTRIC
COMPANY, LLC (U 933 E), AND PACIFICORP (U 901 E) FOR MODIFICATION OF
DECISION 12-06-038**

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TABLE OF CONTENTS

I. INTRODUCTION AND BACKGROUND	1
A. Unique Characteristics of the CASMU Entities	3
B. Unique Requirements Applicable to the CASMU Entities.....	4
II. REQUEST FOR MODIFICATION	5
A. Justification for Modification (Rule 16.4(b)) – Modification of D.12-06-038 is Necessary to Effectuate the Statutory Requirements of SB 2 (1X) and Ensure that Customers Receive Full Value for RPS Procurement.	5
1. The Plain Language of SB 2 (1X) Necessitates that the Commission Modify D.12-06-038.....	5
2. The Goal of SB 2 (1X) to Promote Procurement of Bundled Products Necessitates that the Commission Modify D.12-06-038.	10
3. The Requested Modification of D.12-06-038 is Consistent with the Commission’s Interpretation of SB 2 (1X).	11
4. Failure to Modify D.12-06-038 May Increase Costs to Customers.	12
B. Proposed Modifications (Rule 16.4(B))	13
C. Timeliness (RULE 16.4(d))	15
D. Notice.....	15
III. CONCLUSION.....	16

Verification

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

**PETITION OF THE CALIFORNIA ASSOCIATION OF SMALL AND MULTI-
JURISDICTIONAL UTILITIES FOR MODIFICATION OF DECISION 12-06-038**

In accordance with Rules 1.8(d) and 16.4 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Bear Valley Electric Service (“BVES”), a division of Golden State Water Company, California Pacific Electric Company, LLC (“CalPeco”)¹ and PacifiCorp, d.b.a. Pacific Power (“PacifiCorp”) (jointly, the California Association of Small and Multi-Jurisdictional Utilities (“CASMU”)) submit this petition for modification of excess procurement calculations set forth in Decision 12-06-038, *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program* (the “Decision”).²

I. INTRODUCTION AND BACKGROUND

The Decision implements certain changes to the rules for retail sellers’ compliance with the renewables portfolio standard (“RPS”) program established under Senate Bill 2 (1X) (“SB 2 (1X)”). Among other things, the Decision adopts a calculation for determining the amount of excess procurement that can be carried forward from one compliance period and applied to a subsequent compliance period. The current excess procurement calculation requires all retail

¹ CalPeco also does business in California as “Liberty Energy-California Pacific Electric Company, LLC.”

² Pursuant to Rule 1.8(d), BVES has been authorized to tender this joint petition on behalf of CalPeco and PacifiCorp.

sellers to deduct unbundled RECs in excess of the portfolio balance limits set out in Section 399.16(c)(2).³

This petition seeks to modify the Decision’s treatment of excess procurement as applied to the CASMU entities. Unlike other California retail sellers, the CASMU entities are subject to unique RPS procurement requirements under the statute. In order to comply with these unique statutory requirements, the Commission must revise the Decision’s excess procurement rules to reflect the plain language and goals of SB 2 (1X) as well as the unique RPS requirements applicable to the CASMU entities. Specifically, the Decision’s current rules for calculating excess procurement for the CASMU entities must be modified to harmonize the limitation on counting portfolio content category three (“PCC 3”) renewable energy credits (“RECs”) as “excess procurement” with the statutory language explicitly granting the CASMU entities the discretion to use PCC 3 RECs to meet any or all of their RPS procurement obligations. Because the CASMU entities do not have any limitation on using PCC 3 RECs for RPS purposes, the Decision should be modified to remove the PCC 3 REC limitation for determining excess procurement for these entities, thus harmonizing the Decision with those elements of SB 2 (1X) available only to CASMU entities. Otherwise, the Decision effectively deprives the CASMU entities of rights specifically granted them by the Legislature and frustrates the purpose of SB 2 (1X) with respect to those rights.

To assist the Commission in understanding the foundation of this Petition, the unique characteristics of the CASMU entities and the statutory provisions applicable to them are described below.

³ D.12-06-038, pp. 62-73.

A. Unique Characteristics of the CASMU Entities

BVES is a small electric utility in the Big Bear recreational area of the San Bernardino Mountains located about 80 miles east of Los Angeles that provides electric distribution service to approximately 21,500 residential customers in a resort community with a mix of approximately 40% full-time and 60% part-time residents. Its service area also includes about 1,400 commercial, industrial and public-authority customers, including two ski resorts. BVES' service territory is connected to the California Independent System Operator ("CAISO") via Southern California Edison Company's ("SCE's") system.

CalPeco is a small electric utility that serves approximately 49,000 customers in the Lake Tahoe area of California. CalPeco has limited electrical connections with the rest of California and is not a part of the electrical grid controlled by the CAISO. Instead, CalPeco is included in NV Energy's multi-state balancing authority (i.e. a non-California balancing authority).⁴ CalPeco currently procures all of its RPS requirements from out-of-state resources through a single Commission-approved power purchase agreement with Sierra Pacific Power Company ("Sierra PPA").⁵

PacifiCorp is a multi-jurisdictional utility ("MJU") providing electric retail service to customers in California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp serves approximately 45,000 customers in Del Norte, Modoc, Shasta, and Siskiyou counties in Northern California and represents less than two percent of the total retail load served across PacifiCorp's six-state system. PacifiCorp's California service territory is not included in the CAISO balancing authority area, but rather PacifiCorp is its own balancing authority (i.e. a non-

⁴ See D.11-12-052, Finding of Fact 1.

⁵The Sierra PPA obligates Sierra to supply CalPeco's "full requirements" to serve CalPeco's customers, including 20% from RPS-eligible renewable sources. (D.10-10-017, mimeo at 20.)

California balancing authority)⁶ for its California service territory, which is operated on an integrated basis with other states in the western portion of its multi-state territory.

B. Unique Requirements Applicable to the CASMU Entities

Both the state of California and the Commission have recognized and created appropriate accommodations for the unique characteristics of the CASMU entities. For example, Section 399.18 of the Public Utilities Code allows BVES to meet its RPS procurement requirements “notwithstanding any procurement content limitation in Section 399.16.”⁷ Similarly, Section 399.17 of the Public Utilities Code allows CalPeco and PacifiCorp to meet their RPS procurement requirements “notwithstanding any procurement content limitation in Section 399.16.”⁸ In implementing the Public Utilities Code, the Commission found that BVES, CalPeco, and PacifiCorp “are not subject to the requirements and limitations [on] the use of procurement in each portfolio content category.”⁹ Accordingly, BVES, CalPeco, and PacifiCorp may meet their entire RPS procurement obligations using procurement from PCC 3 RECs.

Because unbundled RECs are likely to be the least expensive of the PCC products, with lower costs to ratepayers, CASMU entities may choose to maximize the procurement of unbundled RECs to meet their RPS targets. Procuring unbundled RECs is also likely to be commercially simpler, as the transaction would only involve transfer of California-eligible Western Renewable Energy Generation Information System (“WREGIS”) Certificates, and transmission and distribution constraints do not play a factor into the delivery of unbundled RECs. For these reasons, BVES will endeavor to take full advantage of unbundled RECs to

⁶ See D.11-12-052, Finding of Fact 1.

⁷ Pub. Util. Code § 399.18(b).

⁸ Pub. Util. Code § 399.17(b).

⁹ D.11-12-052, p. 63; see also D.11-12-052, Ordering Paragraph 16.

meet its RPS obligations, as fully described in BVES' May 23, 2012 RPS Procurement Plan.¹⁰ BVES' compliance strategy should make it relatively easy for BVES to meet its RPS procurement requirements and should also make any RPS-related procurement planning much simpler. The other CASMU entities also have the ability to rely exclusively on unbundled RECs to meet their RPS procurement obligations and may adopt procurement strategies in the future to increase the amount of unbundled RECs used to meet RPS procurement quantity requirements. To account for this unique statutory capability to meet RPS targets exclusively with PCC 3 RECs, the Decision's excess procurement requirements must be modified for the CASMU entities to avoid potentially stranding long-term bundled procurement due to variations in load or REC production.

II. REQUEST FOR MODIFICATION

A. Justification for Modification (Rule 16.4(b)) – Modification of D.12-06-038 is Necessary to Effectuate the Statutory Requirements of SB 2 (1X) and Ensure that Customers Receive Full Value for RPS Procurement.

1. The Plain Language of SB 2 (1X) Necessitates that the Commission Modify D.12-06-038.

The Decision inappropriately applies to the CASMU entities a provision limiting the excess procurement that can be carried forward from one compliance period to another, and thus frustrates the Legislature's intent with respect to the ability of the CASMU entities to optimize their RPS procurement. Public Utilities Code Section 399.13(a)(4)(B) provides that "[i]n no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 [PCC 3 products] be counted as excess procurement." When interpreting this language and implementing the requirement for determining excess procurement, the Decision concluded that a "distinct operation" of the excess procurement calculation is "not counting

¹⁰ BVES' RPS Procurement Plan is available at <http://docs.cpuc.ca.gov/efile/RESP/167271.pdf>.

procurement meeting the criteria of Section 399.16(b)(3) [PCC 3] as excess.”¹¹ CASMU supports this determination and the rationale behind it with respect to most retail sellers. However, the Decision fails to create an appropriate exception for the CASMU entities, and so undermines the CASMU entities’ unique procurement rights and discretion under the statute.

Specifically, the Decision fails to recognize that because the CASMU entities are not subject to the Section 399.16 PCC limitations and may meet their RPS targets using exclusively PCC 3 procurement, a unique excess procurement calculation is needed to give full effect to SB 2 (1X) and the exemption from the Section 399.16 PCC procurement limitations. This error can be easily corrected by allowing CASMU entities to carry forward any long-term bundled procurement not applied to the current compliance period as excess procurement.¹² This proposed modification would merely remove the restrictions of the Section 399.16 portfolio balance limits because the CASMU entities may meet RPS procurement obligations “notwithstanding” the Section 399.16 limitations.¹³ This is consistent with SB 2 (1X), which provides that for the CASMU entities, “electricity products from eligible renewable energy resources may be used for compliance with the renewables portfolio standard procurement requirements notwithstanding any procurement content limitation in Section 399.16.”¹⁴

Accordingly, to properly harmonize the requirements of SB 2 (1X), CASMU proposes that Ordering Paragraph 30 of the Decision be modified as follows (as described in greater detail in Section II.B. below):

¹¹ D.12-06-038, p. 65.

¹² For BVES, the long-term procurement that would be eligible to carry forward as excess procurement would be PCC 1 and PCC 2 products. However, as CalPeco and PacifiCorp are located outside of a California balancing authority and their procurement is not classified as PCC 1 and PCC 2 products, other long-term bundled renewable procurement would be eligible to be carried forward as excess procurement.

¹³ See Pub. Util. Code §§ 399.17(b) and 399.18(b).

¹⁴ Pub. Util. Code § 399.17(b). See also, Pub. Util. Code § 399.18(b).

In calculating excess procurement in one compliance period that may be applied to a later compliance period, including 2021 and later years, retail sellers described in Public Utilities Code Section 399.17 and Section 399.18 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 for the procurement of unbundled renewable energy credits from third parties that are more than the ~~number allowed under the limitation set out in Public Utilities Code Section 399.16(e)(2)~~ procurement quantity requirement for the compliance period.

Under this approach, PCC 3 procurement would be applied to the current compliance period, up to the procurement quantity requirement for that compliance period, and any additional unbundled PCC 3 procurement would not be carried forward as excess procurement, as intended by SB 2 (1X). So if a CASMU utility satisfied its procurement quantity requirement entirely with PCC 3 RECs, any additional long-term bundled RECs could be carried forward as excess procurement. This properly harmonizes the Legislature's intent, by providing procurement flexibility to the CASMU entities as intended without counting PCC 3 RECs as excess procurement.

To illustrate how the proposed modification to the excess procurement calculation would operate for the CASMU entities, consider the following hypothetical example for compliance period 1:

Table 1: Hypothetical RPS Procurement and Obligations for a CASMU Utility

Hypothetical CASMU Utility RPS Obligation and Procurement	Quantity of RECs (in MWh)
Procurement Quantity Requirement	1,000
RECs from contracts executed after June 1, 2010	
Long-Term Bundled RECs ¹⁵	750
Long-Term Unbundled RECs procured from third parties	750
Total RECs Retired in Compliance Period 1	1,500

Under the current excess procurement calculation described in the Decision, in the scenario outlined in Table 1, above, only 125 RECs would qualify as eligible to be carried forward as excess procurement:

Table 2: Hypothetical Excess Procurement Calculation for a CASMU Utility (Decision Calculation)

Excess Procurement Calculation (under the current Decision)	Quantity of RECs (in MWh)
Total RECs Retired in Compliance Period 1	1,500
<i>Minus</i> all RECs from short-term post-June 1, 2010 contracts	0
<i>Minus</i> portion of unbundled RECs from third party contracts above the maximum limit (Current requirement in the Decision)	-375 [Step 1: (1,500*0.25) = 375 Step 2: (750-375) = 375]
<i>Equals</i> RECs eligible for excess procurement	= 1,125
<i>Minus</i> Procurement Quantity Requirement for Compliance Period 1	-1,000
<i>Equals</i> Excess Procurement from Compliance Period 1	= 125

¹⁵ For BVES, these long-term bundled RECs would be PCC 1 or PCC 2 RECs. As CalPeco and PacifiCorp are located outside of a California balancing authority and their procurement is not classified as PCC 1 and PCC 2 products the procurement would simply be long-term bundled RECs classified as PCC 3.

As illustrated above, the Decision’s failure to establish excess procurement requirements consistent with the Section 399.16 PCC limitations uniquely applicable to CASMU entities would deprive CASMU utility customers of the value of renewable procurement that should count in full for the RPS program. The Decision currently requires each utility (including the CASMU entities) to reduce the excess procurement amount by applying the 25% PCC 3 limitation for compliance period 1 found in Section 399.16(c)(2). This result means that a CASMU utility and its customers would not be credited for 375 RECs. This result is directly contrary to SB 2 (1X) which allows the utility to use PCC 3 RECs to meet its 1,000 MWh obligation “notwithstanding any procurement content limitation in Section 399.16.”¹⁶

To address this outcome, the CASMU entities should not be required to utilize the Section 399.16 limitations in their procurement calculation. Since the CASMU entities can meet their RPS targets exclusively with PCC 3 RECs, only those PCC 3 RECs that exceed the RPS procurement quantity requirement should be excluded from counting as excess. Under this revised calculation proposal, the CASMU utility would accordingly carry forward 500 RECs as excess procurement, as illustrated below:

¹⁶ Pub. Util. Code § 399.17(b). *See also*, Pub. Util. Code § 399.18(b).

**Table 3: Hypothetical Excess Procurement Calculation
for a CASMU Utility (Proposed Calculation)**

Excess Procurement Calculation (If Petition is Granted)	Quantity of RECs (in MWh)
Total RECs Retired in Compliance Period 1	1,500
<i>Minus</i> all RECs from short-term post-June 1, 2010 contracts	0
<i>Minus</i> portion of unbundled RECs from third party contracts above the Procurement Quantity Requirement (Proposed calculation)	0 [(1,000 - 750) = 250 (since this is a positive number, it does not need to be subtracted)]
<i>Equals</i> RECs eligible for excess procurement	= 1,500
<i>Minus</i> Procurement Quantity Requirement for Compliance Period 1	-1,000
<i>Equals</i> Excess Procurement from Compliance Period 1	= 500

This approach incorporates the statutory flexibility granted to the CASMU entities and will allow their customers to receive the appropriate benefit from renewable procurement under the applicable requirements. Rather than reduce the excess procurement based on an inapplicable PCC procurement limitation, the utility would instead apply the 750 PCC 3 RECs and 250 long-term bundled RECs towards its compliance period 1 obligation and carry forward the additional 500 long-term bundled RECs not applied to compliance period 1 into compliance period 2 as excess procurement.

2. The Goal of SB 2 (1X) to Promote Procurement of Bundled Products Necessitates that the Commission Modify D.12-06-038.

The current excess procurement calculation in the Decision not only violates the plain meaning and intention of SB 2 (1X), but would create a perverse disincentive for the CASMU entities to procure bundled renewable products. Because PCC 3 RECs are likely to be the least cost and easiest RECs to procure, it may be appropriate for the CASMU entities to maximize

their procurement of PCC 3 RECs, as they are allowed to do pursuant to SB 2 (1X). But under the Decision, if a CASMU utility met more than 25% of its procurement quantity requirement for compliance period 1 (or 15% for compliance period 2 or 10% for compliance period 3) using PCC 3 RECs (as allowed under SB 2 (1X)), the utility would then be discouraged from ever exceeding its procurement quantity requirement by procuring any additional bundled RECs, since those RECs would not be eligible to count as excess.

Looking at the example outlined above, a CASMU utility would logically reduce its procurement by 375 RECs (the amount not eligible to count as excess under the current requirement). Because unbundled PCC 3 RECs are likely to be cheaper and easier to procure in the market, the utility may opt to procure PCC 3 RECs in lieu of the long-term bundled RECs, and thereby reduce its procurement of long-term bundled RECs by 375 MWh. However, if the calculation is modified as proposed, the utility would not be discouraged from procuring the additional 375 long-term bundled RECs as such RECs would qualify as excess procurement. Thus, approval of this petition for modification will promote the procurement of bundled renewable products, an express goal of SB 2 (1X).

3. The Requested Modification of D.12-06-038 is Consistent with the Commission's Interpretation of SB 2 (1X).

CASMU's petition is consistent with the Decision's rationale behind the excess procurement calculation. The Decision provides:

[I]nstead 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 portfolio balance requirement 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 Category 3 RECs retired in the compliance period that are greater than the quantity that may be credited towards compliance pursuant to Section 399.16(c)(2).*¹⁷

As noted in the Decision, only those PCC 3 RECs that “exceed the allowable portfolio balance requirement amount” should be excluded from counting as excess. However, as the CASMU entities are not subject to the portfolio balance requirements, there is no limit to enforce. Because there is no PCC 3 limit for the CASMU entities, only those unbundled PCC 3 RECs that exceed the entire procurement quantity requirement should be excluded from counting as excess, as such RECs cannot count as excess procurement. The correction proposed in this petition is consistent with the stated intent underlying the excess procurement calculation methodology.

4. Failure to Modify D.12-06-038 May Increase Costs to Customers.

As described above, if the current excess procurement calculation is not modified, the CASMU entities will be disincented from procuring bundled products. But even if a CASMU utility procures only unbundled PCC 3 RECs to meet its RPS procurement quantity requirement, that utility will likely incur unnecessary stranded costs that will, in turn, be passed on to its customers. Currently, BVES anticipates meeting its procurement quantity requirement using solely PCC 3 RECs. This strategy is likely to be the least costly for customers, but it is not without its disadvantages. Namely, as PCC 3 RECs cannot be carried forward as excess procurement and due to the inability to perfectly forecast electric load, BVES is likely to over-procure (rather than risk a procurement shortfall penalty), and such stranded and unusable procurement will be paid for by its customers. However, if the excess procurement calculation is appropriately modified so that BVES could continue to meet its RPS targets using primarily PCC

¹⁷ D.12-06-038, p. 65, emphasis added.

3 RECs, but also carry forward long-term bundled (PCC 1 or PCC 2) procurement, such excess procurement would retain its value as it could be applied to a subsequent compliance period, thereby lowering costs for customers. Accordingly, to provide the CASMU entities with the procurement flexibility afforded them in SB 2 (1X), the Commission should grant this petition.

B. Proposed Modifications (Rule 16.4(B))

Rule 16.4(b) requires “specific wording to carry out all requested modifications to the decision.” For the reasons stated above, CASMU requests the following modifications to the Conclusions of Law and Ordering Paragraphs of D.12-06-038. (Language to be added is underlined, language to be removed is struck through.)

Conclusion of Law 29:

In calculating excess procurement in one compliance period that may be applied to a later compliance period, including 2021 and later years, retail sellers other than retail sellers described in Section 399.17 and Section 399.18 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).

Conclusion of Law 30:

In calculating excess procurement in one compliance period that may be applied to a later compliance period, including 2021 and later years, retail sellers described in Section 399.17 and Section 399.18 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 for the procurement of unbundled renewable energy credits from third parties that are more than the ~~number allowed under the limitation set out in Section 399.16(c)(2)~~ procurement quantity requirement for the compliance period.

Conclusion of Law 31:

In order to comply with the portfolio balance requirements, when retail sellers other than retail sellers described in Section 399.17 or

Section 399.18 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).

Conclusion of Law 32:

In order to comply with the portfolio balance requirements, when retail sellers other than retail sellers described in Section 399.17 or Section 399.18 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).

Ordering Paragraph 29:

In calculating excess procurement in one compliance period that may be applied to a later compliance period, including 2021 and later years, retail sellers other than retail sellers described in Public Utilities Code Section 399.17 and Section 399.18 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 Public Utilities Code Section 399.16(b)(3) that are more than the number allowed under the limitation set out in Public Utilities Code Section 399.16(c)(2).

Ordering Paragraph 30:

In calculating excess procurement in one compliance period that may be applied to a later compliance period, including 2021 and later years, retail sellers described in Public Utilities Code Section 399.17 and Section 399.18 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 for the procurement of unbundled renewable energy credits from third parties that are more than the ~~number allowed under the limitation set out in Public Utilities Code Section 399.16(c)(2)~~ procurement quantity requirement for the compliance period.

Ordering Paragraph 31:

If a retail seller other than a retail seller described in Public Utilities Code Section 399.17 or Section 399.18 applies excess procurement in one compliance period to compliance in a later

compliance period, including 2021 and later years, it must apply procurement associated with contracts signed after June 1, 2010 according to the portfolio balance requirements set out in Public Utilities Code Section 399.16(c).

Ordering Paragraph 32:

If a retail seller other than a retail seller described in Public Utilities Code Section 399.17 or Section 399.18 applies excess procurement in one compliance period to compliance in a later compliance period, including 2021 and later years, it must apply excess procurement that meets the criteria of Public Utilities Code Section 399.16(b)(1) to the minimum requirement set by Public Utilities Code Section 399.16(c)(1).

C. Timeliness (Rule 16.4(d))

Rule 16.4(d) of the Commission’s Rules of Practice and Procedure requires that “a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified.” As this petition is filed within one year of the effective date of the Decision, it is timely filed.

D. Notice

Please direct all communications regarding this petition to the following person:

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III. CONCLUSION

For the reasons discussed above, CASMU respectfully requests that the Commission modify D.12-06-038 to clarify that when determining excess procurement for the CASMU entities, only those unbundled PCC 3 RECs that exceed the procurement quantity requirement for the compliance period should be excluded as excess procurement.

Respectfully submitted,

/s/

February 21, 2013

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VERIFICATION

I am an agent of the respondent corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2013 at Sacramento, California.

/s/

Jedediah J. Gibson
Ellison, Schneider & Harris L.L.P.

Attorneys for Bear Valley Electric Service