

DOCKETED

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**Pasadena comments on Proposed Modifications to the
Enforcement Procedures for the Renewables Portfolio Standard for
Local POU**

Additional submitted attachment is included below.



P A S A D E N A
Water & Power

June 22, 2020

California Energy Commission
Dockets Office, MS-4
RE: Docket No. 16-RPS-03
1516 Ninth Street
Sacramento, CA 95814-5512

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RE: Comments from the City of Pasadena, Water and Power (“PWP”) Department on Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard (“RPS”) for Local Publicly Owned Electric Utilities (“POUs”)

Pasadena Water and Power appreciates the opportunity to comment on the Amendments to the Regulations Specifying Enforcement Procedures for the RPS for Local POUs (“RPS Amendments”) dated May 7, 2020.

PWP, through its revised 2018 RPS Procurement Plan and the 2018 Power Integrated Resource Plan (“IRP”) has long been an advocate of reliable renewable energy. In fact, PWP’s voluntary RPS target of 40% RPS by 2020 is higher than the state mandate of 33% RPS by 2020. PWP intends to comply with the Senate Bill (“SB”) 100 RPS mandate of 60% RPS by 2030 and we look forward to working with the California Energy Commission (“CEC”) to develop Enforcement Procedures that provide the most flexibility for POUs, while limiting the potential for stranded investment and disproportionate rate impacts to ratepayers.

This letter focuses on supportive, clarifying and concerning comments on the CEC RPS Amendments.

RPS AMENDMENTS COMMENTS

PWP looks forward to working with the CEC to discuss these issues with the goal of implementing pragmatic and flexible solutions to the State’s regulatory needs. PWP recommends that updates to the RPS regulations be proactive; meaning they apply to future procurement contracts.

Supportive Comments:

PWP supports a number of proposed RPS Amendment changes which reflect the CEC's commitment to the implementation needed to meet California's environmental goals, while providing flexibility to POU's.

RPS Procurement Requirements – Section 3204

RPS Procurement Targets for Each Compliance Period

PWP is supportive of the methodology for the compliance period targets and the interim years between the compliance period targets. This is consistent with PWP planning targets and analysis.

Exemptions and Adjustments:

Retail Sales Exclusion:

PWP is supportive of Section 3204 (b) (9) (A), specifically the retail sales exclusion for green power programs and appreciates the CEC's intention to clarify the terms throughout this section. It is important to understand how to calculate the impact of voluntary programs as part of the feasibility analysis in determining if a POU may offer voluntary ratepayer programs.

Reasonable Proximity:

PWP supports the CEC's proposed implementation of the reasonable proximity requirement. PWP's service area is significantly smaller than larger POU's and this limits the types of resources that can count for a voluntary green program. As such, in consideration of not significantly impacting ratepayers, we request that the CEC further evaluate the economic implications of reasonable proximity given the diversity of renewable project locations. In the future, as the market seeks consolidation and the California Independent System Operator ("CAISO") promotes its Energy Imbalance Market, ("EIM") it is important that the CEC consider allowing green resources from outside the California Balancing Authority ("CBA") in which the POU is located. A restrictive interpretation poses undue challenges to POU's to provide voluntary green pricing programs to ratepayers.

Additionally, we understand when adopting these regulations that the CEC seeks to encourage the development of voluntary green programs. PWP believes that a broader interpretation is the best approach, as it provides certainty that projects procured to comply with this provision are eligible.

Portfolio Balance Requirements ("PBR")

PWP is supportive with the methodology for the PBR and this is consistent with PWP planning Targets and analysis. The allowance for Portfolio Content Category ("PCC") 2 and 3 to meet the RPS procurement targets, post 2020 offers the most flexibility to meet the objectives of SB 100.

Long-Term Procurement Requirements:

Independent Compliance Determination:

Section 3204 (d) advises that beginning in January 1, 2021 at least 65% of the electricity products applied should be from long-term procurement. PWP is supportive of the

implementation of the Long-Term Procurement Requirement (“LTR”) as it is statutorily mandated. We would also like to express support, as reflected in Section 3204 (d) (1) for the independent compliance determination. By assessing the LTR separately and independently of the RPS Procurement Target and PBR, it clearly defines how each compliance requirement will be enforced. Additionally, an independent assessment, provides an equal value to each regulatory requirement and eliminates some of the “murky” understanding by POUs in determining the best compliance approach.

Long-term Procurement Target Exemptions:

PWP supports Section 3204(b) (10) which allows for a POU procurement target exemption as defined in Public Utilities Code section 399.30¹ for unavoidable long-term contracts and ownership agreements in connection with coal.

Many POUs, such as PWP, over-procured resources to comply with RPS, before these regulations were in place. As part of this over-procurement, the majority of PWP's signed contracts are long-term. Although PWP intends to comply with the RPS regulations, there may be cases in which severe over procurement may lead to disproportionate rate impacts. In order to limit stranded investment and the potential for over-procurement, an option to delay compliance or bank resource beyond the 36 month limit, is preferred.

Concerning and Clarifying Comments:

Long-term Procurement: Section 3204 (d)

PWP is supportive of the definition of a long-term contract, as “demonstrating a POU's commitment to procure electricity products from an RPS-certified facility for a duration of at least 10 continuous years.” However, we believe that the definition, as written, does not clearly define how “continuous” will be interpreted by the CEC. PWP recommends that the CEC interpret continuous to mean the duration of the contract term rather than the quantity of deliveries throughout each year of the contract term. For PWP and many other POUs, these contracts were executed based on their respective governing board's statutory interpretation of LTR procurement. Regulations to implement the LTR were not in progress until now. To determine that a POU's executed long-term contracts, prior to LTR regulations, are ineligible may cause many POUs to fall out of compliance with RPS regulations.

PWP executed a contract in 2018, for energy delivered over 11 years with marketer. The contract will deliver RPS eligible electricity products from 7 of the marketer's facilities as outlined in the contract. This is an 11 year contract for a mix of PCC 1 and PCC 2 resources. We signed this with the intent on meeting the 65% long-term requirement for PCC 1 and PCC 2 resources. This was the least expensive resource we found, that met our requirements (we also require shorter terms, per our City Council and to limit stranded investment). For Pasadena, price, location, term and regulatory requirements are extremely important when negotiating a renewable resource.

SB350 language states, “(b) A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10

¹ PUC section 399.30 (I)(1)(A) “unavoidable coal contracts” exemption

years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources”

For contracts, as described above, is the reason that PWP and other POUs are requesting these contracts executed prior to January 2021 be deemed LTR compliant, as they were secured with the intent to comply with the SB 350 legislation as written. Moreover, the CEC did not provide updated guidelines for POUs to rely on at the time and PWP relied solely on the SB 350 legislation. PWP was proactive in its compliance requirements and sought approval from its governing boards for these contracts. It is prudent that the CEC does not punish early action POUs, prior to the development of regulatory guidance. This is a big concern for PWP. We believe that an 11-year continuous executed contract satisfies the LTR requirement.

Long-Term Requirement – PCC 3

In the RPS Amendments, the CEC does not address long-term PCC3 procurement contracts, and how the CEC will determine LTR. PWP has executed a long-term PCC3 contract as defined by Section 3204 (d) (2) (A) for the reasons delineated above. Similarly to any other long-term procurement contracts for electricity products, these PCC3 represent the generation of an RPS eligible resources, however due to the restrictions promulgated by the CEC in how the energy is “unbundled”, and the absence of clear regulation, we are unclear if the CEC will interpret our executed agreement as a long-term PCC3 contract. PWP believes that it meets the LTR definition for the following reasons:

- 1) Contract term is at least 10 continuous years
- 2) PCC 3 Renewable Energy Credits (“REC”) are valid electricity products
- 3) PCC 3 resources are a valuable renewable attribute, which represents the replacement of fossil fuel electricity generation

Substitution - Third-Party LTR: Section 3204 (d) (2) (H) (3)

PWP finds the substitution language in section 3204 (d) (2) (H) (3) concerning.

The RPS Amendment language states:

“Amendments or modifications that substitute a different renewable energy resource or fuel other than as specified in the original contract or ownership agreement shall be treated as new agreements for procurement of generation associated with the substitute resource or fuel”.

Furthermore, the ISOR language suggests that additions and substitutions “should be considered part of the original long-term contract only if expressly specified in the original contract to demonstrate they are legitimately tied to the long-term commitment with one or more RPS-certified facilities from the POU is procuring generation.”

PWP is concerned with this provision as it does not account for the possibility of a myriad of “worst case scenarios” over a long period of time. Certified facility failures, facility ownership changes, or extended transmission outages are just a few of the possible outcomes. PWP has executed long-term contracts that outline a third-party seller’s ability to provide “make-up” or substitute energy, however, the exact resource or facility may not be expressly stated in the contract. Companies are sold, or absorbed into other companies or repowered. Multiple changes can occur over a 10-year period. Additionally in some cases, the facility named in the contract today, might

not maintain the same title as shown in the existing contract agreement. The ability to substitute a RPS certified resource for another RPS certified resource should be allowed—modifying these contracts may not be possible, as it is unknown which resources may be added or removed from the list of certified facilities ahead of time. PWP followed the intent of the legislation and secured many long-term contracts and these early actions should not be punished. If PWP is unable to count these substitute CEC certified resources as LTR, there is added risk to our ratepayers, in order to secure additional contracts to meet the LTR need. If PWP were to secure additional resources to meet the LTR, they are resources PWP does not need to meet the energy needs of its customers, but rather meet the CECs limited interpretation of the regulations. By over-procuring resources, we are burdening our ratepayers with securing additional resources that are not needed, which will lead to disproportionate rate impacts to customers.

Additionally, if this provision remains in the adopted regulations, the outcome will strain a third-party's ability to provide LTR compliant resources to POUs. This can cause a "ripple" effect, where a POU may be unable to find products that are LTR compliant and therefore may be unable to comply with the CEC interpretation of LTR procurement. If third parties are able to provide a contract, without the ability to substitute, they will drive the price of electricity products higher, which can lead to disproportionate rate impacts. We're urging the CEC to reconsider the substitution restriction as it severely impacts the types of contracts we may be able to secure in the future and it will increase costs significantly to our customers.

Third-Party Underlying Procurement: Section 3204 (d) (2) (A) (3)

The RPS Amendments addressing long-term contracts between a POU and a third party are not statutorily required. Essentially, the Amendments state that executed long-term contracts will be deemed LTR compliant *only* if the third party's underlying procurement contracts or ownership agreements with RPS compliant facilities are long-term agreements as well. Additionally, the RPS Amendments place the burden of proof on the POU to aid the CEC in its LTR compliance determination. While we understand what the CEC seeks to accomplish with this provision, this is not consistent with SB 350², stated below:

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

The LTR compliance obligation is set for the retail seller, not the third-party entity.

LTR Grandfathering

The ISOR States:

"Some stakeholders urged the CEC to grandfather contracts executed prior to January 1, 2020, and to consider these contracts long-term based on requirements in the existing regulations for measuring contract duration for purposes of excess procurement. The long-term procurement requirement begins in the 2021-2024 compliance period and may be satisfied by new or existing contracts, ownership, or ownership agreements.

² California Public Utilities Code 399.13 (a)(8)(b)

Procurement from existing contracts that do not satisfy the contract duration requirements for purposes of the long-term procurement requirement may be still be counted toward the 35 percent of procurement from short-term contracts. Furthermore, if a POU experiences delays in procuring from new long-term contracts due to one of the allowable causes for delaying timely compliance, or the cost of entering into new long-term contracts given the POU's existing portfolio of resources creates a disproportionate rate impact, the POU may plan accordingly and adopt one or more optional compliance measures to address a potential procurement requirement shortfall. In light of these factors, staff determined that there is no basis for grandfathering contracts for purposes of the long-term procurement requirement.”

PWP appreciates the CEC response on our request to grandfather LTR contracts if they were secured before January 1, 2021. However, we respectfully disagree with the CEC's assertion that grandfathering is unnecessary given the potential to delay compliance and taking advantage of some optional compliance measures. PWP's intent is to comply with all of the CEC RPS requirements and to limit PWP's the use of “opt out” measures. However, there is a realistic fear that contracts procured under the intent to comply with the LTR, might not count as LTR, due to the CEC's narrow interpretation. PWP secures resources that are best fit, least cost, in order to protect ratepayers from disproportionate rate impacts and to limit stranded investment. PWP hopes to work closely with the CEC to clarify the intent for the LTR and to understand how contracts can count towards the LTR, moving forward. In the workshop, the CEC asserted that if contracts do not count towards the LTR, they can still count towards compliance as part of the short term contract designation. This would not work for PWP—as we have short-term contracts that fill that gap. If we cannot count such resources towards the LTR, they become stranded assets and lose a significant portion of their value. We respectfully request to work with the CEC on this issue to work out a mutually beneficial solution.

Green Pricing Monetization: Section 3204(b) (9) (B) (3)

PWP seeks to clarify Green Pricing monetization as the Low Carbon Fuel Standard allows POU's to retire RECs through book-and-claim accounting to support indirectly supplied low-carbon intensity electricity. By allowing the use of green pricing program environmental attributes, a POU can optimize its climate change programs that foster and support state-wide carbon reductions.

Optional Compliance Measures – Section 3206

Delay of Timely Compliance: Section 3206(a) (2) (A) (3):

As submitted in previous comments, PWP appreciates the additional clarification for this optional compliance measure. PWP has an import limitation, which restricts that the amount of resources that can be imported to PWP. As a member of the CAISO, PWP must maintain a certain level of reliability both locally and at the system level. In addition, PWP is home to many educational institutions, businesses and medical offices (including hospitals) that rely on PWP to maintain power. Unfortunately, if there an issue to the import limitation, greenhouse gas emissions may increase, due to a reliance on PWP's internal and highly efficient, natural gas power plant. As a result, PWP requests the following modification:

- Recommended language Section 3206(a)(2)(A)(3D):

Unanticipated curtailment of eligible renewable energy resources, if the delay of timely compliance would not result in an increase in greenhouse gas emissions was necessary to address the needs of a balancing authority. However, on a case by case basis, the Executive Director may exempt a POU from this section if it can be shown that this unanticipated curtailment was as a result of an import limitation or tie constraint, which resulted in an increase in greenhouse gas emissions. In addition, the Executive Director may provide exemptions based on the reliability needs of a balancing authority, such as the CAISO, if such reliability result in an increase in greenhouse gas emissions.

Furthermore, PWP seeks clarification on to what analysis would demonstrate that the unanticipated curtailment resulted in an increase in GHG.

Delay of Timely Compliance: Section 3206(a) (2) (A) (4):

PWP appreciates the inclusion of this section. As stated in PWP's previous comments, PWP requests that the data source to show "unanticipated increase in retail sales due to transportation electrification," be broad enough to include many data sources, such as the integrated resources plan ("IRP"), which is listed, the integrated energy policy report, POU budgets and annual forecasts, etc. Many POU's develop annual retail sales forecasts—such data should also be included as a data source to show how transportation electrification is forecasted. Due to limitation in accessing data related to vehicle penetration, on a timely basis, the retail sales forecast can vary year to year. The IRP data is already several years old and might not be the best data source to use. There often is not sufficient time to secure resources if large charging stations are installed throughout the POU service territory. Without sufficient data sets and history to analyze the impact of transportation electrification, it may be difficult to procure renewable resources on a timely basis, to meet additional energy needs. We request that the CEC work closely with POU's that experience this and that the data needed to show this is broad to reflect the limited history in forecasting energy growth due to transportation electrification.

Conclusion:

The City of Pasadena appreciates your review of our comments on the Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities dated May 7, 2020.

Should you have any questions, please contact me.

Respectfully Submitted,

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