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M-S-R Comments on Implementation Proposal for LTR

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

Docket No. 16-RPS-03

M-S-R PUBLIC POWER AGENCY COMMENTS ON IMPLEMENTATION PROPOSAL FOR RENEWABLES PORTFOLIO STANDARD LONG-TERM PROCUREMENT REQUIREMENT FOR LOCAL PUBLICLY OWNED UTILITIES

The M-S-R Public Power Agency¹ (M-S-R) provides these comments to the California Energy Commission (Commission) in response to the August 2019 *Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Utilities* (Staff Paper) and issues raised during the September 10, 2019 *Lead Commissioner Workshop on Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement* (September 10 Workshop).

M-S-R appreciates Commission staff’s careful consideration of the implications of implementing the long-term procurement requirement (LTR) for the renewable portfolio standard (RPS)² as reflected in the Staff Paper and the discussion during the September 10 Workshop. M-S-R supports the comments jointly submitted by the California Municipal Utilities Association, Northern California Power Agency, and Southern California Public Power Authority (Joint POU Comments), and urges the Commission to carefully assess the concerns raised therein. In these comments, M-S-R does not reiterate the points raised in the Joint POU Comments, but rather highlights two critical issues.

- The Commission should ensure that implementation of the LTR is done in a manner that is consistent with the entirety of the RPS program, and which recognizes the ability of publicly owned utilities (POUs) to utilize the statutorily recognized optional compliance measures, including delay of timely compliance, for meeting the LTR.

¹ Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. As such M-S-R does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members.

² Public Utilities Code sections 399.13(b) and 399.30(d)(1).

- Implementation of the LTR should not adversely affect or otherwise diminish the value of existing, long-term contracts that meet the statutory requirements of Public Utilities Code (PUC) section 399.16(d) that are recognized as PCC 0, and such resources should count in full toward meeting the LTR under both the independent implementation or dependent implementation proposals.

Delay of Timely Compliance is Properly Applied to the LTR

The Staff Paper interprets PUC section 399.15(b)(5) in such a way that precludes the use of the “delay of timely compliance” optional compliance measure to the LTR.³ The Staff Paper errs in applying such a constrained interpretation to the statutory provision. In addition to recognizing operational and grid-related constraints that may limit the ability of retail sellers to get contracted-for renewable energy resources to their customers, this provision *explicitly* recognizes the myriad issues that can arise in the context of developing new renewable energy projects.⁴ When looking at the entirety of the RPS mandate, including the objective of the new LTR provisions, it is clear that the legislature intended this provision to apply to the LTR. When reviewing the statutory language to discern the intent, the first level of review is to look at the plain meaning of the language; however, the courts have noted that the Commission cannot stop there when faced with a possible contradiction with the purpose of the statute.⁵ The courts have consistently held:

“[the] fundamental rule is to ascertain the Legislature's intent in order to give effect to the purpose of the law. [Citation] We first examine the words of the statute and try to give effect to the usual, ordinary import of the language while not rendering any language surplusage. These words must be construed in context and in light of the statute's obvious nature and purpose, *and must be given a reasonable and commonsense interpretation that is consistent with the Legislature's apparent purpose and intention.* [Citation] Our interpretation should be practical, not technical, and should also result in wise policy, not mischief or absurdity. [Citation] We do not interpret statutes in isolation. Instead, we read

³ Staff Paper, p. 8

⁴ PUC section 399.15(b)(5)(b)

⁵ “But the ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.” (*Ibid.*)” (Levin v. Winston-Levin (Cal. Ct. App., Sept. 13, 2019, No. G056353) 2019 WL 4386025, at *5)

every statute with reference to the entire scheme of law of which it is a part in order to harmonize the whole.”⁶

In this case, applying a provision that allows the Commission to waive enforcement of an RPS mandate in the event of “permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects” just to *short term* contracts would be contrary to the rules of statutory construction and render an absurd result. Instead, the Commission should read the statute as a whole and give the provisions a “*reasonable and commonsense interpretation that is consistent with the Legislature's apparent purpose and intention.*” It is simply not reasonable to assume that the legislature intended to encourage greater long-term commitments, but not to afford the parties entering into such arrangements the same level of protections afforded to short-term commitments.

If the Commission were to enforce the LTR in the face of a delivery failure that occurred due to an interconnection delay, for example, disallowing the use of a properly adopted optional compliance measure, a POU could be faced with a disallowance of RPS-eligible PCC 1 RECs that under the statute would otherwise be counted as excess procurement. This result, as the California Public Utilities Commission has noted, would be counterintuitive.⁷ Instead, the Commission should implement the LTR in a way that fully recognizes the legislative intent behind the RPS program generally, and the specific LTR mandate, which would allow POUs to utilize both the cost limitation *and* delay of timely compliance optional compliance measures to the LTR.

LTR Implementation Should Continue to Recognize Existing PCC 0 Long-Term Contracts and Ownership Agreements

PCC 0 resources should count in full as for determining a POU’s LTR. Regulatory amendments implementing the LTR must not contradict or alter the PCC 0 designation of contracts or ownership agreements that have met the requirements of PUC section 399.16(d). Irrespective of whether the LTR is carried out under the independent or dependent implementation alternatives, the LTR-eligibility of PCC 0 resources is the same; they represent

⁶ Hubbard v. California Coastal Com. (2019) 38 Cal.App.5th 119, 135–136 [250 Cal.Rptr.3d 397, 409] (emphasis added), citing Pasadena Metro Blue Line Construction Authority v. Pacific Bell Telephone Co. (2006) 140 Cal.App.4th 658, 663–664, 44 Cal.Rptr.3d 556 (Pasadena Metro Blue Line) and 20th Century Ins. Co. v. Superior Court (2001) 90 Cal.App.4th 1247, 1275, 109 Cal.Rptr.2d 611.

⁷ California Public Utilities Commission, Decision 17-06-026, p. 14

“contracts of 10 years or more in duration or [] ownership or ownership agreements for eligible renewable energy resources.” As such, they should be treated as long-term contracts under any implementation scenario.

When examining the various types of contracts, resource ownership, and ownership agreements that can be applied to the LTR, it is important that contracts and agreements meeting the statutory requirements of PUC section 399.16(d) and the provisions of current PRS enforcement regulation sections 3202(a)(2)(3) (PCC 0 resources) continue to count in full towards a POU’s RPS mandates, including the LTR. The Commission has posited a number of questions regarding contract amendments and the potential implications such amendments could have on the long-term status of an agreement; as it pertains to PCC 0 resources, the overarching response to these inquiries is that unless the modification is an outright termination of the agreement before the 10th year, no contract modifications, amendments, or assignments that retain the existing renewable energy source would nullify the long-term nature of the contract or alter the LTR-eligible status of these PCC 0 contracts. Since most (if not all) of the PCC 0 resources are associated with contracts or ownership arrangements of more than 10 years, these resources would be eligible to be included in any LTR implementation proposal, whether independent or dependent.

Furthermore, while the upcoming amendments to the POU RPS regulations will necessarily include a number of modifications to implement RPS program changes passed over the last few legislative sessions, none of those legislative changes alter the provisions of PUC section 399.16(d). As such, only contract amendments or modifications that “increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource” could impact continuing eligibility for PCC 0 classification. Similarly, extensions to the current or original duration of these contracts (or ownership agreements) would not impact their ongoing eligibility as PCC 0 resources as long as the statutory and regulatory requirements are satisfied. These distinctions are critically important for the POU’s that took early action and made considerable investments in these long-term commitments, as any regulatory amendments that would alter the PCC 0 designation could result in a significant diminution in the value of these important resources.

Conclusion

As the state moves forward in meeting its clean air and carbon neutrality objectives, the electricity industry will continue to be a key part of that success. As such, it is important to ensure that existing commitments in clean energy resources continue to be recognized and that stakeholders have the regulatory certainty they need to continue to make investments in such technologies. It is within that context that M-S-R provides this feedback to the Commission, and supports the positions set forth in the Joint POU Comments, and appreciates the opportunity to do so. M-S-R looks forward to continuing to work with the Commission staff and stakeholders in implementing the necessary amendments to the POU RPS regulation in a manner that is consistent with the statutory requirements and legislative intent.

Dated: October 1, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Hopper', with a long, sweeping underline.

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