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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 #:	234228
Document Title:	Alliance for Retail Energy Markets Comments - Alliance for Retail Energy Markets 15 Day Language Comments
Description:	N/A
Filer:	System
Organization:	Alliance for Retail Energy Markets
Submitter Role:	Public
Submission Date:	8/5/2020 9:32:04 AM
Docketed Date:	8/5/2020

*Comment Received From: Alliance for Retail Energy Markets
Submitted On: 8/5/2020
Docket Number: 16-RPS-03*

Alliance for Retail Energy Markets 15 Day Language Comments

Additional submitted attachment is included below.



**COMMENTS OF THE
ALLIANCE FOR RETAIL ENERGY MARKETS ON
15 DAY LANGUAGE – MODIFICATION OF REGULATIONS SPECIFYING
ENFORCEMENT PROCEDURES
(16-RPS-03)**

The Alliance for Retail Energy Markets (“AReM”)¹ submits these comments regarding the language released in the California Energy Commission (“CEC”) issuance of its ““Notice of Availability of 15-Day Language - Modification of Regulations Specifying Enforcement Procedures” for the Renewables Portfolio Standard (“RPS”) program. The 15-Day Language addresses the CEC’s “Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.”

AReM takes issue with the language proposed in Section 3204(d)(2)(A)(2) that states “[a] long-term contract includes a resale agreement between POUs, whereby a POU sells a portion of the electricity products procured under a long-term contract with one or more RPS-certified facilities to a second POU, **regardless of the duration of the resale agreement**, if the contract executed by the first POU otherwise meets the requirements of a long-term contract and the second POU, or another party on the second POU’s behalf, can provide documentation demonstrating this.” The language in bold is unfair and discriminatory toward to other Load Serving Entities (“LSE”s) in California and inconsistent with California Public Utilities Commission (“CPUC”) interpretation of the long-term contracting requirements outlined in Public Utilities Code Section 399.13(b).

¹ AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

The members of AReM are electric service providers (“ESPs”) active in the California renewables market through buying and selling renewable resources to meet compliance requirements for Direct Access (“DA”) customer load. Each ESP must meet the 65 percent long-term RPS compliance starting in 2021, and most have begun entering into contracts to meet this requirement. If AReM members have excess long-term resources to sell to POU, the contract between an ESP and a POU must be for at least 10 years as outlined in the proposed Section 3204(d)(2)(A)(3)(i) that states a contract between a POU and a third-party supplier will only count as long-term if “the POU’s contract or resale agreement with the third-party supplier has a duration of at least 10 continuous years”. This creates an unfair and discriminatory environment where a POU can sign short-term agreements with other POU from long-term contracts for long-term compliance, but that requires ESPs and other third-parties to offer contracts of at least 10 years to qualify for long-term compliance. This special carve-out being offered for POU to POU sales will decrease the flexibility that ESPs and other third-parties have for selling available long-term supply, as POU would be less likely to be interested in non-POU resources.

Second, this language, if adopted, runs counter to the CPUC’s requirements in the administration of Public Utilities Code Section 399.13(b). Decision 17-06-026 states that “the use of repackaged contracts is reasonable...so long as they are truly long term, i.e., the retail seller’s contract for its repackaged share of the generation has a duration of at least 10 years.” Thus, all LSEs subject to CPUC oversight must have contracts of at least 10 years regardless of it is with a renewable resource or being purchased from a third-party. If a POU were able to rely on short-term contracts to meet its long-term RPS procurement obligation, the POU would enjoy an undue advantage over other LSEs. The proposed language runs counter to the intent of Public Utilities Code Section 399.13(b) which is meant to provide support for new renewable resource development.

For all the foregoing reasons, Section 3204(d)(2)(A)(2) must require that to qualify as long-term, a resale agreement between POU's must consist of a contract of at least 10 years in duration. The requirements in 3204(d)(2)(A)(3) that a POU contract with a third-party supplier can only count as long-term if it is at least 10 years in duration should be applied to Section 3204(d)(2)(A)(2) as well.

Submitted on behalf of AReM by:

Scott Olson
Director, Government and Regulatory Affairs
Direct Energy Business

510.778.0531
scott.olson@directenergy.com

August 5, 2020