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**NCPA Comments on 15-day Changes**

*Additional submitted attachment is included below.*

**BEFORE THE CALIFORNIA ENERGY COMMISSION**

**In the matter of:  
Amendments to Regulations Specifying  
Enforcement Procedures for the  
Renewables Portfolio Standard for  
Local Publicly Owned Electric Utilities**

**Docket No. 16-RPS-03**

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**NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON 15-DAY LANGUAGE  
FOR ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO  
STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

The Northern California Power Agency (NCPA)<sup>1</sup> offers these comments to the California Energy Commission (CEC or Commission) on the *15-Day Language*, issued July 21, 2020 to the *Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (Proposed Amendments).

**I. INTRODUCTION**

In the 15-day Language, Commission staff has proposed several changes to the modifications to the Proposed Amendments released on May 7, 2020. NCPA appreciates staff's responsiveness to stakeholder concerns regarding the Proposed Amendments, and generally supports the subsequent changes. NCPA urges the Commission, however, to issue another set of 15-day changes to correct the proposed amendments in Section 3204(b)(11), and supports the comments of its member agencies, the City of Redding and the City of Roseville in this regard. NCPA also urges the Commission to include clarifying language in the Final Statement of Reasons (FSOR) supporting the regulatory package as further explained below and to incorporate the changes and clarifications set forth in the comments of the Joint Publicly Owned Utilities (Joint POU Comments) of which NCPA is a signatory.<sup>2</sup>

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<sup>1</sup> NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

## II. SUMMARY OF RECOMMENDATIONS

In addition to positions and issues raised in the Joint POU Comments to which NCPA is a signatory, NCPA offers these comments that elaborate on the following issues:

- The provisions of Section 3204(b)(11) regarding certain natural gas-fired generation should be further revised to remove extra-statutory requirements that limit the ability of eligible publicly owned utilities (POUs) to utilize the provision and effect the statutory intent;
- The provisions of section 3204(b)(8) regarding certain large hydroelectric generation should apply to all future compliance periods;
- The Commission should clarify that financial assignments of existing contracts or ownership agreements do not impact the grandfathered or long-term nature of those contracts or ownership agreements executed before June 1, 2010.

## III. COMMENTS ON PROPOSED AMENDMENTS

### A. Section 3204(b)(11); Second 15-day Language is Necessary to Correct the Imposition of Extra-statutory Requirements on Eligible POUs

NCPA appreciates staff's recognition that the original Proposed Modifications to Section 3204(b)(11), which implements PUC section 399.33, did not accurately reflect the statutory language or legislative intent behind the legislation. The provisions of PUC section 399.33 were narrowly tailored to meet the specific conditions related to a few natural gas-fired electric generation facilities in the state. The need for the specific provisions was recognized by the legislature and unopposed by any party after it was refined to reflect the current text. It is narrowly crafted, entity specific, and applies to only two POUs – the cities of Redding and Roseville. As originally drafted, the Proposed Modification would have significantly impeded the ability of the POU to utilize the full benefit of this provision. While staff recognized that the proposed amendments did not correctly implement the statutory provisions, the 15-day Language does not rectify the previous error. NCPA urges the Commission to correct this shortcoming and *issue a second set of 15-day changes that reflects the following language:*

3204 (b) (11) (B) The qualifying gas-fired power plant must be operating at or below a 20 percent capacity factor on an annual average basis during <del>each</del> <u>any</u> year of <del>a</del> <u>the</u> compliance period in order to reduce the RPS procurement target for the compliance period. <sup>3</sup>
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<sup>3</sup> Consistent with this correction, sections 3204(b)(11)(B)(1) and 3204(11)(F) would also need to be revised accordingly.

As noted in the June 22, 2020 NCPA Comments on the Proposed Modifications,<sup>4</sup> the “premise behind SB 1110 was to ‘protect taxpayers from the construction debt of certain power plants built in response to the energy crisis’,” and in the Fact Sheet describing SB 1110, Senator Bradford noted that some POUs – like Roseville and Redding – built natural gas plants to secure their own power supply, which are typically financed through bonds that are paid out on a 30- to 40-year timeline, that “must be paid regardless of whether the plant is operational.”<sup>5</sup> SB 1110 was narrowly and specifically crafted in acknowledgment of the fact that growth in renewable energy will make it “more expensive to run the plant than to close it,” stranding the POU with “unusable power plant and no way to pay off its bond debt.”<sup>6</sup> The provision recognizes that allowing the POUs to “modestly adjust” their generation will allow them to protect the public agency bond holders, as well as retain jobs in the local communities. This context is essential in implementing the provisions of PUC section 399.33(a)(2).

The statute clearly states that the exception applies when “a powerplant that both meets the requirements of subdivision (a) and is operating below 20 percent of its total capacity on an average **annual basis** during a given compliance period.” (emphasis added) For Roseville and Redding, this provision has always been about ensuring that their ability to make bond payments on these plants is not compromised by having the plant perform at less than 20% of its total capacity in any given year. The performance of the Roseville and Redding plants **in a particular year** is what drives the need for the RPS mitigation that SB 1110 calls for.

The Proposed amendments would have required the power plant to produce at under 20% capacity for *each year* of the compliance period, effectively ignoring individual-year performance where bond payment mitigation is needed. This completely ignored the statute’s reference to the yearly review of the capacity factor and would have required that the POU meet this threshold throughout a given compliance period. (Section 3204(b)(11)(B)) However, “during a given compliance period” is not the same as “throughout a given compliance period.” The 15-day Language recognizes the need for measuring the capacity factor on a yearly

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<sup>4</sup> NCPA June 22 Comments;  
[file:///C:/Users/CSB/Downloads/TN233600\\_20200622T164909\\_Northern%20California%20Power%20%20Agency%20Comments%20-%20on%20RPS%20Proposed%20Amendments.pdf](file:///C:/Users/CSB/Downloads/TN233600_20200622T164909_Northern%20California%20Power%20%20Agency%20Comments%20-%20on%20RPS%20Proposed%20Amendments.pdf).

<sup>5</sup> See NCPA June 22 comments, p. 6 and Attachment A, Fact Sheet, Senate Bill 1110 (Stats. 2018, ch. 605), Senator Steven Bradford, 2018.

<sup>6</sup> Id.

basis, however, fails to decouple the yearly review from the compliance period performance. As such, the 15-day Language suffers from the same shortcomings as the original Proposed Modifications in its requirement to “net out” any yearly target against the entire compliance period. The legislation was intended to address concerns associated with the power plant-related bond payments and the potential for ensuing unemployment impacts; because bond payments and employment risks are urgent issues that must be dealt with annually, so too should the adjustment.

The original Proposed Modifications and 15-day Language both focus on the performance of the plant over the entire compliance periods, rather than annually. As noted in NCPA’s June 22 comments, this position is neither statutorily mandated,<sup>7</sup> nor consistent with the manner in which other optional compliance measures are implemented and administrated.<sup>8</sup> To correct this, NCPA urges the Commission to modify the provisions of Section 3204(b)(11)(B) as noted above, and to correct the related provisions of Section 3204(b)(11) accordingly.

**B. Section 3204(b)(8); the Final Statement of Reasons Should Address the Applicability of the Provision to Future Compliance Periods**

NCPA had urged the Commission to change the proposed amendments to reflect the clear statutory intent of PUC section 399.30(k) applicable to a specific hydroelectric generation resources and contracts, which are defined in PUC section 399.30(k)(1). NCPA supports the original Proposed Amendments, with the exception of the language in section 3204 (b)(8) that would limit the applicability of the provision from January 1, 2019 through December 31, 2030. As explained in NCPA’s June 22 Comments, this section was intended to address long-term contracts between public agencies and the Federal Government, and to provide these public agencies with certainty regarding the RPS program treatment of the resources involving a commitment of up to 30 years.<sup>9</sup>

Reviewing the statutory provisions in light of the statute's obvious nature and purpose, and applying a reasonable and commonsense interpretation that is consistent with that intent and

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<sup>7</sup> “[T]he statutory text makes clear that the ‘review period’ is annual, based on the annual capacity factor, not a multi-year period. Concluding that because the exemption is determined on a compliance period basis means that the threshold must be met each and every year of that compliance period ignores the plain language in the statute that speaks to the annual average on a yearly basis.” NCPA June 22 Comments, p. 8.

<sup>8</sup> “[P]rovisions allowing a delay of timely compliance under section 3206(a)(2) do not require that a lack of transmission capacity, for example, must exist for each year of the compliance period.” NCPA June 22 Comments, p. 8.

<sup>9</sup> NCPA June 22 Comments, pp. 4-5.

purpose, the Proposed Amendments to Sections 3204(b)(8) and 3207(j) should be modified to reflect the applicability of the provision from January 1, 2019 through December 31, 2030, **and to any subsequent compliance periods** as determined by the Commission in the regulations. However, if the Commission staff is unable to justify application of the rules of statutory interpretation in this regard, NCPA urges the Commission to expressly acknowledge in the FSOR that should the legislature provide specific guidance and clarification on this point, that the affected POU's will be able to continue to apply the provisions of Section 3204(b)(8) beyond 2030 irrespective of whether specific regulatory amendments have been adopted by the Commission prior to that time.

**C. Section 3202(a)(2)(B): The FSOR Should Clarify that Modifications are not Needed to this section because Financial Assignments do not impact the Grandfathered or Long-Term Nature of Contracts or Ownership Agreements Executed before June 1, 2010**

NCPA, along with several other parties highlighted the benefits of adding clarity to the Regulation regarding the impact that financial-only transactions have on existing long-term or grandfathered status of a contract or ownership agreement.<sup>10</sup> Section 3202 (a)(2)(B) correctly characterizes the treatment of amendments or modifications to contracts or ownership agreements executed before June 1, 2010. The 15-day Language did not make the requested clarifications, ostensibly because staff feels that there is no ambiguity that needs to be addressed. NCPA urges the Commission to include an express statement in the FSOR to this effect. Stakeholders and markets alike would benefit from added regulatory certainty related to contracts and ownership agreements, especially long-term agreements that have provided – and will continue to provide – RPS-eligible energy to the California consumers. This clarification in the FSOR would go far to ensure market participants have the certainty they need to pursue financial arrangements that provide the maximum benefits and costs savings to electricity customers. In the FSOR, the Commission should acknowledge that contract amendments, assignments, or modifications that do not otherwise alter (i) the POU receiving the renewable resources or (ii) the renewable generation source, do not alter the eligibility under 3202(a)(2)(A), or the classification of those agreements as long-term under 3204(d).

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<sup>10</sup> See e.g.; J. Aron & Company LLC comments, Joint POU Comments,

### III. CONCLUSION

For the reasons set forth herein, NCPA requests that Commission issue a second set of 15-day changes reflecting the necessary corrections and clarifications addressed herein and in the Joint POU Comments, and otherwise supports the suggested changes to the Proposed Amendments reflected in the 15-day Language. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or [scott.tomashefsky@ncpa.com](mailto:scott.tomashefsky@ncpa.com) with any questions.

Dated August 5, 2020.

Respectfully submitted,



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