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Document Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local POU's
Description:	COMMENTS OF THE UTILITY REFORM NETWORK ON THE STAFF IMPLEMENTATION PROPOSAL FOR RENEWABLES PORTFOLIO STANDARD LONG-TERM PROCUREMENT REQUIREMENT FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES
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**COMMENTS OF THE UTILITY REFORM NETWORK ON THE
STAFF IMPLEMENTATION PROPOSAL FOR RENEWABLES
PORTFOLIO STANDARD LONG-TERM PROCUREMENT**

Additional submitted attachment is included below.

**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the matter of:)	
)	
)	Docket No. 16-RPS-03
Amendments to Regulations Specifying)	
Enforcement Procedures for the Renewables)	
Portfolio Standard for Local Publicly Owned)	
Electric Utilities)	
)	

**COMMENTS OF THE UTILITY REFORM NETWORK ON
THE STAFF IMPLEMENTATION PROPOSAL FOR
RENEWABLES PORTFOLIO STANDARD LONG-TERM PROCUREMENT
REQUIREMENT FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

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**COMMENTS OF THE UTILITY REFORM NETWORK ON
THE STAFF IMPLEMENTATION PROPOSAL FOR
RENEWABLES PORTFOLIO STANDARD LONG-TERM PROCUREMENT
REQUIREMENT FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

In response to the August 28, 2019 Notice of Lead Commissioner Workshop, The Utility Reform Network (TURN) submits these comments on the staff proposal for implementing the long-term contracting requirements (LTR) of SB 350 for Publicly Owned Utilities (POUs).

I. TURN SUPPORTS THE DEPENDENT COMPLIANCE APPROACH

The staff proposal provides two high-level compliance options for consideration by the Commission. The first would establish the LTR as a separate and independent obligation that stands apart from the other procurement requirements outlined in the statutes. The second would set LTR compliance as a prerequisite to being able to apply procurement quantities towards the overall targets and the portfolio balance requirements. This second approach was adopted by the Public Utilities Commission in D.17-06-026 for all retail sellers under its jurisdiction.

TURN strongly supports the second option (dependent compliance) and urges the Energy Commission to incorporate it into the final rules. The Energy Commission should not deviate from the approach taken by the Public Utilities Commission.¹ As explained in D.17-06-026, this approach more effectively and accurately implements the statutory scheme, under which “the new LT requirement must be construed as an inflexible requirement of RPS compliance.”²

¹ The adoption of the independent compliance approach would represent a significant break from the CPUC rules and create an unprecedented disconnect between RPS compliance rules applicable to POUs and CPUC-jurisdictional retail sellers.

² D.17-06-026, page 11.

The language of Public Utilities Code §399.13(b) expressly limits the ability of a retail seller or POU to count any quantities towards compliance unless at least 65% of the total volumes are sourced from long-term contracts or ownership agreements. Procurement volumes may only be counted if “at least 65 percent of the procurement” satisfies the LTR criteria.³ The dependent approach accurately implements this restriction by only allowing a POU to “count” procurement towards any other “requirement” of the program if 65% of the total has been sourced from long-term commitments. By contrast, the independent approach would allow a POU to count 100% of procurement towards all other requirements even if none of the volumes were sourced from long-term commitments. That outcome is clearly at odds with the plain text of the statute.

This interpretation is further supported by the fact that the LT contract requirement may not be waved or reduced through optional compliance measures. The optional compliance measures available to POUs are outlined in §399.30(d)(2)(A) and are limited to those outlined in §399.15(b). The waiver provisions of §399.15(b)(5) only apply to the requirements of “this section” (§399.15). Since the LTR appears in §399.13(b), it is not within the scope of the requirements outlined in §399.15(b) that are eligible for compliance waivers. The Energy Commission should include this recognition in any implementing regulations.

The purpose of the LTR is to promote market stability, ensure advance planning and drive the timely development of new resource capacity needed to meet escalating RPS targets. These objectives are central to the success of the RPS

³ Cal. Pub. Util. Code §399.13(b)(A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.)(emphasis added)

program and should be taken seriously by the Energy Commission. Under the dependent approach (Option 2), a POU would understand the critical importance of meeting the LTR as a precondition to applying any procurement to its RPS targets. This understanding should be expected to incentivize full compliance with the LTR.

TURN is concerned that the independent approach (Option 1) would de-emphasize the importance of the LTR by de-linking the obligation from all other compliance requirements. POUs would be permitted to apply any procurement towards RPS targets regardless of the amount sourced under long-term agreements. Failure to meet the LTR would expose the POU to a single form of noncompliance that has no defined consequences.

It is not clear from the staff proposal what type of enforcement action and penalty mechanisms would apply to noncompliance with a stand-alone LTR. TURN suspects that noncompliance under Option 1 (where no quantities are disallowed) would carry fewer consequences than noncompliance under Option 2 (where only 65% of total quantities sourced under LT agreements may be applied). For this reason alone, TURN has serious concerns with the use of Option 1.

Given the importance of using the RPS program to drive the development of new resources that will result in additional clean generation operating on the system, TURN does not support any approach to implementing the LTR that could encourage POUs to engage in additional short-term procurement from existing resources in lieu of making long-term commitments to new generation. The Energy Commission should carefully consider whether the adoption of Option 1 could constitute a signal to POUs that compliance with the LTR may not be necessary.

II. CHARACTERIZATION OF LONG-TERM CONTRACTS

TURN generally supports the articulated elements of the staff proposal for characterizing long-term contracts. The staff proposal would require that any eligible LTR contract “must include at least one continuous 10-year term” between the POU and the seller.⁴ TURN agrees that a 10-year term must be included in the agreement and that short-term contracts may not be extended through another short-term contract to result in an LTR eligible contract.

Beyond specifying minimum duration requirements, the staff proposal does not address other elements that characterize an LTR-eligible commitment. This omission is problematic because it opens the door to potential ‘sham’ long-term contracts that could satisfy the bare-bones criteria of contract duration without actually constituting a legitimate long-term commitment. The Energy Commission should prevent ‘sham’ agreements by incorporating several other key requirements.

First, annual procurement quantities should not vary significantly over the term of the long-term agreement. A POU should be prohibited from receiving LTR credit for a 10-year contract that provides (for example) 99% of deliveries in the first year with the remaining 1% spread out over the next 9 years. This scenario is not hypothetical. In 2013, Pacific Gas & Electric (PG&E) sought CPUC approval of a “long-term” contract that provided 90% of deliveries in the first year with the remaining deliveries occurring over the following 9 years.⁵ TURN opposed PG&E’s contracts on the basis that the deal structures were intentionally designed to evade the banking rules that provided preferential treatment to long-

⁴ Staff Proposal, page 12.

⁵ PG&E Advice Letters 4299-E, 4300-E, 4301-E, filed October 10, 2013.

term commitments.⁶ The Public Utilities Commission agreed with TURN's objections and rejected cost recovery for PG&E's proposed agreements.⁷

Second, a 'sham' long-term contract could fail to specify any particular quantities or prices with amounts and costs being negotiated annually. Under this type of contract, the buyer and seller would agree to regular adjustments to the prices and volumes during the course of the 10-year period, perhaps including options for either buyer or seller to terminate the agreement without penalty if they fail to reach an accommodation. This type of structure would effectively constitute a series of short-term contracts that are not held together by any meaningful or consistent long-term commitment. Such a structure should not be permitted to count for LTR compliance.

TURN recognizes that there may be many different strategies a bad-faith market participant could develop to circumvent the intent of the long-term contracting obligation. TURN recommends that the Energy Commission include two specific requirements to prevent most, if not all, 'sham' contracts:

- (1) Require that any eligible long-term contract include either fixed quantities over the entire term or quantities that represent a fixed percentage of the output of one or more specific generating facilities over the entire term.
- (2) Require that any long-term contract include defined pricing terms that are not subject to renegotiation prior to the end of the 10-year period.

⁶ Protest of TURN and the Coalition of California Utility Employees to PG&E Advice Letters 4299-E, 4300-E, and 4301-E, filed October 30, 2013.

⁷ CPUC Energy Division disposition letter re: PG&E Advice Letters 4299-E, 4300-E, and 4301-E, transmitted May 19, 2014.

These requirements would prevent many types of ‘sham’ long-term contracts that could otherwise be used to demonstrate LTR compliance. In addition, TURN recommends that the Energy Commission include a catch-all provision that directs POU’s to seek pre-clearance of any LTR contract structure that materially deviates from a conventional long-term contract. This ‘pre-clearance’ requirement could allow POU’s to seek guidance from the Energy Commission for unusual long-term contract structures negotiated in good faith. Energy Commission review would establish a safe harbor that prevents disputes when any such agreements are submitted for compliance at a later date.

TURN urges the Energy Commission to recognize the importance of addressing these types of concerns in advance. The failure to lay down clear guidelines at this time could result in a flood of ‘sham’ contracts that could become disallowed, or grandfathered, once these transactions are submitted to demonstrate compliance for the 2021-2024 period. The Energy Commission should do its best to avoid this outcome by establishing more comprehensive requirements at this time along with processes to allow for ongoing review of any creative approaches to long-term contracting.

Respectfully submitted,

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