

**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
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**on Second 15-Day Language Modification of Regulations**

*Additional submitted attachment is included below.*

**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

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

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON SECOND 15-DAY LANGUAGE MODIFICATION OF  
REGULATIONS SPECIFYING THE ENFORCEMENT PROCEDURES FOR  
THE RENEWABLES PORTFOLIO STANDARD  
FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

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September 2, 2020

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON SECOND 15-DAY LANGUAGE MODIFICATION OF  
REGULATIONS SPECIFYING THE ENFORCEMENT PROCEDURES FOR  
THE RENEWABLES PORTFOLIO STANDARD  
FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

In response to the August 18, 2020 Notice of Availability, The Utility Reform Network (TURN) submits these comments on the second 15-day language modifications to the enforcement procedures for the Renewables Portfolio Standard (RPS) for Publicly Owned Utilities (POUs). TURN previously provided written comments on the staff implementation proposal, the draft amendments, the proposed regulations and the first 15-day language modification. TURN appreciates efforts made by Commission staff to make the proposed regulations consistent with the relevant statutory requirements.

In particular, TURN strongly supports the changes to Section 3204(d)(2) clarifying that a POU must enter into a procurement commitment of at least 10 continuous years in duration to receive credit under the Long-Term Requirement (LTR) pursuant to Public Utilities Code §399.13(b). The revised language also provides reasonable accommodation to allow multiple POUs entering into jointly negotiated contracts to count the procurement as long-term and to allow short-term substitution of another renewable resource in the event that the facility specified in the original contract is incapable of performing under the agreement. These changes conform key elements of the regulations to the statutory obligations and fix the defects in earlier iterations that impermissibly allowed short-term commitments to satisfy the LTR.

The Legislature included the LTR in SB 350 to reflect the critical importance of long-term contracting to the development of sufficient new RPS generating resources to meet the ambitious post-2020 targets.<sup>1</sup> The purpose of the long-term contracting

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<sup>1</sup> The California Public Utilities Commission has repeatedly recognized the fact that a long-term contract is essential for a project developer to finance construction of new renewable generation. *See* D.17-06-026, page 15 (“in D.06-10-019 and D.07-05-028, the Commission

requirement is to promote market stability, ensure advance planning and drive the timely development of new resource capacity. Consistent with this understanding, the new language in Section 3204(d)(2)(A)(3) establishes that a POU may be required to provide additional information demonstrating that a contract of at least 10 years in duration “supports the financing and development of new eligible renewable energy resources, major capital investments in existing eligible renewable energy resources, or long-term planning and market stability.” These criteria reflect the core objectives of the LTR and can be addressed in a wide range of contractual arrangements used by POUs. Any legitimate long-term procurement commitment should be capable of satisfying one of these enumerated criteria.

In addition, the annual review process outlined in Section 3207(c)(5) is fully reasonable and necessary to ensure that long-term procurement commitments are fully compliant with the LTR criteria. Absent an up-front process to confirm LTR eligibility, POUs could be faced with reclassifications of their contracts only after the completion of a multi-year compliance period. This outcome would create significant risks of noncompliance, prevent POUs from curing any defects in such contracts in a timely manner, and undermine confidence in the overall program. By contrast, the annual process would ensure that any unusual contract structures can be reviewed for consistency with the criteria enumerated in Section 3204(d)(2)(A)(3).

POU representatives are concerned that this provision creates uncertainty and appear to object to any Commission review of contracts that go beyond a mechanical application of very basic requirements. TURN believes that these concerns are misplaced. The proposed regulations are intended to minimize uncertainty by providing timely determinations that will ensure POUs can count on these agreements for LTR compliance. The annual process will also protect against a potential wave of “sham” long-term contracts that are functionally structured as short-term agreements and fail to satisfy the core purposes of the LTR. In four

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adopted the parties’ consensus that long-term contracts are necessary in order for developers to finance new and repowered RPS-eligible generation.”)

rounds of prior comments submitted over the past year, TURN expressed significant concerns about “sham” long-term contracts and urged the Commission to adopt a series of specific requirements relating to any LTR-eligible contract coupled with a “pre-clearance” process for unusual contract structures.<sup>2</sup> Although the proposed regulations do not adopt TURN’s specific proposals, the revised language establishes an annual process that allows the Commission to identify any problematic contract structures that deviate from core LTR criteria. This approach is entirely appropriate and responds to the specific concerns raised by TURN over the past year.

TURN urges the Commission to adopt the proposed regulations and commit to work with POU’s to ensure that the annual review process results in timely determinations of LTR eligibility and provides POU’s with opportunities to cure any minor or technical defects in procurement commitments that support legitimate LTR objectives.

Respectfully submitted,

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<sup>2</sup> See TURN comments, August 4, 2020 (referencing proposals included in TURN’s comments from October 1, 2019, January 17, 2020, June 22, 2020)(“As proposed in TURN’s prior comments, the Energy Commission could prevent “sham” agreements by adding the following requirements:

- (1) Any eligible long-term contract must include either fixed quantities over the entire term or quantities that represent a fixed percentage of the output of one or more specific generating facilities over a term of at least 10 years.
- (2) Any eligible long-term contract must include defined pricing terms that are not subject to renegotiation prior to the end of the 10-year period.

TURN previously proposed that the Energy Commission should allow any contract materially deviating from these requirements to be submitted for advance certification.”)