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**Comments of IEP on Pre-Rulemaking Workshop on Implementation
Proposal for Long-Term Procurement Requirement**

Additional submitted attachment is included below.

September 19, 2019

California Energy Commission
Dockets Office, 16-RPS-03
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Comments on Pre-Rulemaking Workshop on Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the Pre-Rulemaking Workshop, convened September 10, 2019, regarding the rules to govern the implementation of the Renewables Portfolio Standard (RPS) long-term procurement requirement established in Public Utilities (PU) Code Section 399.13(b). IEP represents the interests of developers and operators of utility-scale renewable resources, including biomass, geothermal, solar, and wind. IEP has been active in the development and implementation of the California RPS since its inception. Moreover, we have been an active in discussions over RPS refinements in the legislature as need arises, including SB 350 which enacted PU Code Section 399.13(b) that established the RPS long-term procurement requirement for retail sellers.

Overall, the Commission seeks additional input on potential implementation options for the long-term procurement requirement introduced by SB 350 as it applies to publicly owned utilities (POUs). The Commission suspended prior activities in this area (initiated in 2016) and now looks to finalize its regulations imposed on POUs in light of the California Public Utilities

Commission (PUC) adoption of rules implementing PU Code Section 399.13(b) for its jurisdictional retail sellers.

As a general rule, IEP believes it helpful for the Commission’s Rules and the PUC’s rules to be comparable and aligned to the extent feasible. The California renewable energy market is increasingly complex. As a result, alignment between Commission and PUC rules often help to provide a measure of regulatory certainty and consistency in project development.

As a follow-up to the discussion at the Pre-Rulemaking Workshop, IEP wishes to make a few brief points and observations.

1. PU Code Section 399.13(b) Sets Clear and Achievable Standards of Performance in Long-Term Procurement of RPS-eligible Resources

Workshop participants appear to view PU Code Section 399.13(b) as unclear and/or unworkable. IEP observes, however, that the standards set in PU Code Section 399.13(b) are relatively clear and straight-forward unlike some sections of the California RPS enacted in statute. PU Code Section 399.13(b) states the following:

“Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.”

At its essence, PU Code Section 399.13(b) sets relatively simple, inter-related standards that flow logically from the other:

- a. **Long-term Contracting Requirement:**
 - i. At least 65 percent of the renewable energy credits (RECs) used to count against an individual retail sellers’ RPS requirement must derive from procurement contracts of at least 10 years duration or via direct ownership.
 - ii. No more than 35 percent of an individual LSEs RPS compliance obligation may derive from other contract forms.
- b. **Form of Sales Agreement to Meet Long-term Contracting Requirement:**
 - i. The procurement contract(s) used to meet this provision must be at least 10 years duration; and,

- ii. The procurement contract(s) used to meet this provision must be executed by the retail seller as the “Buyer” (or, it must be executed by a party on its behalf such as in the case of a joint powers agency).

Essentially, the steps to determine POU compliance with PU Code Section 399.13(b) for POU is relatively straight-forward:

- i. *Calculate* an individual POU’s RPS Obligation (MWh) for the relevant RPS Compliance Period;
- ii. *Calculate* the volume of RECs need to meet the RPS Obligation that must derive from an individual POU’s long-term procurement contracts of at least 10 years duration or from the POU’s ownership agreements [by multiplying the POU’s RPS Obligation (MWh) by .65];
- iii. *Verify* eligibility of individual POU contracts and ownership agreements to qualify to meet the 399.13(b) compliance obligation;
- iv. *Verify* that the requisite RECs used to meet 399.13(b) compliance obligations derive from eligible RPS procurement contracts and ownership agreements; and,
- v. *Verify* POU compliance with PU Code Section 399.13(b) for the relevant RPS Compliance Period.

On its face, PU Code Section 399.13(b) sets a relatively straight-forward, achievable standard for compliance. Determining an individual POU’s compliance with this standard is not complicated nor should it become complicated through rulemaking.

2. A Long-term Procurement Contract Is Not a Series of Short-term Contracts

Workshop participants suggested that contracts of less than 10 years in duration (“short-term contracts”) ought to qualify for meeting the long-term contracting requirements specified in PU Code Section 399.13(b) in certain conditions. For example, it was suggested that a procurement

contract which previously had been of a duration of 10-years and was extended for less than 10-years ought to qualify. Alternatively, workshop participants suggested that a short-term contract (e.g. 9 years) should be sufficient to meet the long-term contracting obligation if after 9 years of operations an additional year were awarded the developer, i.e. two contracts that total at least 10-years in duration should be sufficient. The rationale presented appears to be that, because the goal of PU Code Section 399.13(b) is to incent the development of *new* RPS-eligible resources needed to meet the SB 350 GHG goals, it should be sufficient to meet the intent of section 399.13(b) to allow relatively short-term contract extensions to procurement contracts that may at some time in the past would qualify as a long-term procurement contract.

Proposals to allow short-duration procurement contract to qualify as a long-term procurement contract under PU Code Section 399.13(b) risks eviscerating the clear intent of PU Code Section 399.13(b). Moreover, the workshop discussion ignored the important role PU Code Section 399.13(b) has with regards to retaining existing RPS-eligible resources to ensure that cost-effective, brownfield sites are repowered and fully utilized; thereby reducing the incremental environmental impacts of meeting the California RPS. By interpreting Section 399.13(b) as requiring POUs to “show” that the 65 percent of the RECs used for RPS compliance derive from a contract of at least 10 years duration *at the time of compliance*, then the Commission will be helping to ensure the requisite revenue is available to the developer to invest its capital to retain and/or repower existing facilities needed to meet the California’s RPS and GHG-emission reduction goals.

The Commission should not undermine the *10-years duration* standard clearly articulated in PU Code Section 399.13(b) by adopting the suggestions of workshop participants to interpret the 10-year duration language as something less than its clear intent. The 10-year duration procurement contract standard serves to not only support the development of new RPS-eligible

resources, but it supports the retention and repowering of existing RPS-eligible resources as well to ensure that capacity is available and operating as efficiently as possible to help meet the state's RPS and GHG-reduction goals over time.

3. Requests for Implementation “Flexibility” Are Unsupported and Risk Undermining Statutory Intent

Workshop participants sought Commission “flexibility” in implementing PU Code Section 399.13(b). In support of the need for flexibility in meeting RPS long-term procurement obligations, workshop participants highlighted a variety of market uncertainties present today, including the vagaries of federal/state tax policy; the variability of supply and load; the variability of hydro-power to serve load; and, the difficulty of contracting borne by relatively small retail sellers.

IEP simply notes that energy markets are inherently uncertain and volatile. All the factors highlighted in the workshop as reasons for providing compliance “flexibility” are faced by retail sellers every day. For example, POUs take risks of stranded investment whenever they enter into multi-year energy and/or capacity contracts; when they build their own resources renewable or otherwise; and, when they when decided to invest in new administrative buildings, new transmission infrastructure, etc.

Investment in a long-term asset is risky in whatever form it takes; this is nothing new. Why concerns arise over stranded investment in the context of RPS renewable procurement, but not in the context of most other long-term investments made by POUs, remains a mystery. Bottom line, however: the POUs have ample experience executing long-term contracts in the face of uncertain, often volatile, futures. Most if not all POUs have been serving load for well over 40 years; and, they have been investing in long-term infrastructure throughout this period. The fact

that energy markets are inherently volatile is an insufficient reason to “water down” the RPS long-term procurement requirement prescribed in PU Code 399.13(b).

IEP appreciates the opportunity to comment on this important matter. We look forward to working with the Commission on developing regulatory language that ensures enforcement of PU Code Section 399.13(b) for the POU's.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, stylized "S" and "K".

Steven Kelly
Policy Director