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LADWP Comments to RPS Enforcement Procedures

Additional submitted attachment is included below.

**BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA**

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

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER TO THE
CALIFORNIA ENERGY COMMISSION ON AMENDMENTS TO REGULATIONS SPECIFYING
ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL
PUBLICLY OWNED ELECTRIC UTILITIES**

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INTRODUCTION

Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments to the California Energy Commission (Commission) on Amendments to Enforcement Procedures for the Renewables Portfolio Standard (RPS Enforcement Procedures) for Local Publicly Owned Electric Utilities (POU). The LADWP also acknowledges and supports California Municipal Utilities Association's Joint POU Comments (Joint POU Comments).

The City of Los Angeles (City of LA) is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a proprietary department of the City of LA, pursuant to the Los Angeles City Charter, whose governing structure includes a mayor, a fifteen-member City Council, and a five-member Board of Water and Power Commissioners (Board). LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation's largest municipal utility, serving a population of over four million people within a 465 square mile service territory that covers the City of Los Angeles and portions of the Owens Valley. LADWP's mission is to provide clean, reliable water and power in a safe, environmentally responsible, and cost-effective manner.

SPECIFIC COMMENTS

After the June 8, 2020 Lead Commissioner Workshop (Workshop) on RPS Enforcement Procedures, LADWP had some additional clarifying points and questions; therefore, provides these specific comments.

I. SECTION 3202 – QUALIFYING ELECTRICITY PRODUCTS

a. LADWP Requests Clarification that Assignments, Amendments, or Modifications Do Not Impact Grandfathered or Long-Term Nature of Contracts and Ownership Agreements [Section 3202 (a)(2)(B)]

Section 3202 (a)(2)(B) of the proposed regulations specify amendments or modifications that would restrict the count in full treatment of contracts or ownership agreements executed before June 1, 2010. However, it is unclear whether contract assignments, buyout options, or

efficiency improvements would also impact the count in full treatment. These buyout options should not change the count in full treatment of the original contract. In addition, contract assignments to another POU or third party would provide long-term planning stability for the developer and should therefore not affect neither the grandfathered status nor long-term nature of the original contract or ownership agreement. Other amendments or modifications similar to those identified in the long-term procurement requirement (LTR) that were contemplated in the original contract should also be counted in full. For Pre-June 1, 2010 contracts or ownership agreements, LADWP requests that assignments, amendments, or modifications similar to those identified in Section 3204 (d)(2)(H) count in full and be classified as long-term.

II. SECTION 3204 – RPS PROCUREMENT REQUIREMENTS

LADWP supports the majority of the modifications that Commission staff has made for Section 3204. Specifically, LADWP appreciates the flexible treatment of contract amendments as POUs are faced with different challenges as compared to investor-owned utilities, such as transaction size, “ratepayer cost limits”, budgets, and “lengthy municipal approval processes” to move forward with projects. This is further explained in the Initial Statement of Reasons (ISOR) for the RPS Enforcement Procedures, page 44, quoted below.

For cost and efficiency, many POUs work with a JPA [Joint Powers Authority] that develops, negotiates, or enters into contracts on behalf of the POU. A long-term contract between a JPA, acting on behalf of one more POUs, and a developer provides the long-term planning horizon that is a core function of the long-term procurement requirement for POUs, regardless of the length of the individual POU’s agreement with the JPA.

Based on these considerations, CEC staff concluded that a consistent application of the retail seller requirements to POUs would allow a POU to count as long-term any procurement from its contracts with a JPA, provided the JPA owns or has a long-term contract with the RPS-certified facility or facilities supplying the electricity products.

a. LADWP Supports Independent Implementation for Long-Term Procurement Requirements While Allowing Application for Delay of Timely Compliance [Section 3204 (d)(1)]

LADWP supports the current proposed regulation for the independent implementation of the LTR and for allowing all optional compliance measures to be available for incurring an LTR shortfall, as mentioned in LADWP's Comments to the Pre-rulemaking Amendments to the RPS Enforcement Procedures. An independent implementation of LTR has a more straightforward approach than a dependent implementation in terms of calculating procurement compliance. Independent implementation of LTR would wholly acknowledge LADWP's endeavors to comply with all RPS procurement requirements. Choosing a dependent implementation of LTR could result in disallowing renewable energy credits (RECs) in order to meet the 65% ratio between long-term RECs and short-term RECs would be detrimental to a POU's efforts for meeting the other RPS requirements. Therefore, LADWP appreciates Commission staff's implementation of LTR independent from other RPS procurement requirements while allowing all optional compliance measures, including delay of timely compliance, to be available for a shortfall in LTR.

b. LADWP Recommends the Term "Commitment" Be Removed from the RPS Enforcement Procedures [Section 3204 (d)(2)(A)]

LADWP appreciates Commission staff's clarification during the Workshop that the term "commitment" refers to the contract or ownership agreement. According to the ISOR regarding Section 3204 (d), a long-term contract provides a long-term "commitment". However, the term "commitment" could be misinterpreted as a concept other than an executed contract. Therefore, LADWP recommends explicitly defining a long-term contract to mitigate the potential for confusion or doubt by revising the language of Section 3204 (d)(2)(A) as follows:

A long-term contract is defined as a contract ~~demonstrating a POU's commitment~~ to procure electricity products from an RPS-certified facility for a duration of at least 10 continuous years, except as specified in subparagraphs (i)-(iii).

c. LADWP Supports Efficiency Improvements as Part of the Original Long-Term Contract [Section 3204 (d)(2)(H)1]

Efficiency improvements will help preserve the long-term commitment of the contract and would encourage developers to utilize new technologies available to them without the concern of long-term classification. LADWP understands this section to mean that efficiency improvements would not reclassify the long-term nature of the original contract. For example, if a pilot project is added to an existing facility to increase its efficiency, and the addition of the pilot project is for less than ten years, the pilot project and the contract for the facility would not be reclassified from long-term to short-term procurement. In addition, this will provide flexibility to developers in addressing unforeseen issues with equipment limitations or degradation over the lifespan of the resource. LADWP appreciates and supports Commission staff's clarification defining the types of increases in expected quantities of generation or capacity related to efficiency improvements that would preserve the long-term intent of the contract.

d. LADWP Requests Clarification on Expansions of Existing Long-Term Projects that Will Be Considered as Part of the Original Contract [Section 3204 (d)(2)(H)2.]

Amendments or modifications to a long-term contract that result in an increase in expected quantities, allocation of generation due to contractual changes, or to the addition of new capacity should inherit the long-term classification of the original contract, as recommended in LADWP's Comments to Pre-rulemaking RPS Enforcement Procedures. An expansion to an existing long-term project can lead to significant cost savings and time reductions by leveraging existing land and infrastructure, thereby promoting further renewable resource development. Treatment of project expansions as a new contract would impair the goal of increasing

renewable energy within the State and would affect ratepayer costs to acquire new land and infrastructure.

Furthermore, the accounting of incremental energy associated with expansions that would be treated as a new agreement may lead to complex metering. Identifying long-term RECs and short-term RECs associated with a single facility with common metering would be unnecessarily burdensome.

Therefore, LADWP requests clarification on the level of specificity required in the original contract to allow amendments or modifications that expand existing long-term projects to be treated as part of the original contract or ownership agreement.

e. LADWP Recommends Flexibility in Amendments for Substitute Renewable Energy [Section 3204 (d)(2)(H)3.]

The purpose of contemplating substitute energy in a contract is to allow the developer the ability to reconcile a deficit in guaranteed generation that is due to forced equipment outages, unavailability of renewable fuel, or force majeure events. The language for substitute energy or replacement energy varies from contract to contract. For example, LADWP's contract with Ormat Geothermal has language where the replacement energy must be both RPS and Emissions Performance Standard (EPS) compliant, but the resource type or facility is not specifically identified in the contract. LADWP has multiple existing contracts with similar language regarding replacement or substitute energy. If the substitute energy resource must be specified in the original contract to be considered long-term, the developers of these contracts may be forced to pay liquidated damages if LADWP must reject their substitute energy in order to meet LTR. This will negatively impact the developer's liability and financial security to deliver renewable energy and may result in increased pricing of future contracts to cover the developer's additional risk. In addition, LADWP would be negatively impacted by receiving less long-term eligible renewable energy, possibly resulting in a shortfall in LTR. Therefore, LADWP recommends that the substitute energy contemplated in the original contract does not need to

identify the specific eligible renewable energy resource to allow for flexibility in amendments. LADWP proposes the following revisions to the language in Section 3204 (d)(2)(H)3.:

Amendments or modifications that substitute a different renewable energy resource or fuel other than as specified in the original contract or ownership agreement shall be treated as new agreements for procurement of generation associated with the substitute resource or fuel. The original contract need not identify the specific substitute renewable energy resource if the substitute renewable energy is being used to fulfill contract obligations.

**f. LADWP Supports Treatment of Assignment Changes as Part of Original Contract
[Sections 3204 (d)(2)(H)4 and 3204 (d)(2)(H)5]**

LADWP believes the proposed changes support the intent of the long-term procurement requirement and allows for flexibility and financial security for the developer. As mentioned in LADWP's Comments on Proposed Pre-rulemaking Amendments to RPS Enforcement Procedures, treating assignments as new contracts or ownership agreements would discourage POUs from taking over an existing contract because of the negative impact on their long-term procurement compliance. The proposed language provides necessary flexibility which will encourage POUs to assume an existing contract, whereby ensuring long-term planning stability.

III. OTHER

a. LADWP Supports Consistent Use of the Term "Retail Sales"

The term "total retail sales" appears intermittently in the RPS Enforcement Procedures, but the proposed RPS Enforcement Procedures only has a definition for "retail sales". LADWP appreciates the Commission staff's acknowledgement and consideration of the Joint POU comments during the June 8 Workshop, specifically the request to remove "total" from "total retail sales" from the RPS Enforcement Procedures. Inserting "total" in front of the "retail sales" definition may cause confusion among retail sellers. For example, in other reports to the Commission and other agencies, such as the United States Energy Information Administration

(EIA), it is already assumed that “retail sales” is a total of the entity’s sales to retail customers. LADWP supports the Commission staff’s proposal at the Workshop to revise “total retail sales” to “sum of retail sales” to clarify the calculation behind retail sales. To ensure consistency, these revisions should be applied in all sections of the proposed Enforcement Procedures where “total retail sales” is currently used.

b. LADWP Recommends Maintaining the Long-Term Treatment of RECs Derived from Generation Reasonably Exceeding Anticipated Generation Specified in the Associated Contract.

In developing a new renewable resource, the calculated anticipated generation depends on several factors, such as future environmental conditions and renewable technology. The anticipated generation of any resource inherently includes unavoidable assumptions. Currently, during the Verification Methodology process, RECs exceeding the anticipated generation specified in the contract are reclassified. It is unclear how these reclassified RECs would be treated with respect to the long-term procurement requirement. LADWP recommends the long-term status of the reclassified RECs be based on the short-term or long-term classification of the original contract. Therefore, LADWP proposes the **addition** of the new subsection below:

Section 3204 (d)(2)(l))

- *Electricity products reclassified to another Portfolio Content Category due to exceeding the specified contract amount shall be classified as short-term or long-term consistent with the treatment of the original contract.*

c. LADWP Recommends Clarifying Language for Various Sections

LADWP noted a few typos that should be corrected for clarification:

- i. Section 3204 (a)(1) & (2). EP_x has two different definitions in these sections. LADWP suggests to use different variables for each unique definition to minimize confusion and be consistent with the language, such as Section 3204 (c)(3)(A) and (B) for variables $RPS_{i,x}$ and RPS_x .

- ii. Section 3204 (d)(2)(A). Subparagraphs referenced at the end of the paragraph seems to have changed from (i)-(iii) in the pre-Rulemaking to (1.)-(3.) in the Express Terms.

CONCLUSION

LADWP appreciates the opportunity to submit formal comments on the Amendments to the RPS Enforcement Procedures for local POUs. LADWP is grateful for the opportunity to participate in the formal rulemaking process and looks forward to continue working with California Energy Commission to help shape effective regulations that will benefit the health, safety, and security of all California residents. If you have any questions, please contact me at (213) 367-2525, or Mr. Scott Hirashima at (213) 367-0852.

Dated: June 22, 2020

Respectfully Submitted,



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