

**DOCKETED**

<b>Docket Number:</b>	16-RPS-03
<b>Project Title:</b>	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
<b>TN #:</b>	234241
<b>Document Title:</b>	Los Angeles Department of Water and Power Comments - LADWP Comments to 15-Day Language
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	Los Angeles Department of Water and Power
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	8/5/2020 4:55:05 PM
<b>Docketed Date:</b>	8/6/2020

*Comment Received From: Los Angeles Department of Water and Power  
Submitted On: 8/5/2020  
Docket Number: 16-RPS-03*

**LADWP Comments to 15-Day Language**

*Additional submitted attachment is included below.*

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

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

RE: Comments on 15-Day  
Language

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER TO THE  
CALIFORNIA ENERGY COMMISSION ON 15-DAY LANGUAGE MODIFICATION OF REGULATIONS  
SPECIFYING ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR  
LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

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Dated: August 5, 2020

## INTRODUCTION

Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments to the California Energy Commission (Commission) on the 15-Day Language Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard (RPS Enforcement Procedures) for Local Publicly Owned Electric Utilities (POUs). 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 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 our customers and the communities we serve safe, reliable, and cost-effective water and power in a customer-focused and environmentally responsible manner.

## SPECIFIC COMMENTS

After review of the 15-Day Language of the RPS Enforcement Procedures, LADWP recognizes and appreciates Commission staff for addressing and implementing the majority of LADWP's specific comments submitted on June 22, 2020 for the 45-Day Language of the RPS Enforcement Procedures. If Commission adopts the current 15-Day Language of the RPS Enforcement Procedures, then LADWP requests these clarifying points below to be part of the Final Statement of Reasons. Otherwise, LADWP requests these clarifying points to be directly addressed in the modified regulatory language.

### I. SECTION 3204 – RPS PROCUREMENT REQUIREMENTS

LADWP supports the majority of revisions in the 15-Day RPS Procedures, such as the clarification of the long-term contract definition in 3204 (d)(2)(A); the addition of "expansion" to 3204 (d) (2) (J); restricting "monetized" to any derived "financial value" in 3204 (b)(9)(B)(3)(i); and, the removal of "total" from "total retail sales". Overall, flexibility is essential due to the vast constraints that POUs have to consider when entering into contracts including:

- Minimizing impact to ratepayers
- Obtaining public input in an open and transparent process
- Multiple layers of approval to ensure checks and balances are in place

Further specific comments to take into consideration are provided below.

**a. LADWP Suggests Amending Excess Generation [Section 3204 (d)(2)(E)]**

The added requirement to treat “excess generation” from a long-term contract as short term should be amended to account for overgeneration due to planning uncertainties and the variable nature of generation throughout the compliance periods. The estimated generation in existing contracts or ownership agreements may not be a reliable method of determining excess generation. Commitments already made in legacy contracts or ownership agreements should not be devalued solely because renewable generation exceeded expectations. Generation from renewable resources cannot be precisely predicted due to the variable nature of renewable resources. There are often scenarios that result in overgeneration due to a high wind year or a heavy precipitation year for hydroelectric generation. Forecasts in generation specified in contracts allow both the developer to plan for expected revenue and the buyer to secure financing to hedge against future fluctuations of renewable energy prices. These forecasts should not be relied upon for determining excess generation amounts. Therefore, LADWP suggests that this provision only applies to energy from long-term contracts that specify the maximum generation amount that cannot be exceeded and not from long-term contracts that specify the amount of guaranteed generation for planning purposes. Section 3204 (d)(2)(E) should be replaced in its entirety with the following:

- *(E) For long-term contracts specifying a not-to-exceed generation amount, electricity products in excess of the not-to-exceed generation amount shall be classified as short-term.*

**b. LADWP Supports Efficiency Improvements and Expansions as Part of the Original Long-Term Contract [Section 3204 (d)(2)(J)]**

LADWP supports Commission staff’s treatment of any efficiency improvements and any expansions as part of the original long-term contract or ownership agreement as it encourages upgrades and improvements to existing renewable energy resources.

As stated in LADWP’s comments to the 45-Day Language Modifications to RPS Enforcement Procedures submitted June 22, 2020, efficiency improvements will help preserve the long-term commitment of the contract and provide flexibility for developers to resolve unforeseen equipment limitations or degradations over the resource’s lifespan. Disincentivizing efficiency improvements and expansions would remove any interest in efficiency gains, maximizing the use of a beneficial weather pattern, or future renewable growth. Thus, LADWP strongly supports allowing any efficiency improvements and any expansions to be treated as part of the original contract.

**c. LADWP Supports Flexibility in Amendments for Substitute Renewable Energy [Section 3204 (d)(2)(J)3]**

LADWP supports the first condition (i) in Section 3204 (d)(2)(J)3 allowing the ability to add or substitute resources if specified in the original long-term contract. However, the second condition (ii) in Section 3204 (d)(2)(J)3 that would require added or substituted resources to be either owned by the seller or subject to a separate long-term contract hinders utilization of the substitute renewable energy clause that was meant for contract resiliency.

The negotiated clause for substitute renewable energy within a contract, as LADWP understands it, is related to a shortfall in generation within a specific period of time and not related to a full replacement of an eligible renewable energy resource. The purpose of substitute renewable energy is a mechanism for the developer to avoid paying liquidated damages and makeup any shortfalls for a specific period of time.

Additionally, developers may only own one major RPS facility or may fail to obtain a long-term contract with a substitute resource to supply the guaranteed generation within a specified period. Thus the added restriction will negatively impact the developer's liability to guarantee generation and could force the developer to pay for liquidated damages, which may be counter-productive to the overall intent of using substitute renewable energy.

LADWP recommends keeping the first condition (i) allowing the original long-term contract or ownership agreement to specify the ability to add or substitute resources and remove condition (ii) to reduce restrictions for the developer to comply with guaranteed generation.

**d. LADWP Recommends the Treatment of Assignment Changes to be Extended to Retail Sellers [Section 3204 (d)(2)(J)5]**

LADWP supports the ability to reallocate electricity products among the parties as part of the original jointly negotiated long-term contract or ownership agreement. However, in 3204(d)(2)(J)(5), LADWP recommends re-adding "retail sellers" to provide further flexibility to California's Load Serving Entities. If a retail seller (e.g. investor-owned utilities, community choice aggregators, and electric service providers) is unable to fulfil contract obligations or is over-resourced, they should be able to assign the long-term contract to a POU.

Given that both POUs and retail sellers in California are working towards the same RPS targets, allowing for an assignment from a retail seller to a POU and vice versa provides a larger pool of entities to obtain the contract, especially during times when the POU or retail seller is in financial distress or over-resourced. This ability would also lower the contract risks for the developer. If assignment of contracts is restricted, that may lead to a lack of collaboration

between the major California renewable energy market participants, ultimately affecting the entire state. Therefore, LADWP recommends the treatment of assignment changes to include “retail sellers” in Section 3204 (d)(2)(J)4 and 5 consistent with the proposed 45-Day Language.

In addition to the assignment change provision, when a POU is assigned a contract, that POU assumes all contract terms and the first POU removes its commitment entirely from the contract. While LADWP supports the intent of the language, the language may be misinterpreted to indicate that the “first POU” may be responsible for the duration of the contract, which is an unintended consequence.

Thus, LADWP suggests the provision be amended as shown below or clarified in the Final Statement of Reasons to reduce ambiguity with assignment changes and allow for flexibility:

- Assignments of long-term contracts, whereby a ~~retail seller or POU~~ assigns the remaining portion of its procurement obligations under a long-term contract to a second POU, shall be treated as part of the original long-term contract, provided the assignment maintains the commitment ~~by the retail seller or first POU~~ to procure the same type and quantity electricity products from the RPS-certified facility for the remaining duration of the original contract.

## II. SECTION 3207 – COMPLIANCE REPORTING FOR POUS

### a. LADWP Recommends POU Involvement for Classifying Contract

#### Documentation Submitted by a Third-Party [Section 3207 (c)(2)(G)1]

The ability for a third- party supplier or other party to submit contract documentation directly to the Commission staff allows for confidentiality. However, LADWP is concerned with third-party information to be binding on the POU.

Since the third-parties are not under the direct jurisdiction of Commission staff, there may be false assumptions or incorrect information provided to Commission staff that could lead to noncompliance determinations for POUs. Thus, LADWP suggests avoiding the possible complication to a POU’s compliance by providing in the Final Statement of Reasons regarding a process that includes POUs when verifying third party underlying contracts.

Further, LADWP recommends revising the last sentence from Section 3207 (c)(2)(G)(1):

- Documentation demonstrating a long-term contract meets the requirements of section 3204 (d)(2)(A)2. or (A)3. may be submitted directly to the CEC by the third-party supplier or another party on the POU’s behalf and with its agreement. Any such documentation shall ~~not~~ be binding on the POU ~~and POUs shall be~~

*involved in the verification process with respect to any related portfolio content category classification ~~or~~ and long-term or short-term classification.*

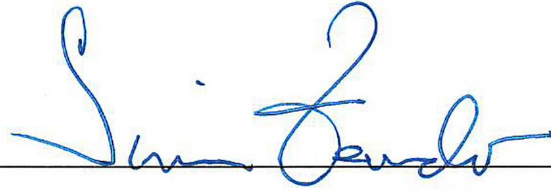
### **CONCLUSION**

LADWP appreciates the opportunity to submit formal comments on the 15-Day Language Modification to the RPS Enforcement Procedures for local POUs, and to continue working with the 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 myself, Simon Zewdu, at (213) 367-2525, or Mr. Scott Hirashima at (213) 367-0852.



Dated: August 5, 2020

Respectfully Submitted,



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