

**DOCKETED**

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**Comments of the Independent Energy Producers Association on  
Second 15-Day Language**

*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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**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON  
THE SECOND 15-DAY LANGUAGE**

The Independent Energy Producers Association (IEP) offers these comments on the Second 15-Day Language, issued August 18, 2020, to the Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. IEP generally supports the CEC's efforts to enforce the requirements of the Renewables Portfolio Standard for local publicly owned electric utilities (POUs). However, IEP has two concerns about the revisions proposed in the Second 15-day Language.

First, the additional information that a POU might be required to provide under proposed section 3204(d)(2)(A)(3) goes well beyond the information that is needed to determine whether a particular contract or ownership arrangement qualifies as a long-term commitment. In most cases, a long-term commitment will be documented by a contract, and the contract will have explicit terms about its duration that are simple to verify.

Section 3204(d)(2)(A)(3), however, suggests that the CEC could request information about "how the long-term contract 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" to "demonstrate that a long-term

contract represents a long-term procurement commitment.” The proposed section refers to Public Utilities Code section 399.13(b), but that section refers only to a retail seller’s “contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” The duration of the contract or the ownership interest is the focus of the documentation, not how a particular resource supports other resources or long-term planning or other extraneous information.

Requesting information that is not focused on the narrow question of the duration of the commitment raises a more fundamental concern about what the CEC or its staff will do with this information. IEP represents power producers that might be the counterparties to the POU’s long-term contracts. If the CEC or its staff determines that a contract with an explicit term of 10 years or more does not qualify as long-term procurement, that determination alters an essential, bargained-for element of the contract and in effect interprets the terms of the parties’ agreement. A determination that a contract with an express duration of 10 years or more is not long-term procurement has significant commercial implications. Because of these and other significant implications, interpretation of contracts is not a responsibility that can properly be delegated to the CEC staff; that function is reserved to the courts, or, if the parties agree, to an arbitrator.

The duration of a contract should be readily apparent from the explicit terms of the contract, and those terms should not be altered by the CEC’s or its staff’s interpretation of the contract terms. Gathering information about “how the long-term contract 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” is not only irrelevant to the simple determination of whether the contract is for a duration of 10 years or

more, it also suggests that that simple determination might be influenced by factors other than what the parties explicitly agreed to.

In addition, information about “the financing and development of new eligible renewable energy resources” or “major capital investments in existing eligible renewable energy resources” will in many cases be confidential, commercially sensitive information that if publicly disclosed would put the disclosing entity at a competitive disadvantage.

Any additional information the CEC requires to support a determination that a contract or ownership arrangement qualifies as long-term procurement should be narrowly focused on the duration of the commitment, and should not require the submission of irrelevant and extraneous information that, if publicly disclosed, could put one of the contract parties at a competitive disadvantage. The CEC staff’s determination under proposed section 3707(c)(5)(D) of whether or not a particular contract or ownership agreement qualifies as long-term procurement should be based solely on the express language of the contract or agreement, not on the staff’s discretion or consideration of extraneous information.

IEP’s second concern is that in proposed section 3207(c)(5), there is no limit on the time allowed for the staff’s review of the information provided in support of a long-term commitment. If the staff concludes that a proposed commitment does not qualify as long-term procurement, the POU will need to act quickly to procure a qualifying commitment and the contracting parties will need to adjust their contract or commercial arrangements. For these reasons, the staff should be required to issue its determination no later than 60 days after the POU’s submission of the annual report.

IEP appreciates the CEC’s consideration of these comments.

September 2, 2020

Respectfully submitted,

*/S/ Jan Smutny-Jones*

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