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<td>Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities</td>
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<td>Gregory Chin</td>
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In the matter of:

Proposed Implementation of ) Docket No. 16-RPS-03
Renewables Portfolio Standards)
Long-Term Procurement )
Requirements for Local )
Publicly Owned Electric )
Utilities )

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LEAD COMMISSIONER WORKSHOP

REMOTE VIA ZOOM

THURSDAY, NOVEMBER 5, 2020
1:00 P.M.

Reported by:

Martha Nelson
APPEARANCES

COMMISSIONER

Karen Douglas, Lead Commissioner

CEC STAFF

Katharine Larson, Renewable Energy Division
Gina Barkalow, Renewable Energy Division
Elisabeth de Jong, Renewable Energy Division
Greg Chin, Renewable Energy Division
Natalie Lee, Renewable Energy Division

PUBLIC COMMENT

Justin Wynne, California Municipal Utilities Association
Mandip Samra, City of Pasadena Water and Power
Matt Freedman, The Utility Reform Network
Scott Tomashefsky, Northern California Power Agency
Steve Uhler
David Siao, Roseville Electric
James Takehara, City of Shasta Lake
Basil Wong, Silicon Valley Power
Randy Howard, Northern California Power Authority
Scott Hirashima, Los Angeles Department of Water and Power
Charles Adams, Albion Power Company
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PROCEDINGS

1:02 P.M.

THURSDAY, NOVEMBER 5, 2020

MS. LARSON: Good afternoon. My name is Katharine Larson. I’m Staff in the Renewable Energy Division. Thank you all for attending this Lead Commissioner Workshop on Implementation of the RPS Long-Term Procurement Requirement for POUs.

I’m going to first go over some virtual housekeeping. And then I will turn to Commissioner Douglas for opening remarks.

So next slide please, Greg.

This workshop is being conducted entirely remotely via Zoom. This means that we are in separate locations and communicating only through electronic means. We’re meeting in the fashion consistent with Executive Order N-25-20 and N-29-20, and the recommendations from the California Department of Public Health, to encourage physical distancing to slow the spread of COVID-19.

This meeting is being recorded, as well as transcribed, by a court reporter.

Everyone will be muted while I’m
presenting but we’ll pause for comments at certain junctures within and after the presentation.

To participate in public comment, please use the raise-hand feature in your Zoom application. If you called in, you’ll need to dial star nine to raise your hand and star six to un-mute yourself. We’ll get these instructions back up later in the presentation.

Please remember to stay muted until you’ve been called on to speak. When you are called on to speak, please start by stating and spelling your full name and identifying your affiliation for the court reporter. A chat window is available for logistical issues during the presentation.

In addition, if you’re unable to make your comment orally, you can type it into the chat window and we’ll read it aloud during the comment session.

Written comments must be submitted by Friday, November 13th. We appreciate comments submitted early and encourage you to submit them through our e-commenting system.

And now I will turn it to Commissioner
Douglas to kick us off.

COMMISSIONER DOUGLAS: All right. Well,
thank you, Katharine. And good afternoon and
welcome everybody. I’m Commissioner Karen
Douglas, the Energy Commission’s Lead
Commissioner for Renewables.

I’m really pleased to have the
opportunity to engage with all of you as the
Commission updates the Renewables Portfolio
Standard Enforcement Regulations for Local
Publicly Owned Electric Utilities, which we
usually just call the RPS POU Regulations.

This workshop is being conducted, as
Katharine said, with remote attendance by all
through Zoom. And in prior workshops on these
regulations the presentations and discussions
covered a wide range of topics. As was explained
in this workshop notice, however, today’s focus
is primarily on key elements of implementing the
RPS Long-Term Procedure Requirement, and the
process CEC Staff proposes to review and verify
that contracts meet the criteria to be considered
long-term, consistent with the RPS POU
Regulations.

Commission Staff issued a Key Topics
Guide on October 30th to help prime today’s discussion and, hopefully, to elicit meaningful input that facilitates Staff’s preparation of express terms that can be circulated for public comment and presented for possible CEC adoption during a December 2020 business meeting. This timing will allow us to have the regulations approved by the Energy Commission by the end of compliance period three which closes at the end of 2020.

I’m looking forward to today’s discussion. And I really want to express appreciation to those who have submitted written comments in advance of today’s workshop.

With that, I’ll turn this back over to Katharine. Thank you.

MS. LARSON: Great. Thank you so much, Commissioner Douglas.

And one last housekeeping item that I actually forgot to mention. So I’m being joined today by Staff in the Renewable Energy Division, as well, who will be helping out with the workshop, so that’s Gina Barkalow, who is the Office Manager, and Greg Chin and Elisabeth de Jong, who are our Staff. And so they may be
answering your questions or calling on you when you make your comments.

We also are joined by our Chief Counsel’s Office, as well, Gabe Herrera and Nick Oliver. And, of course, we have Natalie Lee, Deputy Director of the Renewable Energy Division. And Commissioner Douglas’ advisors, Kourtney Vaccaro and Eli Harland.

All right. Next slide please, Greg.

Great.

So today I’ll begin with some brief background information, including objectives, schedule, and a summary of the implementation of the long-term procurement requirements, or the LTR, and the CEC’s proposed express terms. Next, I’ll summarize Staff’s updated proposal for long-term contracts that are used for compliance with the LTR, reporting and review of those long-term contracts, and a few additional long-term contracts topics.

Throughout the presentation, I’ll pause for comments on the specific topic that I’ve just covered. Because we do have a lot of topics to get through today, we ask that you keep your initial comments on the topics to three minutes.
I’ll then summarize the immediate next steps. And we’ll have an opportunity for public comment before closing the workshop. Depending on how the time goes, it’s possible we may take a ten-minute break sometime during the workshop.

And next slide please.

One of the CEC’s responsibilities under the RPS is to adopt enforcement procedures for the POU RPS Program. The CEC has proposed modifications to implement recent statutory changes to implement the RPS POU requirements and to make necessary clarifications to existing regulatory provisions.

On May 8th, we initiated the formal rulemaking process with the publication of the Notice of Proposed Action, along with the 45-day express terms and the Initial Statement of Reasons. The CEC has issued two 15-day language revisions to proposed express terms in response to comments received.

In comments on the second 15-day language that was issued on August 18th, multiple stakeholders requested additional discussion and
opportunities for public input on the revisions
to requirements for long-term contracts that are
used for compliance with the LTR. Stakeholders
urged the CEC to postpone adopting the proposed
regulations until after an opportunity for
additional discussion. This workshop is one
effort to respond to that request. The workshop
was originally scheduled for October 13th but was
postponed twice, first, to create a more
effective structure for public input and, second,
to allow time for the CEC and the public to
consider related and substantive comments
docketed shortly before at the first anticipated
workshop date.

In response to the second 15-day language
and other public comments, Staff has developed an
updated proposal for implementing the LTR
requirements. And as Commissioner Douglas
mentioned, last Friday we posted a Key Topics
Guide describing the proposal, and illustrative —
— excuse me -- draft language to help
stakeholders prepare for the workshop. The draft
language is not formal express terms but is,
really, just designed to prompt discussion and
help guide comments.
Next slide please.
So our objectives for today’s workshop are, first, to clarify the intent and rationale for the long-term contract requirements that were proposed in the second 15-day language version of the express terms, next, to present Staff’s updated proposal for long-term contract requirements and the associated reporting and review process, as well as clarifications on additional LTR topics, and third, to seek public input here and in the written comment periods to help build the record for an additional round of 15-day language changes to the express terms.

The input that we receive will help inform the development of additional 15-day language and will be included as part of the formal rulemaking record. In providing written comments, we do strongly encourage you to address the illustrative draft language, and to provide suggestions for any proposed revisions to the illustrative draft language.

And next slide please.

Written comments following the workshop are due on November 13th. Following that written comment period, Staff will consider comments and
develop updated express terms. We anticipate posting a third round of 15-day language by the end of the month, followed by a 15-day public comment period, and then present the proposed regulations and the associated negative declaration under CEQA at a December 2020 CEC business meeting.

We anticipate finalizing the rulemaking package and submitting it to the Office of Administrative Law for review in the first part of next year. With the request for an urgency effective date, we tentatively anticipate a regulation effective date mid next year.

However, based on recent Executive Orders, the OAL review period may be extended by up to an additional 120 calendar days, so it’s possible this date could be later.

Next slide please.

So, the LTR was enacted by Senate Bill 350 for retail sellers and specifies that beginning in 2021 at least 65 percent of procurement must come from the retail seller’s own contract of ten years or more in duration, ownership or ownership agreements. The law provides a mechanism for voluntary early
compliance beginning in 2017. The law makes the
LTR applicable to POUs by requiring POU governing
boards to adopt consistent requirements. To
fulfill its oversight role, the CEC must adopt
regulations specifying how compliance with the
LTR will be assessed.

Next slide please.

The CEC’s proposed express terms
implement the LTR of a third separate procurement
requirement for which compliance is assessed
independently of the other two RPS procurement
requirements, the procurement target requirement,
and the portfolio balance requirement. This is
consistent with the established framework for the
other POU RPS procurement requirements.

Similarly, if all statutory and
regulatory requirements are met, POUs may adopt
and apply optional compliance measures to address
the shortfall in the LTR.

As reflected in the CEC’s express terms,
compliance with the LTR is assessed based on the
quantity of electricity products that have
applied for RPS compliance and that have been
procured through a POU contract of ten years or
more in duration, ownership or ownership
For purposes of determining compliance with the LTR, the proposed express terms define long-term and short-term contracts to differentiate what types of contracts can be used for compliance. The proposed express terms also clarify how various contract arrangements may be classified as long-term, how a ten-year duration will be measured and deemed continuous, and special consideration for PCC 2 and PCC 3 contracts and prior banked excess procurement.

In addition, the proposed express terms clarify how procurement for long-term contracts would be classified in different scenarios. In general, procurement from the long-term contracts is expected to be long-term unless amendments or modifications change the status of the long-term contract.

Next slide please.

The proposed requirements for long-term contracts have been revised over the course of this rulemaking. While the second 15-day language version of the express terms modified several aspects of the proposed implementation of the LTR, today’s workshop is focused on the
changes regarding CEC review to confirm a long-
term contracts procurement commitment.

The second 15-day language clarified that
POUs may be required to submit additional
information to show that a contract claimed as
long-term represents a long-term procurement
commitment. The language also outlines the
review process. This language is added, in part,
to address some stakeholder concerns that, absent
requirements for fixed quantities and pricing, a
contract could be structured to evade the intent
of the LTR but still be classified as long-term
based on a ten-year duration.

While Staff anticipated that the CEC’s
responsibilities to review and verify procurement
claims would be sufficient to prevent any sham
contracts from counting for compliance with the
LTR, we proposed addressing this in the second
15-day language with the intent of providing
greater transparency with regard to review of
long-term contracts, and to help identify how
POUs may support a long-term claim for a contract
in which the procurement commitment might not be
as clear. In addition, the intent was also to
provide an explicit appeals process if the POU
did not agree with the CEC’s assessment.

Next slide please.

So, based on comments on the second 15-day language, and in consideration of recent substantive comments on the long-term contract requirements, Staff is proposing updated draft language for long-term contracts and the associated reporting and review processes.

First, Staff proposes differentiating long-term contract requirements based on the execution date of the contract. This proposed change responds to stakeholder comments and absent updated regulations, POUs had only the statutory requirement for a duration to rely on in planning procurement for comment period four. Stakeholders recommended establishing additional criteria only for contracts executed after July 1st, 2020.

Staff found it reasonable to classify contracts executed prior to July 1st of long-term based solely on the continuous ten-year duration requirement that was proposed via 45-day express terms and clarified in the first 15-day language, however, this treatment would apply only for the duration of the contract that’s in effect as of
July 1st. Amendments after July 1st that extend the term of the agreement or that modify contract provisions otherwise relevant to the classification of a long-term contract, those would be subject to the same requirements as long-term contracts executed after July 1st.

For those long-term contracts executed after July 1st or amended after July 1st, Staff has identified three additional criteria, in addition to the ten-year continuous duration requirement. These criteria pertain to contract quantities, termination provisions, and minimum quantity or pricing terms. And I’ll explain them more in detail later in the presentation.

However, as with the ten-year continuous duration requirement, Staff proposes these additional criteria would also apply both to the POU’s contract and any underlying contracts with the RPS facility to ensure that all procurement counted for compliance with the LTR is sourced through long-term contracts.

Next slide please.

So, we will pause here for comments specific to Staff’s new proposal to differentiate long-term contract requirements based on whether
the contract was executed prior to or after July 1st. We’ll discuss contract duration and the additional criteria in a couple slides. And so, as a reminder, please hold other comments until later in the workshop.

And again, because we have a lot of topics to get through today, we are asking you to keep your initial comments to three minutes or less. And so, Greg is pulling up a timer here to help keep track.

And I will now turn it over to Gina Barkalow to help call on attendees with raised hands.

MS. BARKALOW: Hello. Yes. Okay, we have a few raised hands.

Justin Wynne, I’m going to allow you to talk. You may begin.

Greg, would you please start the timer?

MR. WYNNE: Did you -- you would like me to spell my name; correct?

MS. BARKALOW: It’s okay, I think. Your name is -- you don’t need to spell any names, so --

MR. WYNNE: Thank you. So, Justin Wynne for the California Municipal Utilities
First, I just want to thank CEC Staff and Commissioner Douglas for all the work that you’ve put into this. We really think that you’ve been responsive to a lot of the input that we’ve provided. And I think that we’ve made a lot of progress since the second 15-day language. And maybe before going into this specific question for this topic, just taking a step back, for the POUs, I think our starting position was that the statutory requirements for the long-term procurement requirement are pretty straightforward and clear. For a contract to qualify, it just has to have a duration of at least 10 years in length. And we don’t see any expressed legislative intent or legislative history that provides guidance to go beyond this. However, we recognize the concerns that were raised by other stakeholders and by the CEC about certain types of contracts that might meet that duration requirement but really shouldn’t qualify as long-term.

So, to try and reach a compromise on this the POUs worked very closely with TURN to develop some proposed regulatory language that would
exclude these contracts that there were concerns about but, at the same time, not unduly restrict the flexibility of the POUs or lead to any unnecessary cost.

So, the joint stakeholder proposal represents a comprehensive approach to this for the POUs. And it was very carefully drafted and all elements, all individual elements of that proposal, were necessary for the POUs to get support. So, as we go through and talk about the different elements today, I just want to keep that in mind, that when we put together the joint stakeholder proposal, each individual element of that was really necessary.

Which ties to the topic for this question of the different treatment for already executed contracts. And I think one of the biggest concerns that we had when we were looking at potentially developing more prescriptive or more complex regulations was that there’s -- a huge amount of the contracts that will be necessary for future compliance have already been executed. And those were executed without the benefit of these regulations being in place. And if were to all of a sudden adopt these regulations, they...
would be retroactively applying to a huge amount
of investment on behalf of the POUs. And it
would put all of this investment at risk for the
POUs.

So, one of the most important things for
the joint stakeholder proposal was that we needed
to have a clear cut-off date, where before this
point you’re just looking at the simple duration
requirement. After this point than, yes, we can
apply the more complicated requirements.

We see this in the Key Topics Guide and
we greatly appreciated that. I think we just
wanted to reiterate that this is truly an
essential element for the POUs.

I know I’m almost out of time but there
are just things I wanted to mention.

One, I think we’re going to talk about it
later, but there is concern about the reasonably
consistent language and how that is structured.
But we’ll revisit that when it comes up.

On the applicability of these
requirements to third-party marketers, I think
the only comment that I would make is that when
we were developing the joint stakeholder
proposal, we were looking exclusively at POU
contracts. And so, as we are looking at the
reasonable consistent, termination, pricing, and
then the list of justifications that we
developed, we were not thinking about and did not
consult the third-party marketers about their
underlying contracts. And so, I don’t think it’s
clear to us that what we proposed there maybe
takes into consideration all of the requirements
that they would have. And so, I think, if there
is going to be an extension, we would have to
revisit that.

And then finally, I --

MS. BARKALOW: I think that --

MR. WYNNE: Oh, yeah, that --

MS. BARKALOW: I’m going to have to ask
you if you could hold your comments to that
particular section for that. And at the very end
of the workshop, we will have another section
just on general comments.

MR. WYNNE: Great. I appreciate that.

Thank you.

MS. LARSON: Yes. Thanks.

MS. BARKALOW: Okay. Next, we will move
to Mandip. I’m going to allow you to talk.

State your first and last name and affiliation
for the Court Reporter. You should be able to speak.

Then, Greg --

MS. SAMRA: Mandip Samra.


MS. SAMRA: Mandip Samra, City of Pasadena Water and Power. So, I just -- really just a quick point of clarification.

So, I just wanted to get clarification that the only thing required for grandfathering is a ten-year duration or longer for a contract. And all the other requirements, like the up-stream contracts, approving all that, that does not apply to grandfathered contracts. I just wanted to confirm that.

Thank you. That’s it. And we do greatly appreciate this. We have put this in our comments, I think, three of four times. So, we are very appreciative of the grandfathering language and really do appreciate working with you to get this language put in.

Thank you.

MS. BARKALOW: Thank you.

MS. LARSON: And, Gina, maybe I can just jump in and clarify that.
So, Mandip, the grandfathering language as currently proposed would still hold the contracts executed prior to July 1st to the same duration requirements in the 45-day and 15-day express terms, which means the ten-year duration requirement would apply both to the POUs’ contracts and the underlying contracts at the RPS facilities if the facility wasn’t your counterparty.

But the additional criteria we’ve proposed regarding reasonably consistent quantities, for instance, those wouldn’t apply. As currently proposed, the ten-year duration requirement would apply both to a POU’s contract and the upstream contracts as well.

MS. BARKALOW: Okay. So first we’re going with the folks that are on the Zoom call. And then we’ll go to callers on the phone.

So next I have Matt Freedman. You should be able to speak.

MR. FREEDMAN: Thank you. This is Matt Freedman here on behalf of The Utility Reform Network. And I just want to echo what Justin Wynne said, which is that following the latest revisions to the 15-day language, TURN worked
with CMUA, NCPA, and SCPPA (phonetic) jointly to try to develop a joint stakeholder proposal that could address a range of differences between our respective positions. And I feel like the proposal that was submitted in comments represented a good compromise that TURN can support and provides the necessary flexibility for publicly owned utilities to be able to do legitimate long-term contracts that might have some unique features, and to provide some safe harbors, along with ensuring that new criteria that would be adopted by these rules are applied to new contracts. And that’s where the grandfathering comes in.

As we have the conversation about existing contracts, TURN recognizes that POUs have entered into contracts prior to July 1 of 2020 that were not entered into with full knowledge of the types of requirements that might come out of this process. And so, for that reason, we believe that the grandfathering provision that is proposed here is appropriate so long as any amendments or extensions or new contracts are not exempted from the reasonable consistency requirement and we believe that the
draft language does that. So, we want to thank
the Staff for recognizing the reasonableness of
this particular element of the proposal.

Thank you.

MS. BARKALOW: Thank you.
Okay, next we will move to Scott
Tomashefsky.

Scott, you should be able to speak.

MR. TOMASHEFSKY: Thank you, Gina. And
I’ll assume that you can spell my name, or it
will take the entire three minutes just doing
that.

MS. BARKALOW: That’s fine.

MR. TOMASHEFSKY: I appreciate the
opportunity. And I think this is more of a point
of just administrative clarification because, as
Justin speaks, there’s a lot of uniformity
surrounding the POU position. So rather than
have us come up and echo those comments 15 times,
I think you can go under the premise that we’re
in sync with what Justin was saying in that what
we will do is provide specific clarifications to
the extent we want to elaborate on a particular
position.

So, in terms of the NCPA position on
grandfathering, very much in alignment with what both Justin and Matt have said. But just moving forward there might be some areas where you might not hear us say anything, although we will be in concurrence, so just wanted to share that.

MS. BARKALOW: Thank you.

Okay, so we will now move to folks on the phone. The person with the phone number ending in 385, you should be able to speak. You may hit star six if you’re muted to un-mute yourself.

MR. UHLER: Hello?

MS. BARKALOW: Hi. Please state your name and affiliation for the Court Reporter.


Slide eight, I’m taking it that where it starts -- it looks as, before beginning, is 399.13(b). I’m interested in determining what type of contracts? Because that clause in the beginning talks about contracts for electricity associated with renewable energy credits. Are you also considering contracts for generation and metering and all the various downstream things from generation?

And for the renewable energy credits, under WREGIS (phonetic), contracts for -- that
will -- where the credits will end up in a WREGIS reserve subaccount, I’m interested in knowing what the statuses will be there.

Also, another thing, a small thing, these two appear to be taken from statutory provisions. The second governing -- the governing board, paragraph four instead of paragraph five, could be on the slide.

So, the main point is I want to know what kind of contracts? Are there just for buying this generated and are metered through per WREGIS operating rules at the high side of the transformer, at the generator? And, in particular -- and what would make these products? Because your -- all of your language talks about electricity products. But a high-sided generators is not an electricity product.

You’ll find more in -- and I spoke on this and have written on this, that the Commission seems to be terming products before the courts in the state will term them products, so can I get an answer to that?

Thank you.

MS. BARKALOW: Thank you.

That is the last person requesting to
speak, so unless anyone has anything else to say, we can continue on.

Greg, would you forward the slide please?

MS. LARSON: My apologies. I had muted myself and forgot to un-mute.

So, moving on, before we get into the requirements for long-term contracts, Staff has proposed clarifying the definition of jointly negotiated contracts. The second 15-day language definition addresses contracts that were executed -- or that are executed by a joint power agency or a third-party on behalf of multiple POUs, as well as joint contracts.

Staff proposes that jointly negotiated contracts also include separate contracts that are executed by each POU with the same RPS certified facility if two conditions are satisfied. First, if each POU contract identifies the other POUs that are in the agreement, jointly negotiated agreement. And second, each POU contract expressly provides the right to reallocate procurement among these identified POUs. As with the existing proposed requirements for jointly negotiated contracts, the procurement duration for each POU and each RPS facility must
be at least ten continuous years.

Next slide please.

So, again, we’ll pause briefly here for comments on this proposed clarification for jointly negotiated contracts. Again, please hold comments on any other topic until later in the workshop where we’ll be covering a number of different topics. And we’ll have an open public comment period at the end as well.

And I’ll turn it back to Gina.

MS. BARKALOW: Hello. Okay. Justin Wynne has his hand raised.

Justin, you should be able to speak.

MR. WYNNE: Yes. Thank you. Justin Wynne for CMUA.

So, I’ll just quickly note that this proposal is very important to the POUs. There’s not a lot of flexibility built into the long-term procurement requirement and this is one of the few areas that provides some of that needed flexibility.

And specific to this change regarding separate contracts, this language is greatly appreciated. It’s particularly going to be beneficial to smaller POUs that will be engaging
in that type of contract structure in order to meet the long-term procurement requirements. So, I just want to state that we greatly appreciate this modification.

Thank you.

MS. BARKALOW: Thank you.

All right, next we have Matt Freedman.

You should be able to speak, Matt. Okay.

Try again.

MR. FREEDMAN: Okay. I think I’m on.

Are you hearing me?

MS. BARKALOW: Yes.

MR. FREEDMAN: Great. I just want to reiterate what Justin said in the context of our conversations between TURN and the POUs and talking about the applicability of requirements related to the consistency of deliveries over the term of a contract. We believe that the POUs brought up a very legitimate issue around the use of joint powers agencies to allow multiple POUs to band together to help develop brand new facilities. And we think it’s very appropriate to allow the reallocation of quantities between JPA participants without requiring an additional look or additional scrutiny with respect to
compliance with the long-term contract requirements.

So, I just want to support this element of the proposal and explain why we think it’s appropriate.

Thank you.

MS. BARKALOW: Thank you.

All right, there are no more raised hands.

Greg, would you forward the slide please? We can continue.

MS. LARSON: Okay. Great. So, the first requirement for all long-term contracts, including those executed prior to July 1st, 2020, is to have a duration of at least ten continuous years. This requirement applies to a POU’s contract and to any underlying contracts with the RPS facilities. The duration of the contract is measured from the contract’s start date to the contract’s end date. The contract’s start date is defined in the express terms as the first date the POU procured electricity products to the contract.

As clarified in the first 15-day language the duration would be deemed continuous if the
contract specifies non-zero procurement quantities annually and/or on a compliance period basis over the term. However, the method for defining quantities isn’t restricted, so they could be specified as megawatt hour amounts, output share, or through some other metric.

Staff didn’t propose any substantial changes to the ten-year continuous duration requirement relative to the second 15-day language. But for clarity, we proposed updating the definition of a long-term contract to require non-zero procurement quantities for a duration of at least ten years.

Next slide please.

So, we’ll pause here for comments specific to this proposed duration requirement. In the workshop guide, we did pose a question as to whether a continuous ten-year term should ever include years in which the contracted for procurement quantity is zero, which we currently don’t see as allowed under the proposed language, to encourage you to consider this question as you are providing comments. And again, please hold those comments that are unrelated to duration until later in the workshop.
And I’ll turn it back to Gina.

MS. BARKALOW: Okay. We just have a few hands raised.

Justin Wynne, you should be able to speak.

MR. WYNNE: Thank you. Justin Wynne for CMUA.

So first, I would say, I don’t know that we expressly addressed this in the joint stakeholder proposal, but I think that what our interpretation was of our recommended approach to this question would be that if you have a contract, you would take any individual year and you would apply the, I think, reasonably consistent threshold, percentage threshold evaluation of that year, in comparison to the rest of the contract. And if it violates that, then -- or if it exceeds that, then you would apply one of the justifications.

And our expectation is, is that if you had a ten-year contract and, say, you had an individual year that was a zero quantity, then you would be able to justify that based off of one of the examples. And so, I think our approach would be, instead of having a
prohibition on any zero year, say we’d have like
an extra layer or a floor that would be applied
outside of the reasonably consistent threshold
calculation, that you would just use that
provision and then you wouldn’t have a zero-
megawatt hour prohibition.

As far as real-world examples, it’s
probably pretty rare that it would come up, but I
think some examples we could think of is, say in
year seven, there’s going to be massive
construction at the facility and so they’re going
to add solar panels or they’re going to
reconfigure or repower some elements of the
facility. There could be an extended period of
expected construction where you would have zero
in that year.

Another one might be something like if
there’s an essential transmission line, you know
it’s going to be down for one year within the
contract, and so there’s zero procurement during
that year. That would be another examples

So our expectation is that it would be
rare. It would be up to the POU to show that one
of the justifications is met. But I think that
that would be our preferred approach, instead of
just having a flat rule that you can’t have a zero quantity in an individual year.

Thank you.

MS. BARKALOW: Thank you.

Okay, next we have Mandip.

Please, you should be able to speak.

MS. SAMRA: Mandip Samra, Pasadena Water and Power. I just have a point of clarification here.

So a POU were to do, say, a 20-year contract but it would receive zero energy for the first five years, the quantities for the last 15 years, would that count as LTR? Because it is longer than ten years in duration. So I just wanted to seek some clarification because I think there’s inconsistency.

Thank you.

MS. LARSON: I think I might be able to clarify that general example.

So because of the way we measure -- because of the way we proposed to define contract start date, any initial zero quantity years, that we wouldn’t start measuring until the POU actually began procuring under the contract. So, in the scenario that I believe you just
described, if the procurement quantity was zero for the first five years, we’d just be looking at 6 through 20, which would have a duration of ten continuous years, assuming all other LTR requirements were met.

MS. BARKALOW: Okay. Thank you.

David Siao, you’re next please.

MR. SIAO: Thank you, Gina. I’m -- as you said, my name is David Siao with Roseville Electric. And I just had a clarifying question. For the duration requirement that was described in the prior slide, could you clarify whether this regulation would apply starting in 2021 or would this retroactively start applying to existing contracts producing RECs in compliance period three?

Thank you.

MS. LARSON: So I think, if I got the question right, this requirement would apply to all contracts, regardless of the execution date. So, if the contract was executed in 2018 but you are planning to, you know, a ten-year contract that goes forward, then beginning compliance period four or whenever you are subject to the LTR, we would be looking at this requirement to
apply, regardless of what date the contract was executed.

MS. BARKALOW: Okay. Next, Matt Freedman.

MR. FREEDMAN: Thank you. This is Matt Freedman on behalf of TURN. And we support the approach that’s being proposed here.

It’s our view, and we’ve expressed this in comments many times before the Commission, that a long-term contract that has a significant number of years with zero deliveries in it could very well be what we would characterize as a sham contract. Again, if you had all of the deliveries in year one and zero deliveries for the remaining nine years and, yet, called it a ten-year contract, nobody could really, with a straight face, I think make that claim under any level of scrutiny.

So, we believe the non-zero quantity requirement is critical. But we also accept the concerns raised by the POUs and reflected in the joint stakeholder proposal that an exemption—an exception to that could be made if there is a very specific demonstration made by the POU that a non-zero year is justified for a set of
specific reasons -- Justin identified those -- if the facility is down for refurbishment or repowering or some other very, very legitimate reason that justifies a gap.

And we also agree that a contract that has zero quantities in the first few years, followed by deliveries that span at least ten continuous years, shouldn’t be penalized for that. These are typical types of arrangements where contracts are executed for projects that have yet to be developed. And we don’t think there’s a reasonable basis for penalizing a POU because a project that it has a contract with isn’t immediately online. That’s, obviously, not realistic.

So, we think this strikes a good balance and we support the proposal.

Thank you.

MS. BARKALOW: Thank you.

Okay, next on Zoom, we have James.

Please say your name. I cannot see your full name.

MR. TAKEHARA: Hi. My name is James Takehara. I’m with the City of Shasta Lake. And a clarifying question.
I think I heard you say during the verbal portion of your presentation that this non-zero threshold would be applied not only on an annual basis or it would be on a compliance period basis. So if that’s correct then, you know, let’s just pick an example.

Let’s suppose in month one of this ten-year contract, the beginning of a compliance period, I take delivery of electricity. And then, for some reason, I don’t take another delivery of this electricity until the last year of the subsequent compliance period. Is that pattern an acceptable structure under your thinking?

Thank you.

MS. LARSON: I think I can partly speak to that at least.

We do, under the current proposal, allow a contract to be -- the contract duration to include procurement quantities on an annual and/or compliance period basis. However, as we’ll get to a little later in the presentation, which is actually my next topic, we have proposed additional requirements for reasonable -- reasonably consistent quantities. And for those
contracts that specify quantities on a compliance period basis, rather than an annual basis, the requirements might look a little bit different.

So I think that next section will be able to better address your question. But it’s correct that, yes, the proposed duration requirements allow quantities on an annual and/or compliance period basis.

MS. BARKALOW: Okay. Next, we have Mr. Steve Uhler.

You should be able to speak.

MR. UHLER: Steve Uhler, U-H-L-E-R.

A question related to underlying contracts. Can I get a clarification to what underlying contracts are?

MS. LARSON: Sure. The underlying contract in this case refers to if the POU -- the POU’s counterparty is not the RPS certified facility, then it is -- and the POU has a contract with a third party, then it is the third party’s contract with the RPS facility.

MR. UHLER: Okay. Would that include contracts for renewable energy credits that would ultimately reside in the reserve subaccount for the POU? Are you familiar with the reserve
subaccount?

MS. LEE: Hello, participant.

MS. LARSON: I’m not.

MS. LEE: Could we ask for you to submit those questions in your comments?

MR. UHLER: Okay. I have. But just being that I didn’t get an immediate answer there, reserve subaccount is for any credits that will be used outside of WREGIS. I’d hate to think --

MS. LEE: Yes, sir, I think that we fully understand the use of WREGIS.

MR. UHLER: Okay. Please do not --

MS. LEE: And we certainly appreciate --

MR. UHLER: -- interrupt me. Please do not interrupt me. I’m trying to make a statement here at an open and public meeting. I’m really --

MS. LEE: I apologize. Please go ahead.

MR. UHLER: Okay. Let me finish.

I’m concerned with this zero situation.

What would happen if a POU got a ten or a better year -- longer contract but, along the way, decided to port all of those credits into a reserve account, in other words, allow their
customers to claim the use of renewable energy,
and it drove it to zero because they couldn’t use
any of those credits for RPS, or they could use
some varying amount? Are you going to prohibit
them from driving it to zero by getting their
customers to actually pony up and buy renewable?
That’s my point here. That’s my point here.
That’s the product.

So I’d like to know the effect on the
reserve subaccount and whether or not POUs will
be reticent to allow their customers to claim,
fully claim, and use those credits outside of
WREGIS, which is allowed by WREGIS operating
rules? Can I get a clarification on that?

MS. LEE: Are you done with your
statement, sir?

MR. UHLER: No, I’m not done. I’m
waiting for a clarification. Is the credits that
are -- that end up in the reserve account, I
would like to know, will they be considered as
creating a non -- a zero contract? Will they be
considered or have you not considered the reserve
subaccount as far as trying to get additionality
and renewable sources here? Because here’s an
opportunity to get all the customers to not only
meet 33 and 50 and 60 but beyond that. But if a POU makes a ten-year contract and can’t sell those to their customers for risk of not complying with RPS, I think that’s a negative.

MS. LEE: Okay.

MR. UHLER: So --

MS. LEE: We thank you for your --

MR. UHLER: Please --

MS. LEE: -- we thank you for your comment.

MR. UHLER: -- please clarify that and answer the question. And, once again, we’re talking about products here. We’re not talking about electricity just because it’s electricity. We’re talking about delivered product. So I’ll be looking for --

MS. LEE: Okay.

MR. UHLER: -- I’m taking it that you’re taking that this is relevant to ten-year contracts that I’m speaking of. Can I get that clarification?

MS. LEE: No, I’m sorry, we’re not prepared to provide that at this time, but we thank you for your comment.

MR. UHLER: Why are you not prepared to
tell me whether or not what I’m saying is relevant after four years of working on this? The taxpayers would like to know why you can’t tell me why when I talk about a ten-year contract --

COMMISSIONER DOUGLAS: This is --

MR. UHLER: -- you can’t tell me?

COMMISSIONER DOUGLAS: Thank you for asking that question. And, obviously, the comments go into the record, but we do need to move on now.

MR. UHLER: Is this -- was that the Chair speaking? Whoever was speaking, please identify themselves.

COMMISSIONER DOUGLAS: This is Commissioner Douglas. We need to move on now, but we appreciate the question. And we will, obviously, focus on moving forward with the workshop. But the questions that are asked in this process do get addressed, so thank you.

MS. BARKALOW: Thank you.

Okay, Greg, would you forward the slide please?

MS. LARSON: Okay. So, the next topic we’ll discuss is the reasonably consistent
procurement quantities.

For contracts and amendments that are executed after July 1st, the first additional criterion in the Staff report is that the long-term contracts must include reasonably consistent procurement quantities. As reflected in the first and second 15-day language versions of the express terms, defined contract quantities are necessary to describe the procurement commitment and to establish obligations represented by the contract.

Staff has proposed a new requirement that contract quantities must be reasonably consistent in a long-term contract which responds to some concerns that, absent this requirement, a ten-year contract could be structured to only include meaningful procurement in one or two years but shall count for compliance with the LTR will not really meet its purpose.

To implement a requirement for reasonable consistent procurement quantities, Staff proposes establishing a measure of reasonable variation for long-term contracts. However, Staff acknowledges that contracts may include greater variation and still represent a long-term
procurement commitment.

   Based on stakeholder comments, Staff proposed expressing the measure of reasonable variation as a specified percent of the average annual contract quantities. Staff is considering two options for the specified percent which I will discuss in a couple minutes. But, generally, under this proposal a long-term contract would include reasonably consistent quantities under either of the following.

   First, contracted-for annual quantities vary no more than the specified percent relative to the average annual quantity, or the reason for the variation or the reason for specifying the contracted-for quantities on the compliance period basis is based on one or more circumstances that are consistent with the purposes of the LTR.

   For PCC 3 contracts only the requirement for reasonably consistent quantities would be assessed by comparing the average contracted-for quantities between any two adjacent compliance periods rather than to the average annual contract quantity. This recognizes the fact that PCC 3 electricity products aren’t procured with
the associated electricity, are more likely to be
procured in batches in a compliance period and
are more likely -- or may be used as a compliance
tool to fill procurement gaps.

Next slide please.

In calculating whether a long-term contract includes reasonably consistent procurement quantities, the variation in any given year is based on the contracted-for quantity, not the actual delivery under the contract. Similarly, if the contracted-for quantity is based on output share, then the variation would be based on any change in the output share, rather than any -- rather than on any estimated megawatt hour quantities under the contract.

As I previously noted, the additional long-term contracts criteria, including reasonably consistent procurement quantities, would apply to both the POU contract and two underlying contracts with the RPS facilities. However, for jointly negotiated contracts the variation would be assessed based on the aggregate contracted-for quantities, rather than on each POU individual quantities.
Next slide please.

So I just wanted to show a couple of quick examples as to how this calculation might look.

So in the first contract, quantity has been specified as annual megawatt hour amounts. The average annual contract quantity is calculated by summing the annual quantities and then dividing by the number of years in the term. In this case, that yields an annual average of 7,900 megawatt hours. Then for each of the contract the variation of that year’s procurement quantity relative to the average annual quantity is calculated.

If the variation in any individual year exceeds the measure of reasonable variation the POU would have the opportunity to submit information explaining the variation and why the contract, nevertheless, supports the purposes of the LTR.

In the second example, the quantity is expressed as a percent of facility output, the same process is used to assess variation. But in this case, as you can see, it is based on a change in the POU’s share of the facility’s
Next slide please.
So as I mentioned, Staff is considering two options for the specified percent of reasonable variation.

The first option is to establish 33 percent of the measure of reasonable variation, but also to apply this requirement only to POUs that are required to file Integrated Resource Plans with the CEC. Staff proposed this 33 percent threshold, in part, based on a review of the existing contracts, as well as the intent to capture the vast majority of contracts.

Staff also considered applying this requirement only to POUs that are required to file IRPs, which are those POUs that have average annual electrical demands greater than 700 gigawatt hours. This is based on prior comments identifying the planning challenges faced by many small POUs based on their load size, such as the relatively large impacts due to arrival or departure of a single large customer, or the need to rely on a relatively small number of contracts. The IRP requirements apply to 16 of the 44 POUs, which means 28 would be excluded.
The second option Staff is considering is to establish 40 percent of the measure of reasonable variation and long-term contract quantity for all POUs regardless of size. This would apply the same requirements to all POU long-term contracts that are executed after July 1st but would slightly increase the measure of reasonable variation due to a potentially greater need for flexibility among smaller POUs.

Under both options, contracts with greater variation could still be classified as long-term if the POUs sufficiently explain how the contract was consistent with the purposes of the LTR.

Next slide please.

So if the variation in the contracted-for quantity in a given year exceeds the measure of reasonable variation, or if the contract specifies quantities on a compliance period basis, POUs may submit additional information on how the contract provides a long-term procurement commitment consistent with supporting the purposes of the LTR.

The proposed regulations include a list
of examples based on stakeholder comments that
Staff found reasonable for explaining a greater
variation than the specified percent and that
would be consistent with the purposes of the LTR.
Staff is proposing to include these examples in
the regulations to provide better guidance and
certainties to POUs.

Next slide please.

I’ll now provide an opportunity for
comments specific to the proposed requirements
for reasonably consistent procurement quantities.
This slide paraphrases two questions posed in the
workshop guide which we encourage you consider
when making comments. The questions are which
measure of reasonable consistent variation is the
best implementation and why, and if the list of
proposed examples for greater variations is
sufficiently comprehensive to provide guidance to
POUs?

And I’ll just add for those commenters
who are supporting option A, which is 33 percent
of the measure of reasonable variation that apply
only to IRP-filing POUs, how would you support
differentiating the requirement for POUs based on
demand?
And I’ll now turn it over to Gina for comments.

MS. BARKALOW: Okay. I will go ahead with Justin Wynne.

You should be able to talk.

MR. WYNNE: Thank you. Justin Wynne with CMUA.

So both when the POUs were looking at the second 15-day language and as we were considering more comprehensive, more prescriptive requirements for the long-term procurement requirement, one of the main concerns was ensuring that there was sufficient regulatory certainty.

The POUs are investing a huge amount of funds on behalf of the ratepayers over a very long period of time in these renewable contracts. And so at the point of contract execution they need to be able to look at the regulations and have certainty about whether it would qualify.

To address this but also meet the -- address the concerns that TURN and others had raised, what we had proposed in the joint stakeholder proposal was a structure where we have the average analysis. If there’s a
deviation above a certain threshold, then you
would only be able to treat the contract as long-
term if it met one of the justified reasons.

But the way that we had worded in that
proposal made this an auto qualification, so that
if you deviate above the threshold but you meet
one of these requirements, there’s no step in
between, it automatically qualifies as a long-
term. And that’s essential because that allows
the parties at the point of contract to have a
high degree of certainty, that even if they have
a structure where they’re deviating beyond this
threshold, they still know that it’s going to
qualify as long-term.

As I read the proposal in Section
3204(d)(2)(C)1.iv. (phonetic) of the Key Topics
Guide, it appears to differ from this structure.

And so rather than there being an automatic
qualification based off of one of the
justifications, there’s this language now that
the POU has to justify that it meets the
requirements of the -- meets the purpose of the
long-term procurement requirement. It gives the
examples of market stability, long-term planning,
investments in new construction, and improvements
to existing resources. But now the list of
justifications is described as a list of
information. And as I read it, it might support
that finding but it’s no longer automatic.

And so the POUs have a lot of concerns
with the wording of this structure based off of
our initial read of the way it’s laid out. And
this would lead to significant regulatory
uncertainty. And it appears that there would be
a step where it’s up to CEC’s discretion to
determine if it meets the purpose of the long-
term procurement requirement. And, particularly,
as we mentioned before, because there isn’t any
legislative intent that’s expressly stated for
this, it seems like there’s a lot of discretion
around what that actually means.

And then more specifically with market
stability, that’s when it, as we’ve mentioned in
response to the second 15-day language, causes a
lot of concern because there’s a lot of different
ways to interpret that. And certainly when we’re
talking about maybe solar contracts, an argument
can be made, but that doesn’t support market
stability. And so it adds a lot of uncertainty
to whether these contracts were qualified.
And so I think the core thing that we’re trying to achieve here is give that regulatory certainty. And so we’d urge the Commission to consider that language.

Thank you.

MS. BARKALOW: Great. Thanks.

Okay, Mandip Samra, you should be able to speak.

MS. SAMRA: Mandip Samra, Pasadena Water and Power. I guess I don’t need to say that anymore.

But I do want to say, thank you, Justin, because we do support a lot of comments that Justin just spoke on.

But I’m just wondering if there’s an option, if the CEC would be open to it, that the deviations wouldn’t apply if you have a contract that consistently increases in its quantities? So, say you have a 30-year contract and, you know, you have 10 megawatts, then 20, then 30, then 40, 50 that can attach a retail load, we’re hoping that, you know, there could be a possibility that contracts that increase in their megawatt hours or quantity would be excluded from this deviation.
So that’s just one thing I want to put out, I think a lot of POUs do contracts that way, but just as an optionality for us.

Thank you.

MS. BARKALOW: Thank you.

Okay, next we have Scott. You should be able to speak.

MR. TOMASHEFSKY: Thank you, Gina. Scott Tomashefsky, NCPA. And I’ll echo the comments that Justin provided. We definitely agree with that.

My focus is, you know, looking at the distinction between option A and option B, especially with the lens of smaller entities. I think Katharine did a really good job of making our point as she was describing option A and about the planning challenges and sort of the size of contracts associated with some of the smaller entities. So it’s really important in terms of that option.

If you look at the comparison between option A and option B, option B is really a nonstarter for smaller utilities. And the distinction of dealing with the IRP threshold works really well.
And what’s critically important in dealing with that is exactly what Katharine had mentioned in a little bit less detail. If you have a particular utility that has a couple of very large customers and they end up in a long-term procurement related to serving that customer and the rest of that community, and that customer leaves, you are putting a small community at enormous risk in terms of being left holding a stranded asset to serve a community, which is really unacceptable.

So there’s major exposure that goes to the community, which is problematic in itself, and, of course, the uncertainty surrounding some of the contracts in terms of variation.

Within the NCPA member family there are ten members that are non-IRP utilities, so we have some pretty good practical examples tied to our membership. And, in fact, there are three members I can speak to off the bat that have customers that represent at least 50 percent of their load. So if they leave, that becomes a big problem.

And this is not -- I think that this is really important to clarify -- this is not
suggesting that not being -- not having to comply with this particular variation provision exempts you from the long-term requirement. It does not at all. It just, basically, takes 399.13(b) and instead of putting four additional screens on top of it, it just puts three.

One thing I would also add, I know some of the things that we’ve talked about over the years in terms of dealing with certain things that don’t quite fit, there’s been sort of a suggestion to kind of move towards optional compliance measures, but that’s never really a desired end game.

But in this particular instance, what would happen, short of having this type of provision built into the regulations, you would basically put every small utility in a situation where they would have to, basically, develop an optional compliance measure, build it into a procurement plan, and it would be a fairly high probability that there would be administrative impacts, both with the utility that would have to, basically, make that claim to the CEC, but also the CEC in reviewing those optional compliance measures.
So the short of it is, but for that particular provision, you’re likely to see a much larger usage of optional compliance measures which will definitely bear down on the program itself.

So I just wanted to share with that. We definitely support option A, don’t really see what comes out of option B as far as being more efficient.

Thank you.

MS. BARKALOW: Thank you.

Okay, next we have Matt.

You should be able to speak, Matt, please.

MR. FREEDMAN: Yeah. I’m on. This is Matt Freedman on behalf of The Utility Reform Network.

This was, obviously, one of the most challenging issues to resolve between TURN and the POU in our negotiations that led to the joint stakeholder proposal. TURN has indicated in a variety of comments, oral and written, that there is a need for long-term contracts to contain reasonably consistent quantities throughout the duration in the absence of a
legitimate justification for an alternative structure. And this -- these -- this really represents a safeguard against sham contracts that are intended to meet the ten-year requirement in name only without actually substantively looking and feeling like a real legitimate long-term contract.

And we recognize, though, the need to balance the importance of maintaining generally consistent quantities with real-world considerations that face publicly owned utilities and their contracting activities.

Let me say, for starters, the proposed differential treatment for PCC 3 contracts is not something that was entertained by TURN and the POUs in our conversations over the joint stakeholder proposal. And TURN doesn’t support having a different standard apply to PCC 3 contracts. We don’t believe there’s any basis for that.

With respect to options A and B, although TURN could support either approach, the joint stakeholder proposal recommends option A and does not include a precise percentage. We prefer applying the same quantity requirements to all
publicly owned utilities but we recognize the
burden and challenges that are faced by small
POUs. And so we think it’s a legitimate way to
distinguish smaller POUs based on whether they
file IRPs. And if the Commission finds that it
can make this distinction, we would support
option A.

With respect to Pasadena’s concern that
increasing quantities in a contract should not be
subject to the consistent quantities requirement,
well, there is a specific provision, I believe,
in the Staff language that would cover that
situation.

And then, finally, the list of
justifications that were provided in the joint
stakeholder proposal constitute the specific
issues that were identified in the course of
negotiations between TURN and the POUs. And it
includes a catchall provision to allow contracts
that fall outside the enumerated list of
justifications to qualify in the event that
there’s a demonstration that the contract
supports the financing of a new resource or is
consistent with the intent of a long-term
procurement requirement.
And I agree with Justin, who said the CEC should clarify that the draft language states that a demonstration of any of the enumerated justifications are sufficient to satisfy the purpose of the long-term contract requirement. I think that small adjustment would address the intent that is found in the joint stakeholder proposal.

Thank you.

MS. BARKALOW: Thank you, Matt.

Okay, next we have James, so you may begin speaking but say your name because I can’t read it on the --

MR. TAKEHARA: Yeah. I’m sorry. When I entered my name, I put James, Shasta Lake, so, yeah, I see your problem, the challenge. My name is James Takehara with City of Shasta Lake. I appreciate everybody’s comments so far.

We are one of the type of utilities that were mentioned. We’re a pretty darn small community up here, population 10,000. And to just give you a little flavor for what the community looks like here, we -- to compare our census data, compare it to the statewide averages, we have a higher degree of poverty,
lower income, both household and per capita. And, you know, population-wise, we have more people who typically aren’t part of the workforce. They’re either under the age of 18 or over the age of 65, so people come here to retire, predominantly.

So we run into some challenges with this type of mandate. And that’s -- so I appreciate the consideration you’re giving toward option A. It’s something that we would be interested in seeing moving forward, and not only for the potential impact to the community that being over-leveraged would create.

If one of my large customers were to leave, but we have an interesting resource, or it’s our load diversity problem, rather, where nine out of ten of my electric customers, that’s counting meters, are residential, but we have a very small number of customers you can count on one hand who represent a super majority of my retail sales. So if any one of those were to leave, I would have these long-term commitments to buy a product that I would no longer be needing. And these ratepayers would end up having to pay a larger portion of share. And
that’s something that we’re very cognizant of and try to protect against under the guidance of my governing board when we develop our procurement strategies.

So the fact that you’re considering option A and using an IRP threshold, we support that, appreciate everybody’s concerns in that, in supporting that as well. So I think that’s the only comments I would like to offer you at this time, so -- oh, and I guess one more thing.

You’re right. The question I asked before, this set or portion of the slides answers that. I was a little confused of whether we’re talking annual versus compliance period. But just so you know, when we do our procurement here we do like to bring in renewable energy that we need in the year that we need it so that the cost is allocated back to the customers who are creating that need. We don’t -- we try not to do monthly procurement. So we do follow a matching principle but I was just trying to understand what the CEC’s regulation proposal would be looking at, so just a point of clarification there.

Thank you.
MS. BARKALOW: Thank you.

MS. DE JONG: Hello. This is Elisabeth from the Renewable Energy Division. We received a question in the chat submitted from Abraham Alemu, A-L-E-M-U, from the City of Vernon. And the question is: What is the reason for the variations requirement under the reasonably consistent requirement?

MS. LARSON: I think, if I’m understanding the question correctly, I can respond.

So the reason we proposed establishing a measure of reasonably consistent variation is to ensure that contracts that are counted for compliance with the long-term procurement requirement are structured in a way that the procurement commitment is -- lasts over all the years of the contract, but also recognizes there may be circumstances in which the quantities may vary year to year and that, you know, could be quite significant, which is why we’ve provided a number of possible scenarios in which greater variation could still be counted for compliance with the LTR.

But, essentially, the core reason is to
ensure that the contract is structured to procure meaningful amounts over the entire term, not just in a year or two.

MS. BARKALOW: Okay. The next hand raised that we have is phone number ending in 385. I believe that’s Mr. Uhler.

You should be able to speak. Are you -- you should be able to speak.

MR. UHLER: Am I on? Yeah.

MS. BARKALOW: Yes.

MR. UHLER: Can you hear me?

MS. BARKALOW: Yes.

MR. UHLER: Okay.

MS. BARKALOW: I can hear you.

MR. UHLER: Any variations that -- where a POU’s customer is purchasing the attributes through the reserve subaccounts under WREGIS, or any contracts for that, should have no impact on the validity of anything that comes out of that contract. In other words, if the POU gets their folks hip to how to use more renewables, and they want to port it over to reserve subaccount and then port some of them, which would then appear to be a reduction of what they got for compliance with RPS, that shouldn’t matter. That shouldn’t
matter. This should encourage more POUs to sell renewables and use the reserve subaccount for those people to wholly claim the environmental attributes.

Also, in a situation, if they take that kind of a risk that their customers are going to go in that direction, those are contracts the customers have for electricity. And if those customers decide to go elsewhere, they shouldn’t be penalized because they’ve lost -- they’ve been stranded, as some of these folks might say, and their customers are not going to buy out of that account anymore.

So once again, this is -- I’m talking in terms of a ratepayer, which I don’t hear so much going on. I hear a lot of talk about POUs which are owned by the ratepayers. But I’m talking in terms of a ratepayer being able to claim, wholly claim, credits and nothing standing in their way. And long-term contracts that actually go to that, there needs to be a provision for the reserve subaccount. I want to see some language on that and how that would be used in any case on how the -- as far as how the Energy Commission assures the tracking for credits outside of
So thank you.

MS. BARKALOW: Thank you.

All right, that is the end for this session.

Greg, would you please forward the slide?

MS. LARSON: Okay, so for contracts and amendments executed after July 1st the next criterion we proposed is that a long-term contract must represent a commitment in which the procurement obligation is expected for at least ten continuous years of the contract term. Staff has proposed regulatory language that limits unilateral cost-free termination options that would allow the buyer to walk away from the contract early and may indicate that the procurement duration in the contract is optional rather than committed.

However, this proposal is not intended to limit termination due to nonperformance, force majeure, or mutual agreement, nor is it Staff’s intent to question early termination provisions that may be necessary and reasonable based on specific circumstances. Rather, Staff’s intent here is to ensure that a long-term contract
represents a commitment rather than a series of options.

So Staff’s proposed regulatory language that identifies examples of termination provisions for which Staff is aware, that would be not considered as jeopardizing the contract commitment. Staff has also proposed regulatory language that would allow a POU to show that a contract with early termination provisions still provides a procurement commitment consistent with the purposes of the LTR.

Next slide please.

So we’ll now pause for comments specific to the proposed requirements for limiting early termination. This slide includes a question that was posed in the workshop guide which is why are the proposed requirements reasonable considering the established contract provisions?

And I’ll turn it back to Gina for comments.

MS. BARKALOW: Okay. Great.

Justin, you may go ahead.

MR. WYNNE: Thank you. Justin Wynne for CMUA.

So we’ll just note that the language in
this proposal does differ from what we had
developed for the joint stakeholder proposal.
However, based off of our review and the list of
provisions that would justify these types of
termination clauses, we don’t have any
significant concerns.

I think one issue that we just want to
make sure is addressed is that there are a wide
variety of termination clauses and we just don’t
want there to be any unintended consequences.
And so I think it’s important that we review this
carefully, so I think we will take another look.
And if we have any other modifications that need
to be made, we’d put those into comments that
would be filed by November 13th.

Thank you.

MS. BARKALOW: Great. Thank you.

Matthew Freedman?

MR. FREEDMAN: Hi. Matt Freedman on
behalf of The Utility Reform Network.

We appreciate the development of this
proposal. And I agree with Justin, it’s not
identical to what the joint stakeholders proposed
but it is consistent. And we’ll be looking at it
to see if we have any particular concerns.
But I think what I want to say today is it’s really important to ensure that any contract classified as long-term doesn’t include early termination provisions that render meaningless the notion of an actual long-term commitment. So the goal of this provision is to prevent a loophole from opening up that would allow an entity to enter into a so-called long-term contract that actually could be easily canceled in year one, two or three for no particular reason, and there’s no particular obligation by the buyer or seller to do anything. And it looks and feels and walks, essentially, like a short-term contract.

We think the proposed language provides reasonable guardrails that should protect against abuse of early termination clauses to -- that would otherwise evade the purpose and intent of the long-term contract requirement. But it also allows reasonable termination provisions that, based on our conversations, we believe are used by POU s in legitimate contracts that are seen in the real world.

So we appreciate the attempt to balance out these considerations and think that this,
generally, hits the mark.

Thanks.

MS. BARKALOW: Thank you.

Okay, Mr. Uhler, you should be able to speak.

MR. UHLER: Steve Uhler again. Am I unmuted? Can you hear me?

MS. BARKALOW: Yes, we can hear you.

MR. UHLER: Early termination -- once again, I’m going to hang around this whole -- the whole use of the reserve subaccount -- any contracts that have -- that need to come up with a percentage of renewable energy credits that will be placed in the reserve subaccount. And before any early termination the POU has got to show that they tried to get their customers to purchase those environmental attributes outside of WREGIS.

Thank you.

MS. BARKALOW: Thank you.

Okay, that’s all that we have for this section.

Greg, would you please advance the slide?

MS. LARSON: So the last additional criterion that Staff has identified for a long-
term contract is that the contract must include sufficient minimum quantity or pricing terms such that both parties have an obligation to perform for the continuous term, and it is not the express intent of the contract for the parties to negotiate prices or quantities within the continuous ten-year term.

Staff has proposed regulatory language clarifying that a contract lacking such minimum quantity or pricing terms would not be classified as long-term. Staff proposed this language based on some stakeholder concerns that, absent requiring defining pricing and quantity terms, long-term contracts could include sham agreements that don’t represent a real enforceable obligation for at least ten years. However, the language Staff proposes also seeks to recognize other stakeholder concerns that the structure, in terms of pricing provisions, may vary based on the individual contracts, and that non-standard provisions may still represent a commitment to procure over the term of the contract.

Next slide please.

So we’ll pause again for comments specific to this topic. The slide includes a
question that was posed in the workshop guide which asks if the proposed requirements are sufficient to address a potential scenario where a contract shall represent an enforceable procurement obligation for at least ten continuous years?

And, again, I’ll turn to Gina.

MS. BARKALOW: Okay. Great.

And I will turn it over to Justin.

MR. WYNNE: Thank you. Justin Wynne --

MS. BARKALOW: You may go.

MR. WYNNE: -- for CMUA.

So, again, this is another area where the proposed language differs from what we’d included in the joint stakeholder proposal. But we reviewed it, I know we provided input, and I think that this is something we find acceptable.

I guess the one issue that we’ve identified is with the use of the word “or” because, as that’s structured, I think it can be read so that either the first clause, or if there’s a contract where just only on that basis it doesn’t have a megawatt hour procurement requirement in any individual year, then it would violate the pricing term provision.
And so what we -- what I’d mentioned earlier in the workshop was that we think that a zero year should be dealt with under the substantial deviation provision. And so if there is a zero year but you do have one of the justifications for it, then it should be allowable, and that there shouldn’t be this separate provision under the pricing provision that would prohibit that.

So consistent with what we’d mentioned earlier on that there should be no prohibition on a zero year as long as you can meet one of the justifications, then there shouldn’t be this separate requirement here. And I think that if we switched the or to an and it would address that.

Thank you.

MS. BARKALOW: Thank you.

Okay, Matt Freedman?

MR. FREEDMAN: Thank you. Matt Freedman on behalf of The Utility Reform Network.

We support the inclusion of this provision in the regulations. TURN has repeatedly expressed concerns about a long-term contract claimed by a party that really
represents nothing more than an agreement to negotiate for purchases in future years. If it’s just a shell of an agreement that has no defined quantities, no defined pricing, maybe just a master agreement to buy anything that shows up on a short-term basis throughout the duration of a ten-year period, that that really doesn’t meet the intent or purpose of the long-term contract requirement.

And so we believe that in tandem with the other provisions included in the draft regulations that this element is really important and it makes sense. It is a little bit slightly different from what we had proposed in the joint stakeholder proposal but we think that it is appropriate, subject to the concern that Justin raised about the zero-year exemption under very specific limited circumstances. We wouldn’t want to get a contract tripped up over the fact that there is a unique circumstance that includes a zero-quantity year. But we also don’t want that unique circumstance to become sort of an escape hatch for contracts that are problematic. So an entity that wants to demonstrate a zero year as reasonable has to -- should be able to make that
showing as part of its demonstration to the
Commission.

So we think that the proposed language
does provide reasonable guardrails that should
ensure that contracts represent an enforceable
procurement obligation on the buyer. That’s
really the key thing.

Thank you.

MS. BARKALOW: Thank you.

Okay, next we have Mr. Uhler. You should
be able to speak.

MR. UHLER: Yes. Once again, any
credits, renewable energy credits or electricity
consumed, that the credits end up in the WREGIS
subaccount, reserve subaccount. There should be
some sort of terms as far as pricing and quantity
adjustments to the contract to feed that, once
again, to encourage POUs to get their customers
to pony up for renewable energy and at least keep
that contract alive by actually conveying
electricity to the customer.

So, once again, this is the reserve
subaccount under WREGIS. You’ll find its terms
of use under the Operating Rule, WREGIS Operating
Rules.
Thank you.

MS. BARKALOW: Thank you. All right, that is all that we have for this section.

Greg, you may advance the slide.

MS. LARSON: Okay, so now we’re going to shift gears a little bit.

So Staff is proposing updates to annual reporting requirements in conjunction with the updated requirements for long-term contracts. In addition to reporting in the second 15-day language, Staff proposes requiring POUs to report on variation and procurement quantities, termination provisions, and minimum quantity or pricing terms for contracts executed in the prior year and claimed as long-term. This reporting would also include a copy of the contract documents, the location of the relevant contract’s provisions and, as needed, explanations of these provisions to show compliance with the requirements.

The requirements would apply to both POU contracts, and POUs would also report on their -- on underlying contracts with the RPS facilities. However, Staff proposes allowing POUs to attest to contract provisions of the underlying
contracts if the POU has sufficient records to support the attestation and will make these records available to the CEC upon request. Staff also has proposed, as in the express terms, that a third party may submit information directly to the CEC on the POU’s behalf.

The contracts that are reported to the CEC or that have been reported to the CEC in prior annual reports, Staff proposes requiring each POU’s annual report that’s submitted next July to identify the long-term and short-term classifications of any contracts in which the POU intends to retire and apply procurement in compliance period four. It’s later than the original proposed date of April 1st that was in the second 15-day language but aligned now with the annual report process.

For any POUs that elect for a voluntary early compliance with the LTR the annual report would also need to identify the long-term and short-term classifications of contracts used for compliance period three. And Staff will verify these contract classifications as part of its verification activities for compliance period three.
Next slide please.

So consistent with current contract verification practice, Staff anticipates reviewing the contracts that a POU reports as long-term, along with any additional information submitted by the POU to verify the classification. Staff may request additional information, if it’s needed, to verify the classification. And upon completion of contract verification, Staff anticipates notifying POUs through the RPS online system, similar to current practice.

In response to stakeholder comments, Staff proposes updated regulatory language that outlines the process and expected timeframes for Staff review. Following the submittal of annual reports which, again, would include reporting on contracts executed during a reporting year, Staff will verify the classification of each contract claimed as long-term. To the extent possible, Staff will complete all reviews of long-term contract classifications and notify POUs of the determination within one year of submittal of a complete and accurate annual report.

If the POU disagrees with Staff’s
verification of the contract classification as long-term or short-term, the POU may appeal Staff’s determination to the Executive Director. This appeals process is specific to verification of the contract as long-term or short-term and doesn’t extend the PCC classification of the contract. This appeals process is proposed because of stakeholder concerns regarding possible uncertainty in long-term contract requirements which hasn’t been the case for PCC requirements.

Next slide please.

So also in response to stakeholder requests, Staff has proposed a process for POUs to request advance review of a long-term contract. This would be available only for contracts executed after July 1st or proposed contracts that have been fully negotiated by the parties but perhaps not formally executed by the POU. And in both cases this process could only be available if additional information is needed to establish if the contract or proposed contract meets the long-term contract requirements.

Staff anticipates the advance review process would only be needed for those contracts
that are unable to demonstrate compliance without additional information and the limited use of the provision is necessary to mitigate impacts to CEC resources.

Under the proposed process a POU may submit a request to the Executive Director for advance review of a long-term contract. The request may -- excuse me, must include a complete copy of the contract, any relevant upstream contracts or attestations regarding those contracts, and a description of how the contract meets all of the long-term contract requirements, including page numbers in the contract where the criteria are met. The Executive Director may make available a form to facilitate the advance review request.

To the extent possible the Executive Director would issue a determination within 180 days of the complete request. But failure to issue a determination in that time wouldn’t be a determination on the contract. The Executive Director or Staff, as delegated, may request additional information, as needed, to complete the review. And, again, if the POU disagrees with the Executive Director’s determination the POU
may file a petition for reconsideration.

Following the Executive Director’s
determination and the resolution of any appeal,
Staff will review the classification only if the
contract terms were amended or modified, or if it
became known that the information submitted in
the advance review was incorrect or
misrepresented. However, as part of compliance
period verification activities, Staff still would
be reviewing procurement claims under the long-
term contract.

Next slide please.

Okay, so now we will pause for comments
on the proposed reporting and review processes.
And I will turn it back to Gina.

MS. DE JONG: Elisabeth here. I’ll go
ahead and step in.

Justin Wynne, if you want to go ahead and
speak, you’re ready to go.

MR. WYNNE: Thank you. Justin Wynne for
CMUA.

So first, I just wanted to say, thank
you, Katharine, for including this provision, and
specifically for putting in this proposal about
voluntary early review. That’s something that I
think it would be very beneficial.

And we are very mindful of the Commission’s resources and don’t want this to be unduly burdensome. And I think the one concern -- one of the concerns that we have with the proposal as it’s structured is with the 180-day time frame. And if a POU wanted to build this into their contracting process such that they would have a finalized contract and then seek to have this reviewed before it would be executed by their governing board, the 180 days makes this very challenging.

And so one of the thoughts we have is, is there another way we can modify this so that it prevents it being unduly burdensome to the Commission staff but it could be a shorter time frame, maybe something closer to a month or in that window? And could we do something like increase the requirements on the POU submitting this as far as the documentation that they would have to provide? I know there’s already a provision about a standardized form and maybe we could make adjustments to that? Or if there’s other ways to limit who this would be available to, if we could do that and then lower the time
frame, I think it could be a lot more beneficial. I think that some other POUs will speak on this but I just wanted to have that as the opening comment on this.

Thank you.

MS. BARKALOW: Thank you, Justin. Sorry about that. I was on mute.

Mandip Samra, you may speak.

MS. SAMRA: I echo Justin’s comments. Thank you so much for providing this as an option for POUs, really do appreciate it. I know PWP, Pasadena Water and Power, definitely was putting that in our comments.

But I do have one request, if it’s possible? For POUs that are currently executing contracts or negotiating contracts or, let me rephrase, about to execute contracts that, you know, may have not a zero megawatts and there just may be some issues there, for clarification, is it possible for the CEC to maybe discuss what -- you know, the POUs, some of these issues that they have are early on before they sign the contract.

PWP would be very interested to meet to discuss at least one specific contract that we
have. We will be happy to send it to you but we really do appreciate you doing this. And we’re hoping that we can have a dialogue before we sign it.

Thank you so much.

MS. BARKALOW: Okay. Thank you.

Basil Wong, you may speak.

MR. WONG: Hi. This is Basil Wong, W-O-N-G. I’m with Santa Clara, City of Santa Clara, Silicon Valley Power. Thank you for including this provision and considering this provision.

For us, you know, we enter into -- we have a medium utility and we enter into many long-term contracts. And given the complexities of the rules around the contract, we don’t want to take the risk that we enter into a contract that would otherwise not count. That has a lot of costly ratepayer impacts. And waiting, you know, for an annual review, or even waiting 180 days, to find out that a contract be executed is not valid or that it is not going to count is -- causes a lot of heartburn.

To Justin’s point, we would support a lower review period, maybe something in the order of 60 days, 45 to 60 days, to be consistent with
a timeline in which the city -- where staff takes
the contract to the city council for approval.
Our long-term contracts, because of their size
and their dollar amounts, are typically
approved -- have to be approved by a governing
board or body. And so aligning the approval
process, the CEC approval process or
determination with the governing board process,
would be very difficult. And, especially, it
would give our council and governing body a
little bit more assurance that the contract
you’re about to approve and authorize is going
to be useful and will not cause any ratepayer
impacts in the future.

Thank you.

MS. BARKALOW: Thank you.

Next we have David Siao.

MR. SIAO: Great. Thank you, Gina.

Again, this is David Siao at Roseville Electric.

I want to say what my colleagues at Santa
Clara and Pasadena said in terms of, you know,
making sure this voluntary review process is
something that’s both timely and conducive to
getting renewable resources in the ground but I
would like to focus on a question I had about how
excess procurement from compliance period three might be treated.

As stated in Roseville’s June comments, even though the long-term procurement requirement starts in 2021 for prior executed contracts, it would seem that requiring counterparties to also meet even some of the long-term procurement requirements, you know, that ten continuous years, would require detailed tracking of excess procurement from compliance period three. In other words, I’m thinking that there will be some contracts that are producing excess reqs that are -- may or may not be long-term procurement requirement eligible.

So I guess what I’m asking is maybe if the Commission could clarify what the treatment of the excess procurement from compliance period three would be and if the Commission might consider working with the POUs to make sure we can identify which reqs are retired for compliance period three versus which ones are carried over for future compliance periods?

Thank you.

MS. BARKALOW: Thank you.

Okay, next we have Matt Freedman.
MS. LARSON: Sorry, if you don’t mind,

Gina --

MS. BARKALOW: I’m sorry.

MS. LARSON: -- I might be able to
clarify that, just -- or, perhaps, clarify the
question.

David, I think you’re asking about excess
procurement, not -- in compliance period three,
not for POUs that are opting for voluntary
compliance but for POUs that are expecting to
begin complying with the long-term procurement
requirement in compliance period four. And so
the excess procurement rules that are in effect
now would remain in effect for compliance period
three.

In our proposed express terms the excess
procurement that was banked by a POU prior to a
POU becoming subject to the long-term procurement
requirement, that would count -- would continue
to count as long-term in future compliance
periods.

So I think that might have been your
question. But the other aspect is we would
expect POUs to identify what procurement in
compliance period three they wanted to claim as
excess versus to assign for -- toward compliance
with the compliance period three requirements.
And that was some of the motivation for the
changes we made to compliance reporting in 3207.

MR. SIAO: Yes. Thank you. I think you
understood my question correctly and I appreciate
that answer you provided. I think that makes
things a lot simpler and less burdensome for
everyone involved.

MS. BARKALOW: Great. Thank you.
Okay, Matt Freedman, you’re next.

MR. FREEDMAN: Thank you. This is Matt
Freedman on behalf of The Utility Reform Network.
And we appreciate the inclusion of a
process for voluntary advance review. This is
something that TURN had proposed in written
comments earlier in the proceeding to ensure that
any ambiguities regarding long-term contract
eligibility could be addressed up front rather
than after the fact. We thought this would
provide the kind of clarity to POUs that they
would need to be able to move forward,
particularly with contract structures that were
slightly out of the ordinary.

And as part of that the joint stakeholder
proposal suggested a 60-day timeline for turnaround by the Commission. And the purpose was to provide an expedited process that would allow timely determinations, especially for POUs that are on the threshold of executing a long-term contract. And due to commercial realities, we think the review process has to be timely and it has to be expeditious.

In that vein, 180 days for this process is just too long. There’s got to be a shorter timeline, especially for contracts that don’t require enhanced scrutiny by Commission Staff.

If a contract is not particularly unique, if it doesn’t differ significantly from non-grandfathered contracts that previously received a long-term contract designation, it shouldn’t require 180 days or more to make an advance voluntary determination.

So we recognize the limitations on Staff resources and very much respect all of the hard work that the Commission Staff puts in, but we think there has to be a more expedited process, especially for contracts that don’t require enhanced scrutiny.

So to the extent that the Committee could
even segment contracts into kind of a streamlined
express category, and those that are going to
require additional review, and to have those
streamlined contract reviews occur much quicker,
we think that that would serve all of the
participants in this process well.

    Thank you.

MS. BARKALOW: Thank you.

Okay, next on the phone, we have Randy
Howard.

MR. HOWARD: Yeah. Thank you. I just --
I’m going to echo some of Matt’s comments.

    This is a great provision but it’s not
very useful. And so what we’re most concerned
about is, you know, everybody’s going to move to
more standardized-type contracts, not be
creative, not do what’s necessarily best for
their consumers going forward because they’re
going to -- they need that certainty; right? So
they’re not going to be able to wait 180 days for
potential results on a pre-screen.

    We need to figure out a way to get this
to a shorter duration because we recognize that,
to meet the numbers that we have to meet going
forward to get these projects built, we’re going
to have to be a little more creative in some of these contracts. And that might be a good cause to bring them for the pre-screen but waiting 180 days isn’t going to do that. What you’re going to do is get rid of the innovation that we need going forward and you’re going to go to just some standard old ways of doing it that aren’t going to be as beneficial for our ratepayers, and they’re probably not going to provide the benefits the grid needs as well.

And so those are key things that I think need to be considered by the CEC. And, again, if there are additional elements that would help in getting that review done quicker and it’s on our end and our burden, I think that’s probably okay, but it has to be shorter periods.

MS. BARKALOW: Thank you.

All right, next we have Mr. Uhler. You should be able to speak. You might need to hit star six. You need to un-mute yourself, Mr. Uhler.

MR. UHLER: Can you hear me?

MS. BARKALOW: There we go. Yeah.

On reporting, the reporting should include the amount of credits that went into the reserve subaccount under WREGIS.

On the contract review, 180 days, I’m thinking, you know, having worked in the industry, if we don’t have the contract reviewed by the end of the week, we don’t work there anymore. You might want to talk to folks like Michael Dell (phonetic), how he does it. You need to be a lot more innovative. There’s a lot of software applications and such.

And I’m really concerned about if it’s going to inhibit innovative contracts that might be blending the purchase of renewable energy and renewable credits that will be used outside of WREGIS through the -- for the reserve subaccount.

So you really need to think about automating a number of these features as far as reviewing the account or farming it out to somebody who can turn it over in a week. There’s a lot of folks who could crowd source and turn that over. But, yeah, 180 days, that’s insane. That’s insane. I’m thinking if I’m going to build a product and somebody comes to me and says, here it is, and I tell them I can’t tell
them for 180 days, I don’t build them a product.

So you need to work on that heavily.

And, once again, there’s plenty of systems out there that would allow that reviewing the contract in much less time.

Thanks.

MS. BARKALOW: Thank you.

Okay, that’s it.

Greg, you may advance the slide.

MS. LARSON: Okay. Thanks Greg.

So there are a few additional areas related to long-term contract requirements that we are proposing to clarify in response to stakeholder comments and we’re seeking additional input in these areas.

The first is additional quantities.

Staff proposed clarifying that procurement in excess of the quantities that a POU is obligated to procure under a long-term contract will be classified as short-term. This clarification is in response to concerns that under the current express terms language procurement in excess of estimated quantities or guaranteed quantities in a long-term contract would be classified as short-term, even if the POU is obligated under
the contract to procure it.

Next, Staff proposes clarifying that a long-term contract includes a POU contract with a third party to procure bundled electricity products in which the PCC classification changes over the ten-year term as long as the POU’s contract and underlying contracts meets all other long-term contract requirements. Staff considered this clarification reasonable because it provides a similar treatment to resource substitution to long-term contracts. But Staff proposes limiting the changing PCC classification to bundled products only as PCC 3 contracts are subject to slightly different long-term contract requirements and may serve a different function with respect to the purposes of the LTR.

Staff also proposes clarifying that renewals or extensions of contracts with the Western Area Power Administration as part of the Central Valley Project should be classified long-term without regard to additional criteria for long-term contracts.

In comments, stakeholders identified that renewals or extensions of these federal contracts include provisions allowing for early termination
or changes to quantities based on actions by WAPA and FERC. Staff considered this clarification reasonable because the POUs may not have control over the inclusion of such provisions in federal contracts and because the renewals and extensions in question are 30-year contracts that Staff understands to be consistent with the purposes of the LTR.

Any new increases in the POU’s allocation share under these renewals or extensions would still be subject to the express term provisions regarding contract modifications that increase quantity.

And, finally, Staff proposes clarifying that replacement energy under a long-term contract may be considered part of the long-term contract when a facility did not perform as the contract required. Based on stakeholder comments that POUs may not have control over whether the need for replacement energy arose due to maintenance activities, curtailments or other reasons, nor would the POU necessarily have information on these decisions, Staff found it reasonable to limit the use of replacement energy to those scenarios in which the resource didn’t
perform as required.

Next slide please.

We will now take comments on these additional topics. The slide includes some questions that were posed in the workshop guide on this slide to encourage you to consider them in your comments.

So the proposed clarification that procurement additional to a POU’s long-term contract obligation will be classified as short-term, is this clarification sufficient to address all contracting scenarios and on what basis, if any, should electricity products that are optional to procure be considered part of the long-term contract?

For long-term contracts in which the PCC classification may change from one type of bundled PCC to another are there any concerns with this provision?

For the proposed recognition of renewals and extensions of WAPA contracts of long-term, is the proposed language sufficient, and are there any concerns?

And for the proposed change to requirements for replacement energy under a long-
term contract are there concerns with this provision?

And I will turn it back to Gina.

MS. BARKALOW: Okay. Thank you.

Justin, you should be able to speak.

MR. WYNNE: Thank you. Justin Wynne for CMUA. And I was just going to speak to the additional quantity question.

And I think the POUs still have significant concerns with this entire proposal. I think there’s a lot of contract structures that provide opportunities for a POU to purchase certain energy that may be optional, but that would be a common contracting structure and shouldn’t be something that should be restricted. And there might be examples, like if a generator produces above a certain amount the POU could have the option to either purchase it or refuse it, and then the seller could, at that point, remarket that excess energy out to another purchaser.

And this is very important because, especially, dealing with renewable resources where there’s variable amounts of generation year to year, it makes it difficult for POUs to plan
for it. And provisions like this that don’t
burden the POU with a huge obligation in a year
where, say, the generation was far in excess of
what the forecast was provides an option that
avoids excess costs falling to a POU that doesn’t
need it.

And so the other issue is that it hasn’t
been clear, as there’s been different versions of
this language, what the harm is in either just
the excess generation as it was originally
proposed or with these optional procurement
provisions. It’s not clear what we’re trying to
avoid but there is potentially the downside in
that it would prohibit these types of contract
structures that could provide a planning and a
cost benefit to POUs.

Thank you.

MS. BARKALOW: Thank you.

Okay, next we have Mr. Charles Adams.

You should be able to speak. It looks
like you’re muted. You’ll need to un-mute
yourself. Charles Adams, are you able to speak?
It doesn’t look like you’re on the phone but, if
you are, that would be star six to un-mute.

Okay, so we’ll go next to Scott, and we
can try with Charles Adams again later.

Scott, please go ahead.

MR. TOMASHEFSKY: Thank you, Gina. And I just wanted to speak to --

MS. BARKALOW: Oops. Oh, oh, I’m sorry, Scott. Hang on a second. I think I just -- hang on one second. I’m sorry. Where are you?

MR. TOMASHEFSKY: How about that?

MS. BARKALOW: There we go. Okay.

Great. Thanks. Please go ahead.

MR. TOMASHEFSKY: Thank you. I thought I clicked it but maybe I didn’t. But, yeah, no. I just wanted to speak to the Western provision and just say that that language works for us. I think as much time as we’ve spent dealing with the large hydro provision early on in the regulatory process, a lot of the language that applies there fits really well into this component. And it also recognizes the value of a small portion of the Western resource that actually is RPS eligible, so, you know, we’re really supportive of the way you’ve addressed this, so thank you.

MS. BARKALOW: Thank you.

Okay, it looks like, Charles Adams, you
are un-muted. Are you able to speak?

Okay, we’ll go to David.

David, you should be able to speak.


I just wanted to echo Scott’s comments, that we also support the WAPA provision which seems reasonable and affects, you know, a unique renewable resource within Roseville’s portfolio.

I also, on another topic, wanted to seek clarification, perhaps in the FSOR (phonetic), on the difference between substitute versus replacement energy. My understanding is substitute energy is listed in a contract and must meet LTR requirements, whereas replacement energy is an otherwise non-LTR eligible resource which is necessary in certain narrow circumstances to maintain the integrity of a contract.

So I think that is the CEC’s understanding, as well, but I would be greatly appreciative if that’s something we could confirm in the FSOR.

Thank you.

MS. BARKALOW: Thank you.
Okay, next we’ll go to Matt Freedman.

MR. FREEDMAN: Thanks.

MS. BARKALOW: You should be able to speak.

MR. FREEDMAN: Yeah. Matt Freedman here with TURN. Let me follow up on that last comment.

I think the idea, our view on the replacement energy issue, is that it should be limited to a narrow set of circumstances. The concept of a resource not performing shouldn’t become a proxy for the seller deciding to resell the output from that resource to another buyer. So there is a potential abuse of a replacement energy provision if one resource is promised under the contract but the seller just decides to remarket it and then fills in with other resources from an unrelated portfolio. That’s not the request that I’m hearing from the POUs. Really, the idea here is that this provision should be limited to situations where nonperformance by the resource wasn’t anticipated and the output from that project identified in the contract isn’t resold to other buyers. That would be a way to protect against the kind of
gaming or abuse that we might be worried about.

And then in terms of the issue of excess procurement beyond the contract quantities being classified as short-term, one way to, you know, to deal with some of the concerns the POUs have raised would be to limit additional procurement from projects not included in the contract. So the idea here is if the project produces a bit more than was anticipated, and should the POU be able to buy that excess output as part of their long-term contract? Well, that makes sense.

But if the idea is I have a long-term contract for output from a particular facility and in year five suddenly the sellers says, yeah, I’ve got some unrelated resource that I can just throw in for a year to give you a one-year boost, should that also count as part of the long-term contract? I don’t think so. That ends up being sort of an end run around the purpose of this requirement.

So I think the goal here is to distinguish between reasonable situations where output increases from the defined facilities in the contract, which should be acceptable from situations where the seller decides to simply
throw in a bunch of additional RECs from other resources based on a short-term desired need, so -- and we’ll identify that a little bit more in our comments.

    Thanks.

MS. BARKALOW: Thank you.

Okay, next we’ll move to Mandip. You should be able to speak.

MS. SAMRA: Thank you. I just wanted to speak briefly on the excess procurement limitation that you have in the rulemaking.

    I think with Pasadena and some of the other small POU s, we have a lot of uncertainty about our retail load, especially with transportation electrification. And we will be requesting in comments, like we have in past comments, that there should be a limited allowance of excess generation use if you have it in your long-term contract. And if, for example, for -- you know, one year load goes up by a few percentage points and you need renewable power right there and then to fill it in, I think that should be a reasonable request that we ask for, but in limited circumstances.

    So we will be submitting comments to that
effect but we really do appreciate you cleaning up the language.

Thank you.

MS. BARKALOW: Thank you.

All right, we can try Mr. Charles Adams one more time before we move to the calls on the phone.

Charles, did you want to speak? You may also send your questions through the chat if you’d like? Okay.

Before we go to the phones, we have one more on the Zoom chat.

Scott, you may go ahead. Do you need to un-mute yourself?

MS. BARKALOW: Are you able to un-mute yourself, Scott?

MR. HIRASHIMA: Yes. Hi. Can you hear me?

MS. BARKALOW: Yes. Thank you.

MR. HIRASHIMA: Sorry about that. Scott Hirashima, Los Angeles Department of Water and Power. I just want to speak on the additional energy provision.

So many of our contracts, we have provisions for this additional or excess energy
with defined pricing terms sometimes being optional. And as Justin mentioned, you know, renewable resources are inherently variable. And so you could potentially have a high wind year or maybe even a heavy rain year. And by treating this additional energy as short-term would unnecessarily discourage this additional renewable energy.

So, you know, we would like to see this as this energy be treated as long-term, you know, maybe, potentially, unless the contract expressly defines they’re not to exceed amount of that generation.

Thank you.

MS. BARKALOW: Thank you.

Okay, we will move to Mr. Uhler.

Mr. Uhler, you can speak.

MR. UHLER: Hello. That’s Steve Uhler.

There should be, really, no restriction on additional quantities of energy from any renewable source. I don’t know if anybody follows the curtailment charts. But if there’s any chance to use renewables, and a utility has the capability to make space for it, they should be able to take it in a long-term contract as a
long-term contract renewable energy credit for RPS, meeting the RPS.

And, also, to enhance the flexibility of the whole system, once again getting back to that reserve subaccount, there should be consideration that if in some years somebody has to use the reserve subaccount to sell in order to get enough funds to pay for the contract, they should be, later on, they should be able to bank that if there is any kind of restriction on additional quantities so that they can say, well, I sold those off to my customers, they paid for it. Now I have the ability to use this on my own. I want to use it for RPS.

So, yeah, you really need to look at the situation as a variability and look at the chart as far as where the renewables exist. Wind is just all over the place. Solar can end up under cloudy skies and fires, and stuff like that, and you can’t get it there. And then, suddenly, you get it back. So, yeah, there should be no restriction on additional quantities.

Thank you.

MS. BARKALOW: Thank you.

Okay, the next person we have is someone
on the phone with the phone number ending in 785. You should be able to speak.

MR. ADAMS: Oh, yeah. Charles Adams, Albion Power Company. Can you hear me?

MS. BARKALOW: Yes.

MR. ADAMS: One of the questions that we had is, is there a mechanism that can be considered where rooftop solar and distributed resources can count toward the RPS of POUs under the POU in which it resides? So these would be non-leased systems, non third-party owned.

San Francisco has something similar to this with its rebate program. Germany counts their systems on rooftop towards their renewable portfolio and so 80 percent of the systems are on rooftops in Germany.

Utility-scale farms are really destructive. We’ve built them. And from an environmental perspective, we were a bit alarmed. I think many people on this call would be alarmed at what really is destroyed by some of the farms.

I would also say that a lot of the contracts are loaded with accounting tricks and tax benefits that don’t go to Californians but that go to entities that own very large
portfolios of fossil fuels and things like that, so they’re using the tax credits to offset those. That doesn’t seem to be in the spirit of what the RPS was designed to do.

This is also detracting from a lot of the POUs saying, we can’t use the rooftop solar, so they’re trying to go away from that metering and trying to go away from even having rooftop solar at all. That doesn’t seem to be in line with many of the state’s policies. And it’s largely because something’s not being counted. Many Californians believe that they’re going towards the 100 percent goals by putting rooftop solar on their roof.

In terms of a cost perspective, accounting for the rooftop solar allows the wealthier or the community to subsidize POUs from having to be in some of these contracts. And they do certify the systems, not necessarily in the way you guys look at it, but they do certify them by interconnecting them and inspecting them. So, certainly, the systems are real.

It would really be beneficial to look at things a little differently because the farm -- building the farms and not going distributed is
not where we started 20 years ago. And some of it’s what entities benefit? Entrenched interests tend to benefit by not doing local community. It’s a lot of detraction and an impediment to local POUs going distributed and not destroying the land.

Please consider this and it’s much appreciated.

Thank you.

MS. BARKALOW: Thank you.

Okay, that is the last hand raised.

Greg, you may advance the slide.

MS. LARSON: Okay, so that concludes our discussion of the proposed long-term contract topics.

As I mentioned before, the written comments following the workshop are due on November 13th. And we encourage you to use our e-commenting system. You can find instructions for submitting written comments in the workshop notice. And, again, we strongly encourage you to include suggested regulatory language where changes are recommended.

Following the comment period and consideration of the input we receive, Staff
plans to develop the third 15-day language to post by the end of the month, and then to present the final express terms to the Commission for adoption at a December business meeting.

Next slide please.

The rulemaking documents can be obtained online in the rulemaking docket link or on the CEC’s webpage for these rulemaking proceedings.

Next slide please.

So we will now open the floor for public comment. Again, if you are unable to make your public comment orally, you may type the comment into the chat box and we can read it out loud. And all comments will be limited to three minutes.

I will now turn it back over to Gina for any comments.

MS. BARKALOW: Okay. Sounds good. We have Mr. Uhler.

You should be able to speak.

MR. UHLER: Hello. Steve Uhler here. Concerned about disaggregated WREGIS certificates. I find nothing in the guidelines or in the regulations that talk about the use of the reserve subaccount under WREGIS. The reserve
subaccount is for when credits or environmental attributes are going to be used outside of the WREGIS system. And there doesn’t seem to be any mechanism to ensure that those credits are not being double counted once they get outside of the WREGIS system. There seems to be no code or no statements anywhere about reserve subaccounts.

The other area would be in -- you guys, you need to define what a product is. Just calling it -- just because electricity shows up on a transmission line somewhere doesn’t make it a product. The courts have ruled on that. So you need to show me what statute allows you to use the term “product” related to anything in the renewable enforcement standards?

Yeah, both -- the high side of the transformer voltages are not marketable. The public doesn’t use any voltages like that. There’s other processes that have to be done. And folks should be aware that an electron never makes it from a generating plant to the consumer in an AC powered system. It goes through a number of transformers, unless there’s a defect in the transformer. That electron never leaves that generating plant and such.
So you need to get a little closer to some realities about when it is a product. And, absolutely, you need to come up with something that says you don’t have to follow Fong versus PG&E and Pierce and PG&E as far as what a product is. Stop calling it a product just because you’ve made a credit out of it. That just shows somebody generated out of a generating plant. Where am I on this? Yeah, 34 seconds.

Yeah, you need to really be clear on what a product is. I think you’re losing a lot of customers for renewable energy because you’re not giving them confidence that they’re actually getting what they’re paying for.

And the double counting, if somebody is claiming -- is selling and contracting out and selling the environmental attributes to a customer and they have a receipt for it, you need to make sure that there’s no renewable energy credit that’s not in the reserve subaccount.

Thank you.

MS. BARKALOW: Thank you.

All right, next we have David.

MR. SIAO: Thanks. Thanks again, Gina.

David Siao with Roseville Electric.
I just wanted to make sure to thank all
of the CEC Staff and Commissioner Douglas for
being accessible throughout this entire process
and taking our input. I know it’s been a long
and challenging process but I think we can all
see a light at the end of the tunnel.
So I just wanted to make two more
comments which I wasn’t able to relate to the
topics earlier.
First of all, we support the definition
of continuous, including compliance period, which
I think allows us to preserve flexibility and
savings to our ratepayers.
Second, I would like to ask for a point
of clarification regarding a contract with a
resource owned by a counterparty. I’d like to
clarify how or if a change in the resource
ownership, or if the contract is sold to another
third party, if there would be any impact on the
LTR eligibility?
Thank you.
MS. BARKALOW: Thank you.
Unless Katharine has anything to add,
that’s all that we have on the -- with hands
raised.
Okay, I think we can advance.

MS. LARSON: So that is the end of our presentation. We really appreciate everyone’s time today.

And before we adjourn, I’d like to ask Commissioner Douglas if there’s anything she would like to add?

COMMISSIONER DOUGLAS: Thank you, Katharine.

I just wanted to state my appreciation for everyone who’s participated in this workshop. And, particularly, I know the POUs and Matt Freedman worked hard together getting us some very substantive comments that were extremely helpful and, as you saw, reflected significantly in what we put out.

I want to, as Katharine said, encourage everybody to please get us your comments on time, get us your comments early if you can. Where you have suggested changes to the language, please, as much as possible, you know, give us line edits, if you can, just so that we can move forward in an expeditious way and so that we can really clearly see what you mean.

But, again, thanks to everybody who’s
participated. And I really look forward to finalizing this package and bringing it forward to the Energy Commission in December.

MS. LARSON: Great. Well, thank you all so much.

(The workshop concluded at 3:18 p.m.)
CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November, 2020.

[Signature]

MARTHA L. NELSON, CERT**367
CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

MARTHA L. NELSON, CERT**367

November 30, 2020