

DOCKETED

Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	231594
Document Title:	Power & Water Resources Pooling Authority Comments - on Prerulemaking Amendments
Description:	N/A
Filer:	System
Organization:	Power & Water Resources Pooling Authority
Submitter Role:	Public
Submission Date:	1/20/2020 4:46:05 PM
Docketed Date:	1/21/2020

*Comment Received From: Power & Water Resources Pooling Authority
Submitted On: 1/20/2020
Docket Number: 16-RPS-03*

16-RPS-03 Comments on Prerulemaking Amendments

Additional submitted attachment is included below.



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Chairman

January 20, 2020

David Ansolabehere
Vice Chairman

Via E-mail

Bruce McLaughlin
Secretary

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Re: Comments on the Pre-Rulemaking Amendments to the Renewable Portfolio Standard Regulations [CEC Docket #16-RPS-03]

Member Agencies
Banta-Carbona I.D.
Glenn-Colusa I.D.
James I.D.
Lower Tule River I.D.
Princeton-Cordora-Glenn I.D.
Provident I.D.
The West Side I.D.
West Stanislaus I.D.

The Power & Water Resources Pooling Authority (“PWRPA”) is a joint powers authority (“JPA”) comprised of irrigation districts and operates pursuant to California irrigation district law. PWRPA was formed in 2004 in order to aggregate load, manage power resources, and purchase power to serve its Participants’ power portfolio needs. The Participants use nearly all of their power to pump, convey and deliver water for agricultural and municipal operations. The provision of retail electric services by PWRPA optimizes the efficient use of facilities and resources by allowing PWRPA’s Participants to more efficiently aggregate, schedule, dispatch and deliver energy resources owned, controlled, or purchased by PWRPA.

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PWRPA possesses the right to receive capacity and energy from the Western Area Power Administration (“WAPA”), a federal agency engaged in the marketing of power generated by federally-owned facilities, including the multipurpose Central Valley Project (“CVP”). On August 12, 2004, WAPA executed a *Contract for Electric Service Base Resource with the Power and Water Resources Pooling Authority* (Contract 04-SNR-00722). This CVP power output sold by WAPA is called Base Resource, and the contract is called the Base Resource Contract.

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Both PWRPA’s annual retail sales and allocation of Base Resource are dependent upon hydrology. In wet years, when surface water is plentiful, agricultural pumping load decreases dramatically. At the same time, the ample rainfall fills the CVP reservoirs with the “renewable” and “carbon-free” fuel for the hydroelectric generators. The opposite is typically true in dry years when pumping load increases significantly as the amount of hydroelectric generation declines. Over the last 15 years, PWRPA’s annual retail sales ranged from 274,000 to 566,000 MWhs and its Base Resource allocation spanned 127,000 to 285,000 MWhs.

PWRPA has no doubts that preparing the Pre-Rulemaking Amendments to the Renewable Portfolio Standard Regulations (“Amendments”) required a significant amount of thoughtful analysis and effort by California Energy Commission staff (“CEC Staff”). PWRPA gratefully acknowledges their work, and also appreciates CEC Staff’s efforts in providing stakeholders with the opportunity to review and comment on the Amendments. PWRPA’s comments, herein, are limited to certain language of subsections 3204(b)(7) and 3204(b)(8).

3204(b)(7)(C) and 3204(b)(8)(C): Support

The regulatory language proposed by CEC Staff in 3204(b)(7)(B) is consistent with, and reflects a reasonable interpretation of, the interplay of Public Utilities Code (“PUC”) §399.30(1)(2) and §399.30(i) that were included in Senate Bill 350. The regulatory language proposed by CEC Staff in 3204(b)(8)(C) is consistent with, and reflects a reasonable interpretation of, the interplay of PUC §399.30(k)(2) and §399.30(i) that were included in Senate Bill 100.

3204(b)(7)(A)(5)(ii): Do Not Support

The regulatory language proposed by CEC Staff in 3204(b)(7)(A)(5)(ii) is inconsistent with, and does not reflect a reasonable interpretation of, PUC §399.30(1)(3) that was included in Senate Bill 350. The statute is reasonably interpreted to state that new procurements are not eligible for the exemption *unless* they result from an extension or renewal of an agreement that was effective as of January 1, 2015. The language presented in paragraph (5)(ii) is inconsistent with PUC §399.30(1)(3) because it is more restrictive than the statute.

3204(b)(8)(A)(3)(i)-(ii): Do Not Support

The regulatory language proposed by CEC Staff in 3204(b)(8)(A)(3)(i)-(ii) is inconsistent with, and does not reflect a reasonable interpretation of, PUC §399.30(k)(3) that was added by Senate Bill 100. The text of the existing law is included below.

Section 399.30(k)(3) An extension or renewal of a procurement agreement shall not be eligible to count towards the determination that the local publicly owned electric utility receives more than 40 percent of its retail sales from large hydroelectric generation in any year. *This paragraph shall not apply to any agreement in effect on January 1, 2015, between a local publicly owned electric utility and the Western Area Power Administration or federal government as part of the federal Central Valley Project.* [emphasis added]

The statute appears quite clear. The paragraph in the statute that restricts the exemption eligibility of extensions and renewals does not apply to contracts between POU’s and WAPA for CVP generation, that were in effect on January 1, 2015. The proposed Amendment, however, expressly restricts CVP generation procured under a renewal or extension of that very same contract vintage. No regulation can be valid or effective unless it is consistent and not in conflict with statute and reasonably necessary to effectuate the purpose of the statute. PWRPA submits that paragraphs (3)(i)-(ii) would fail on all counts. Shown below are suggested modifications to 3204(b)(8)(A)(3), respectfully offered for consideration by the CEC Staff.

3. The generation is procured by a POU under an ownership agreement or contract in effect as of January 1, 2018. Procurement from an extension or renewal of that agreement shall not be eligible to count as large hydroelectric generation for the purposes of this section 3204 (b)(8) unless the agreement was in effect on January 1, 2015, between the POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project.

- i. For purposes of this section 3204 (b)(8), *limitations on* an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project ~~includes an amendment that renews or extends the existing agreement as contemplated under the administration of the~~ *do not apply to any agreement that was* in effect on January 1, 2015, ~~or included in the Western Area Power Administration's Power Marketing Plan.~~
- ii. In the event that an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project increases the percentage allocated to the POU, only generation procured under the renewal or extension up to the maximum allocation under the terms of the agreement in effect on January 1, 2018~~5~~, shall count as large hydroelectric generation.

The federally-owned CVP comprises 26 hydroelectric generating units that are all registered with WREGIS. The units are located at 12 separate facilities in California, 3 of which are certified by the California Energy Commission as eligible renewable electricity generating resources. With commercial operating dates spanning from 1944 to 1979, hydroelectric generation from the 9 remaining facilities fits squarely within the definition of “large hydroelectric generation” in PUC §399.30(k)(1).

The CVP provides measurable value to all Californians, including flood control, municipal water supply, agricultural water supply, recreation, ongoing ecological restoration activities and other ecosystem services. The CVP has numerous authorized uses across four distinct critical infrastructure types. Two of these, water and power, are classified as “lifeline infrastructures.” CVP operations enable capabilities to: (a) store and deliver water; (b) generate and transmit carbon-free electricity; and (c) protect, restore, and enhance fish, wildlife and associated habitats. When considered as an integrated whole, the CVP is a *cardinal critical infrastructure* in California. It is likely true that without the CVP, California could not have built or currently sustain: (a) many of the cities now in existence that serve as important centers of technology, critical manufacturing, government and employment; or (b) the agriculturally productive Central Valley that grows more than half the nuts, fruits and vegetables in the United States. Moreover, it is surely true that without these urban and rural areas which encompass many types of critical infrastructures, California could not support many of the current activities making it the world’s 5th largest economy.

PWRPA thanks the CEC Staff for their review of these comments.



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