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**Roseville Comments - on Proposed Modifications to the
Enforcement Procedures for the Renewables Portfolio Standard for
POUs**

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of,

**RPS Enforcement Regulations for Publicly
Owned Utilities**

Docket No. 16-RPS-03

COMMENTS OF ROSEVILLE ELECTRIC UTILITY ON THE COMMISSIONER WORKSHOPS ON AMENDMENTS TO REGULATIONS SPECIFYING ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

1. Introduction

Roseville Electric Utility (Roseville) appreciates the opportunity to provide comments to the California Energy Commission (CEC or Commission) on the Initial Statement of Reasons (ISOR) and Express Terms released May 7, 2020, for *Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. Roseville would like to additionally thank CEC staff for their efforts to work with Publicly Owned Utilities (POUs) while developing these proposed regulations.

Roseville is a POU located in Northern California and is governed by its City Council. Roseville serves over 58,000 customers, with an annual electricity load of over 1.1 million MWh. The following sections will discuss specific areas for which Roseville seeks clarification, in addition to broader concerns of how contractual flexibility and regulatory certainty impact the affordability and deployment of new/repowered RPS resources.

Specifically, Roseville's comments address the following:

- Grandfather existing contracts executed before the new Long Term Contracting Requirements (LTR);
- Modify or eliminate Section 3204(d)(2)(H)(3) to preserve contractual flexibility for developers and POUs;
- Clarify "Continuous" in section 3204(d)(2)(A) as referring to the underlying contract term; and,
- Amend language in Section 3204(b)(11) to apply the adjustment on a per-year basis.

2. Discussion

- a. Grandfathering existing contracts is necessary to preserve regulatory certainty, the integrity of the RPS program, and the associated cost savings.**

In the ISOR, the CEC does not address the negative impacts- stranded contracts- that the regulatory uncertainty of retroactively applying the LTR to existing contracts would cause. However, the

Commission does list three reasons it believes “there is no basis for grandfathering contracts for purposes of the long-term procurement requirement.”¹ Roseville will paraphrase and address each of these reasons in turn, then explain the necessity of grandfathering existing contracts. Doing so will preserve the lower risk and lower costs stemming from the regulatory certainty currently associated with California’s RPS program.

“The LTR begins in 2021 and may be satisfied by new or existing contracts, ownership, or ownership agreements.”

Roseville executed long term contracts based on the prevailing RPS regulations. Roseville is relying on the renewable energy from these contracts for 86 percent of Roseville’s 2021 through 2024 (Compliance Period 4, or CP4) needs. However, as explained in section b, it is unclear whether these contracts can be applied to the LTR.

“Existing contracts that do not satisfy the LTR may still count towards the 35 percent of procurement from non-LTR eligible contracts.”

In CP4, Roseville’s contracts should significantly exceed the 35 percent of procurement which can be applied towards non-LTR compliant RECs. The CEC’s LTR rules will put utilities like Roseville and its renewable partners at odds to resolve complex contracts, putting both ratepayer funds and developers’ financing arrangements at risk. Adding regulatory uncertainty to developers and ratepayers does not advance California’s climate goals.

The LTR is a regulatory requirement that applies to the RPS portfolio of a POU, not individual RECs. On what legal or regulatory basis would a POU allocate the new LTR portfolio requirement to existing contracts which may or may not individually cause the POU to violate the LTR?

Additionally, although the LTR does not apply to CP3, in order for POUs to maximize likelihood of RPS compliance and minimize excess procurement which would be LTR ineligible in CP4, the CEC will need to spend significant staff resources to determine or verify LTR applicability for tens of millions of RECs retired prior to 2021 and their hundreds of associated contracts.

“Optional Compliance Measures may be used to address delays or disproportionate rate impacts that would cause potential procurement requirement shortfalls.”

Optional compliance measures are not a panacea for addressing delays or disproportionate rate impacts caused by applying the new LTR to existing contracts. The Commission may disagree with a POU’s findings and determine the application of such measures are not consistent with Public Utilities Code Section 399.30 or RPS regulations². A POU cannot simply eliminate the financial, legal, and regulatory risks- described throughout Roseville’s comments- by attempting to apply a delay of timely compliance or cost limitation measure to its RPS obligations.

The application of the LTR to existing contracts will diminish the applicability of optional compliance measures. Section 3204(d)(2)(H)(3) in particular restricts the ability of a contract’s substitute resources to count towards the LTR. This harms 1) a POU’s ability to prudently manage portfolio risk, 2) its ability to procure sufficient RECs to compensate for foreseeable delays or insufficient supply, and 3) the ability of a POU to deal with unanticipated curtailment or forced outages in a way that does not increase greenhouse gas (GHG) emissions. Yet, to utilize the delay of timely compliance measure, these are exactly the factors to which a POU must make an affirmative determination.³ As explained in

¹ ISOR, page 44.

² Section 3206(g), Express Terms page 43.

³ Sections 3206(a) (2) (A) (2) and 3206(a) (2) (A) (3), Express Terms page 39.

Roseville's comments on Section 3204(d)(2)(H)(3), this may simply be infeasible with existing contracts under the new LTR.

Even if Roseville were able to use optional compliance measures to avoid non-compliance and associated sanctions, the harm from applying LTR to existing contracts cannot be entirely avoided. Roseville would be unable to utilize excess procurement⁴, an element of its procurement strategy. Roseville currently holds over 200,000 excess procurement RECs from existing contracts worth several million dollars and equal to approximately an eighth of the RECs it expects to receive in CP4.

More important than the failure of individual POUs to meet RPS requirements, applying LTR to existing contracts undermines the integrity of the RPS program, causing economic harm to owners of existing renewables and POU ratepayers.

Grandfathering existing contracts is necessary to preserve regulatory certainty, encourage the lower cost construction of new/repowered renewables, and prevent economic harm to ratepayers.

The purpose of the LTR is to encourage the construction of new/repowered renewables. Applying the LTR to existing contracts does not serve this purpose. This will raise developer and ratepayer costs while discouraging POUs such as Roseville from going beyond minimum RPS requirements or relying on long term contracts with new/repowered projects. None of this advances California's climate change goals.

Developers and financiers rely on a revenue stream for the duration of these contracts to recover costs. If the LTR is retroactively applied to existing contracts, parties with contracts that were RPS compliant and fair market value when signed risk these contracts becoming devalued- if not effectively invalidated- midstream. This regulatory uncertainty will compel developers and financiers to raise the cost of new projects to not only recover prior losses, but also hedge against the future risk for contracts that may be invalidated or devalued by further regulatory changes. The reluctance of any developers and financiers to even continue doing business in California will reduce competition and only further raise the cost of new/repowered renewables in California.

Grandfathering existing RPS contracts will avoid potentially tens of millions of dollars of economic harm to developers and Roseville's ratepayers, preserve the integrity of the RPS program, and provide certainty for POUs to engage in long term contracts with new/repowered renewables.

b. Section 3204(d)(2)(A)(3): The requirement for third parties to own or have long-term contracts for RPS facilities should only apply to contracts signed after the proposed RPS regulations are approved; existing contracts should be grandfathered

Roseville's counterparties have large portfolios and utilize their pool of renewable generators to meet Roseville's needs. Congested and curtailed nodes, major equipment failures, and other unforeseen events are well managed by developers through contractual flexibility to provide renewable generation from a portfolio of assets. Isolating contracts to specific resources adds risk and increases cost to developers. This heightened risk and cost are ultimately passed on to ratepayers. Further, in highly congested areas, it puts contracted production targets at odds with grid stability. Requiring long-term contracts to be limited to specific generators is not necessary, increases cost, and does not promote reliability.

⁴ Section 3206(a)(1)(B), Express Terms page 32.

c. Section 3204(d)(2)(H)(3): The requirement for substitute facilities to be explicitly named in the original contract restricts contractual flexibility, leading to increased costs to POUs and harming the deployment of new/repowered renewables

CEC staff intends for substitute facilities to count towards the LTR only if they are explicitly named in the original contract, “to demonstrate they are legitimately tied to the long-term commitment with one or more RPS-certified facilities from which the POU is procuring generation.”⁵ Otherwise, according to Section 3204(d)(2)(H)(3), such resources will “be treated as new agreements.”

This presumes that substitute facilities not listed in the original contract cannot demonstrate a legitimate, long term commitment. It also presumes that all renewable facilities are one-off, isolated projects. Both presumptions would be wrong. There are numerous legitimate reasons for a developer building a portfolio of new/repowered facilities to add substitute facilities to a contract after execution.

Any of the following are legitimate reasons for a new/repowered project with a long-term commitment to be added as a substitute resource after the original contract execution:

- Renewable facilities in California take many years to build, and may fail- or at least be delayed- for environmental, permitting, financing, interconnection, regulatory, or other reasons. A developer may choose to build several projects for one or several contracts, knowing that some may fail, and allocate a facility’s generation to a contract only after they are completed, rather than listing a number of facilities which may be delayed or non-existent.
- A developer may find it economical to package existing and new facilities together. Existing renewable facilities would be used to lock in a REC price and provide initial REC deliveries, as well as hedge the risk (described above) of funding newer, lower-cost RPS facilities that would otherwise not be built as soon, or at all.
- Mergers and acquisitions which were not completed at the execution of a contract allow a developer to seamlessly take over new/repowered facilities under construction and allocate or reallocate them to new or existing contracts. Without the contractual flexibility to do so and have it count towards LTR, weaker companies are at greater risk of failing. Rather than being acquired, their new/repowered renewable projects may not even be completed.
- In 2019, the main transmission line for NCPA’s geothermal plant 1 was down for nearly half a year due to the Kincade Fire. Without contractual flexibility, any replacement RPS energy would almost certainly come from existing facilities and would likely need to be long term, pushing back the need for new/repowered projects. With contractual flexibility, new/repowered facility may be diverted to help a developer avoid non-performance penalties and keep a POU in regulatory compliance, if the original generation or associated transmission is damaged or destroyed and substitute facilities were insufficient and/or LTR ineligible.
- Conversely, the buyer of a new/repowered facility may become unable to fulfill its contract several years into its development. A developer would find it far safer and less costly to simply add this facility to existing contracts and rebalance its portfolio, rather than facing the uncertainty of merchant generation; securing a new buyer for the same term, quantity, and price; or downsizing or scrapping the project altogether.

⁵ ISOR, page 51.

- In the case of one of Roseville's contracts, the main resources are substitute facilities which were added after contract execution, but before contract deliveries were scheduled to begin. Without Commission clarification in the Final Statement of Reason (FSOR) that this contract's substitute resources will indeed be LTR eligible under Section 3204(d)(2)(H)(3), this contract will count against a significant portion of Roseville's LTR limitation.

The ability to add substitute resources reduces the risks and costs for a developer building a portfolio of new/repowered renewables. This flexibility also allows developers to bridge mismatches between timing, pricing, quantity, and other factors- further reducing the cost of new/repowered renewables. Depriving developers of this contractual flexibility will ultimately result in greater costs passed on to POU ratepayers and in fact hinder the deployment of new/repowered renewables.

d. Section 3204(d)(2)(A): "Continuous" should refer to the underlying contract term, rather than annual deliveries or a fixed/minimum quantity of RECs

Roseville supports interpreting "continuous" as referring to the underlying contract length and allowing planned contract quantities/allocations to change over time, if specified in the contract. This preserves contractual flexibility, enhancing the economic viability and affordability of new/repowered renewable projects. For example, Roseville contracted for two solar projects in conjunction with another utility. These were ten-year contracts split between Roseville, which had an upfront need, and the other utility, which had a need in later years. Roseville received 99 percent of their output for the first few years, and 1 percent in later years, while the inverse was true for the other utility. With a narrower definition of "continuous," neither project would have been built. This type of deal enables renewable resources to come online, both sooner and at a lower cost.

Similarly, Roseville's largest contract allows for "compliance period" deliveries from RPS eligible resources. This delivery flexibility allows Roseville to meet its RPS obligations at a lower cost and allows the counterparty to optimize its fleet of RPS eligible generators.

If "continuous" were interpreted to mean annual delivery, or a certain fixed/minimum quantity of RECs instead, all of the RECs Roseville has received from its largest contract- or just over half of its portfolio- through at least 2020, and potentially through 2024, would not apply towards the LTR.⁶ In addition, Roseville's ability to utilize banked excess PCC1 and PCC2⁷ procurement from this contract would be severely restricted, devaluing the contract it signed to meet its RPS obligations.

e. Section 3204(b)(11): Adjustments for qualifying gas-fired power plants

In our joint comments submitted on February 24, 2020 as part of the pre-rulemaking process, Roseville and Redding Electric recommended an amendment to Section 3204(b)(11)(B) to ensure the implementation of Senate Bill (SB) 1110 is consistent with the intent of the statute. The amendment below clarifies that the proposed adjustment provided by SB 1110 apply on a yearly basis. Roseville continues to support the inclusion of this language and asks the CEC to make these clarifying changes as part of a 15-day amendment package.

⁶ Delivery of RECs in this contract is by compliance period- rather than annually- through 2020, and annually thereafter.

⁷ In accordance with 3206(a)(1)(F)(1)

(B) The qualifying gas-fired power plant must be operating at or below a 20 percent capacity factor on an annual average basis during any year of a ~~each year of the~~ compliance period in order to reduce the RPS procurement target for the compliance period.

Roseville additionally supports the comments submitted by NCPA and Redding Electric Utility regarding Section 3204 (b)(11).

3. Conclusion

Roseville recommends grandfathering existing contracts and excess procurement. This would not only preserve the integrity of the RPS program, but also safeguard the progress utilities and renewable developers have made towards meeting California's climate change goals. Otherwise, a retroactive change as significant as the LTR will put utilities and developers at odds with each other. CEC staff will also need to review potentially tens of millions of RECs and the hundreds of associated contracts/amendments for LTR eligibility in CP3, which may result in delays to compliance verification. New regulations should apply prospectively to new contracts.

Roseville notes that after the energy crisis, portfolio diversity- creating a lower risk, lower cost system- was the original catalyst for encouraging the development of renewable energy in California. It would therefore be fitting for the Commission to reconsider its implementation of Section 3204(d)(2)(H)(3), and allow developers with a portfolio of new/repowered renewable projects in California the continued contractual flexibility to provide POUs with lower risk, lower cost new/repowered renewable energy and advance California's climate change goals.

In implementing the LTR to encourage the building of new/repowered renewables, Roseville urges to Commission to avoid causing harm to ratepayers or owners of existing renewable facilities and provide greater certainty to new/repowered renewables.