

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

August 5, 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 Department (“PWP”) on Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard (“RPS”) for Local Publicly Owned Electric Utilities (“POUs”)

PWP appreciates the opportunity to comment on the *Amendments to the Regulations Specifying Enforcement Procedures for the RPS for Local POU’s* (“RPS Amendments”) dated July 21, 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 POU’s, while limiting the potential for stranded investment and disproportionate rate impacts to ratepayers.

This letter focuses on supportive comments as well as a request for additional guidance on the CEC RPS Amendments.

COMMENTS TO RPS AMENDMENTS

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 implement California's environmental goals.

Portfolio Content Category 3 LTR:

PWP supports the CEC's decision to allow Portfolio Content Category 3 long-term contracts to count toward Long-Term Requirement ("LTR"). Similarly to any other long-term procurement contracts for electricity products, these PCC3 represent the generation from a RPS eligible resources.

Amendment or modifications that substitute renewable resources in a Long-term contract:

PWP supports the CEC's decision to allow the substitution of energy in long-term contracts, as long as the contract states a third-party supplier's ability to substitute. We appreciate the CEC's clarification that the specific resource is not required, as a number of changes can occur over term of the contract. Certified facility failures, facility ownership changes, or extended transmission outages are just a few of the possible outcomes.

Amendment or modifications the increase expected quantities:

PWP supports the CEC's clarification that increased quantities due to efficiency improvements or an expansion of facility will be treated as long-term. This is key as it denotes the CEC's commitment to the repowering of existing eligible resources.

PWP recommends to add the following language, "the addition of onsite energy storage is also considered an efficiency improvement." Currently, many existing and new renewable resource developers are developing plans for the installation of energy storage on-site. The presence of energy storage systems on-site should not impact the LTR compliance of long-term contracts.

Additional Guidance/Clarification needed

PWP requests additional guidance or clarification on the following issues, along with proposed language that may help to clarify the intent or provide more context around the request.

Grandfathering Existing Contracts that were executed prior to implementation of the Regulation:

PWP appreciates the CEC's Initial Statement of Reasons 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 of contracts 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 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 any disproportionate rate impacts and to limit stranded investment cost.

PWP has done its best to comply with the LTR statute, as regulations have not been available until now. We are concerned that we may be penalized for early action and may be required to procure additional long-term resources even though we are fully resourced. It is critical that the CEC does not punish early action of POUs, prior to the development of regulatory guidance. This is a major concern for PWP.

Similar to the PCC0 accounting methodology, PWP recommends that those contracts executed before these RPS Amendments, shall be grandfathered, as PWP already met the requirement per the LTR statute as laid out in SB 350. PWP invested in long-term renewable contracts early on and procured these contracts at higher costs than renewables that are available today. In some cases, POUs did not need the energy and only procured resources with the intent to comply with the RPS rules. As new laws are passed and regulations developed, they should be developed in a way to not impact past contracts. The only way to ensure this is to grandfather resources procured, before any regulations are in place. Retroactive regulations severely impact early action of POUs, forcing them to use an “opt-out” measure which may not be politically feasible or leading to severe disproportionate impacts to ratepayers (where the contract costs severely outweighs the contract value). PWP recommends that the CEC work closely with impacted POUs to resolve any outstanding issues and concerns. PWP recommends adding language to these regulations, which support grandfathering of contracts.

PWP proposes the following language, “on a case by case basis, the Executive Director may determine that a contract be grandfathered for LTR, if POUs can demonstrate any of the following:

- 1. Disproportionate rate impacts or*
- 2. The Contract was signed with the intent to meet regulations in place at the time the contract was executed or*
- 3. Other circumstances as approved by the Executive Director*

In the June 8, 2020 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 the gap (meaning that 35% of our RPS contracts are short-term). If we are unable to count such resources towards the LTR, they become stranded assets and lose a significant portion of their value. We respectfully request the CEC’s reconsideration on this issue to work out a mutually beneficial solution. It is our hope and request that the CEC work with POUs that have unique circumstances to understand how contracts were negotiated and priced. It is prudent that the CEC does not execute these regulations in a limited manner, which causes a disproportionate rate impact to POUs that took early action.

Long Term Procurement Requirement:

“A long-term contract includes a POU’s contract or resale agreement with a third-party supplier, including a retail seller, if both of the following are satisfied:

The POU’s contract or resale agreement with the third-party supplier has a duration of at least 10 continuous years.

The RPS-certified facility or facilities supplying the electricity products in the long-term contract are owned by the third-party supplier or are subject to a long-term contract with a duration of at least 10 continuous years, and the POU, or the third-party supplier or other party on the POU’s behalf, can submit documentation demonstrating this. “

PWP appreciates a more direct definition to the implementation of the long-term procurement language for contracts with a third-party supplier. Additionally, we are considerate of the CEC’s intention of requiring third-party suppliers to have a long-term vested interest in renewable energy

investment and maintaining long-term energy needs for California's SB-100 mandate as well as achieving stability to the market place by providing options to POUs for procurement purposes. PWP's existing executed long-term contracts do not stipulate buyer access to underlying contracts to demonstrate that underlying contracts meet the LTR, as these contracts are proprietary to the third-party supplier.

Disqualifying previously contracted resources would be a financial misstep and heavily detrimental to POUs, like PWP, that have procured contracts from third-party suppliers with full and good-faith intention to meet the LTR by purchasing contracts that are eligible.

Lastly, we are recommending that acceptable supporting documentation include an attestation, under penalty of perjury, signed by an authorized agent of the third-party supplier. This is necessary to ensure that POUs, who took early action, do not endure compliance shortfalls when underlying contracts are unavailable due to the constraints in existing contracts.

PWP Proposed Language:

“Acceptable documentation includes, but not limited to, an attestation signed by an authorized agent of the third-party supplier, affirming that the underlying contracts support a POU's long-term procurements are LTR compliant.”

“Third-party supplier underlying contracts should remain confidential under Title 20, California Code of Regulations, Section 2505, if the third party supplier has submitted a Non-Disclosure Agreement to the Energy Commission that has been approved by the Executive Director, or his or her designee.”

Substitution of Resources:

“Amendments or modifications that substitute a different renewable energy resource or fuel shall be treated as new agreements for procurement of generation associated with the substitute resource or fuel unless the following conditions are satisfied:

- i. The original long-term contract or ownership agreement specifies the ability to add or substitute resources.*
- ii. Any resources added to or substituted in the long-term contract or ownership agreement are owned by the seller or are subject to a long-term contract in its original term or an extension that has a duration of at least 10 continuous years.”*

It is PWP's interpretation that substitutions are permissible, as long as the contract specifies the ability to substitute the resource in the original contract. PWP is considerate of the importance of identifying substitute resources in original contracts and appreciates the ability to amend and add resources if needed. The RPS Amendments which require that third-party supplier underlying long-term contracts be long term as well are not statutorily required.

PWP encourages the CEC to consider alternatives to this narrow interpretation of this language. Some of PWP's contracts were developed before any RPS regulations (before 2010) and all of PWP's contracts were negotiated before this new regulations on LTR. The ability to substitute resources is important to maintain RPS compliance. It was never contemplated that substitution resource would also need to comply with the LTR. Often the generation from substitution resource is minimal, but there are rare circumstances where the generation can exceed expectations.

Additionally, some POU contracts stipulate a third-party supplier's ability to assign the contract to another counterparty. PWP would like to clarify that contracts that are assigned but met the intent and LTR parameters should not be penalized, and deemed short-term because the original counterparty assigned the contract.

Excess Energy:

Proposed Amendment states:

"Electricity products procured in excess of the quantity that is specified in a long-term contract shall be classified as short-term."

PWP would like to clarify that defined contract terms include various terminology that would have the same meaning as "excess". Such terms include "substitution" or "replacement". Although the terminology may be different, we'd like to clarify that these defined terms, are used interchangeably with the "substitution" meaning provided in the RPS Amendments.

PWP Proposed Language:

In addition, PWP recommends the following language for this section,

"If contracts allow for the opportunity for excess procurement and the excess procurement comes from the same PCC, it shall be deemed LTR compliant."

Many long term renewable contracts allow for excess/substitute/replacement energy, in order to make up for shortfalls in previous years or compliance periods. For PWP, some of these contracts have been delivering renewable energy prior to 2010, before any RPS regulations. Implementing a strict interpretation of how excess quantities cannot counts towards LTR poses a disproportionate rate impact to those early action POUs that have secured renewable contracts that allow for excess energy delivery.

Long-term "Continuous" Procurement:

Proposed Amendment states:

"The duration of a contract shall be measured from the contract start date until the contract end date, except as specified in paragraphs 1.-3. The duration shall be deemed continuous if the contract specifies nonzero procurement quantities on an annual or compliance period basis, or a combination of both, for the contract term. The contract start date may occur before, on, or after January 1, 2021."

A single contract may have procurement of multiple products (PCC1, PCC2, and/or PCC3) with various delivery schedules within the contract. Products that fulfill the duration of at least 10 continuous years shall be considered long-term, thus deeming the contract as LTR compliant.

PWP would like clarification that if one product (PCC) under a single contract specifies delivery on an annual or compliance period basis with specific nonzero quantities, then the contract will be deemed LTR compliant for that product.

Conclusion

PWP 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 July 21, 2020.

Should you have any questions, please contact me.

Respectfully Submitted,

Badia Harrell

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