

DOCKETED

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Document Title:	Key Topics Guide - Proposed Implementation of RPS Long-Term Procurement Requirement for RPS POU Regulations
Description:	This workshop guide was developed to support stakeholder and public preparation for discussion at upcoming workshop and subsequent public comment period, and explains CEC staff's proposal and includes draft regulatory language for the LTR in Appendix A.
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Key Topics Guide: Proposed Implementation of RPS Long-Term Procurement Requirement in *RPS POU Regulations*

The California Energy Commission (CEC) is currently proposing to modify existing *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (RPS POU Regulations) through the formal rulemaking process. The proposed regulations implement the long-term procurement requirement (LTR), as established by Public Utilities Code section 399.13 (b) and applicable pursuant to section 399.30 (d), for local publicly owned electric utilities (POUs), including specifying the requirements that the CEC proposes for determining whether POU procurement from a contract may be counted for compliance with the LTR.

The proposed requirements have been modified over the course of the rulemaking process in response to stakeholder comments. Based on comments received on second 15-day language changes, CEC is considering additional revisions to the proposed RPS POU Regulations to clarify the requirements for contracts to be characterized as long-term for purposes of implementing the LTR. CEC Lead Commissioner for Renewable Energy, Karen Douglas, has scheduled a workshop for November 5, 2020, to discuss key elements of the implementation of the LTR for local publicly owned electric utilities. The workshop notice is available in the [CEC's docket log for this proceeding](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-RPS-03) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-RPS-03>.

This workshop guide was developed to support stakeholder and public preparation for discussion at the upcoming workshop and during the subsequent public comment period, and explains CEC staff's proposal and includes draft regulatory language for the LTR in Appendix A. The language included in Appendix A is not official express terms, only a draft for discussion and comment. Following the workshop and written comment period, CEC staff anticipates posting updated express terms as third 15-day language with an associated public comment period and presenting the proposed regulations for adoption at a December 2020 CEC business meeting.

PROPOSED UPDATES TO REQUIREMENTS FOR LONG-TERM CONTRACTS

Contracts executed prior to July 1, 2020

Stakeholders have argued that for contracts executed prior to July 1, 2020, POUs could only rely on the statutory requirements for long-term procurement as the RPS POU Regulations had not yet been updated to implement the statutory requirements. CEC staff finds it reasonable to distinguish requirements for contracts executed prior to July 1, 2020, from those executed on or after this date.

Staff proposes that contracts executed prior to July 1, 2020, to be classified as long-term for purposes of compliance with the LTR must meet the continuous duration as proposed in the 45-day express terms. This includes the requirement that the contract provide for procurement of nonzero quantities for a continuous period of 10 years.

These more limited requirements apply only for the term of the contract in place as of July 1, 2020. In addition, amendments after July 1, 2020, that modify the duration, quantity, pricing, or other provision

that materially relates to the contract's classification as long-term, must meet the same requirements as contracts executed on or after July 1, 2020.

Long-term contract elements for contracts executed on or after July 1, 2020, and amendments to contracts executed prior to July 1, 2020

Staff proposes four criteria that contracts executed on or after July 1, 2020, and amendments to contracts executed prior to July 1, 2020, would be required to meet for the contract to be considered long-term for the purpose of compliance with the LTR. These elements are:

- Procurement duration of at least 10 continuous years, consistent with the requirements for contracts executed prior to July 1, 2020.
- Reasonably consistent procurement quantities.
- Commitment without cost-free termination options for the buyer.
- Minimum pricing or quantity terms.

Staff is proposing regulatory language to clarify the requirements for each of these elements, shown in Appendix A to this document and described below. The requirements recognize that in some cases, a POU's contract may fall short of meeting one or more of these criteria; however, the POU may provide additional information relative to any or all of these elements to demonstrate that the contract meets the purpose of the LTR. However, it is staff's expectation that in most cases contracts will meet all of these criteria and the long-term classification of a contract can be verified without any need to submit additional information.

For simplicity, the proposed requirements are presented first for a contract between a POU and an RPS-certified facility, then clarified for several contracting scenarios. The proposal presented here does not address all elements of the proposed implementation of the LTR, but rather is intended to prompt discussion on those areas of the proposed regulation where further revisions have been proposed. Nothing in the second 15-day language or in the proposed updates would preclude a POU's contract with an existing RPS-certified facility from counting for compliance with the LTR.

Long-Term Contract Elements

Duration

Staff proposed in 45-day express terms that a POU's long-term contract with an RPS-certified facility, regardless of the date entered into, must have a duration of at least 10 continuous years, measured from the contract start date to the contract end date, and in 15-day express terms proposed the contract duration would be continuous if the contract specified nonzero procurement quantities annually or on a compliance period basis for the term. The 45-day express terms proposed a definition of contract start date as the first date after contract execution that the POU is deemed to have procured electricity products from the counterparty to the contract.

These proposed requirements have not substantially changed; however, the regulatory language shown in Appendix A reflects modifications to more clearly identify the nonzero procurement quantity requirement in the definition of a long-term contract.

Discussion Questions

1. Are there circumstances in which a long-term contract for purposes of compliance with the LTR should include contracted-for quantities of zero MWh or zero percent output within the continuous 10-year term?

Defined and reasonably consistent quantities

Defined contract quantities are necessary to describe the procurement commitment and establish the obligations represented by the contract, an understanding reflected in the 15-day and second 15-day language. Staff has proposed an additional requirement for reasonably consistent quantities in response to stakeholder concerns that consistent procurement quantities are necessary in a long-term contract, and that absent such requirements, a contract could be characterized as long-term for purposes of compliance with the LTR even if it was structured to include meaningful procurement quantities in only one or two years of the contract, functionally equivalent to a short-term contract.

Staff proposes establishing a measure of reasonable variation based on a percent of average contract quantity over the term, while acknowledging that contracts with greater variation may still represent long-term procurement commitments. A contract must specify reasonably consistent procurement quantities over the contract term. The contracted-for quantities may be expressed as a percent or other share of output, specific MWh amounts, or through other metrics. Based on the existing definition of contract start date, as referenced above, any zero quantities prior to a POU beginning procurement under the contract would not factor into the determination of reasonable variation over the term.

Staff is considering two possible options for this measure of reasonable variation.

Option A

Staff proposes establishing 33 percent from the average contract quantity as the measure of reasonable variation, but limiting the requirement for reasonably consistent procurement quantities to POUs that are required to file IRPs with the CEC. Staff proposes 33 percent based on a sample of long-term contracts previously reported to the CEC. As noted in prior stakeholder comments, smaller POUs may face unique planning challenges, such as a relatively greater impact on overall load due to the departure or arrival of a large customer or needing to rely on relatively few contracts. Staff found it reasonable to consider providing additional flexibility with regard to contract quantity for these smaller POUs, following the threshold established in Public Utilities Code section 9621 for the IRP-filing requirement.

Reasonably consistent procurement quantities mean either of the following:

1. The contracted-for quantities in each year vary no more than 33 percent from the average contract quantity over the contract term. Variation will be assessed based on the contracted-for quantities, rather than actual deliveries under the contract. For contract quantities based on a percent of output, any changes in the percent share will be the basis for evaluating reasonable variation. If the contract specifies a range of quantities for a given year, the minimum quantity specified each year will be the basis for assessing variation.

2. The contracted-for quantities in each year vary by more than 33 percent from the average contract quantity, or the contracted-for quantities are specified on a compliance period basis, and the POU may demonstrate how this contract represents a long-term procurement commitment consistent with the purposes of the LTR. In this case, the proposed regulatory language enumerates certain examples, based on stakeholder comments, that would more commonly address greater levels of variation and generally provides that the POU can otherwise demonstrate that the contract is consistent with the purposes of the LTR.
3. For contracts that procure only unbundled RECs (PCC 3), the contract specifies procurement quantities on an annual and/or compliance period basis for at least 10 continuous years, and the variation between the average expected procurement quantities for any two adjacent compliance periods is no more than 33 percent, or the POU can submit additional information explaining how the contract represents a long-term procurement commitment as described above. Staff proposes these requirements for PCC 3 contracts because they are comparable to those for contracts that deliver electricity while recognizing that these contracts often have a different structure due to the role that unbundled RECs may serve as a compliance tool for procurement gaps and lower costs.

Option B

Staff proposes the same framework for reasonable variation as in Option A, but establishing the measure of reasonable variation as 40 percent of average contract quantity and applying the requirement to all POUs, not just those that file IRPs with the Commission. This option would establish reasonable variation requirements that apply equally to all POUs, but increase the threshold in recognition of a greater need for flexibility.

Discussion Questions

1. Staff has proposed two options for reasonable variation in annual quantities as a measure of reasonable consistency. Which option should be established? Explain.
2. The proposed regulations identify several reasons that variation may be greater than the threshold percent from the average contract quantity and provides a general option allowing POUs to otherwise demonstrate that a contract meets the reasonably consistent quantity requirement consistent with the LTR. Is this list sufficiently comprehensive to provide guidance for POUs seeking options to demonstrate why a contract with greater variation should be considered long term?

Minimum pricing or quantity terms

Staff have proposed regulatory language clarifying a contract without any minimum pricing or quantity terms within the first 10 continuous years is not a long-term contract, if the intent of the contract is for parties to negotiate price and quantity for any given year in that 10-year period or if neither party is obliged to procure or sell electricity products for that 10-year period. Staff has proposed this language to reflect the importance of pricing and quantity in defining the procurement obligation created by the

contract, while recognizing that the structure and terms of pricing provisions may vary based on the individual contract.

1. Are staff's proposed provisions sufficient to address contracts that do not represent an enforceable procurement obligation for the 10-year term?

No cost-free early termination options for buyer

A long-term contract represents a commitment in which the procurement obligation is expected to continue for at least the first 10 years of the contract term, and cost-free early termination options allowing the buyer to exit the contract early may indicate the stated procurement duration is optional rather than committed.

CEC staff has proposed regulatory language seeking to require that a long-term contract may not include cost-free options for the buyer to terminate the contract within the first 10 years without cause. However, a POU may submit additional information to explain how a contract with cost-free early termination options allowing the buyer to exit without cause still represents a long-term commitment by the buyer. The requirement as proposed does not preclude early termination by mutual agreement of the parties, early termination due to default or nonperformance, a force majeure event, or other specified reasons. It also does not preclude early termination for purposes of facilitating the sale of the RPS-eligible resource under contract to the POU, a need highlighted in stakeholder comments.

Discussion Questions

1. Are staff's proposed provisions reasonable considering negotiated termination provisions in existing contracts?

Long-Term Contract Scenarios

In general, the proposed implementation of the LTR characterizes contracts between a POU and a third party other than the RPS-certified facility as long-term only if both the POU's individual contract and the upstream contract with the RPS-certified facility meet the requirements of a long-term contract. This is necessary to address both the individual utility's obligation to enter into long-term contracts and ensure that all procurement counted for compliance with the LTR is sourced through contracts that represent long-term procurement commitments. Thus, by extension, the updated proposed requirements for long-term contracts detailed above would also apply to both a POU's contract with a third party and the upstream contract(s) with the RPS-certified facility(ies) supplying the electricity products. Staff proposes updated regulatory language clarifying the applicability of the updated long-term contract requirements for certain joint procurement scenarios.

Joint procurement through a JPA or other third party: Each POU's contract with the JPA or third party individually meets the requirements of a long-term contract, except that variation in contracted-for procurement quantity will be assessed in aggregate and the joint POU members may assign or reallocate procurement among each other without affecting characterization of the long-term contract. The JPA or third-party contract(s) must also meet the requirements of a long-term contract.

Jointly negotiated contracts between multiple POU's and one or more RPS-certified facility: Consistent with stakeholder comments submitted on the second 15-day language, staff proposes clarifying that jointly negotiated contracts include both of the following:

- A joint contract between multiple POU's
- Separate contracts executed by two or more POU's with the same facility, if each of the separate contracts identifies the other POU(s) and specifies the ability to adjust their relative share of the facility output to the other POU(s).

To be classified as long-term, each POU's contract, or each POU's procurement obligation within a joint contract, must meet the requirements of a long-term contract, except that procurement quantity variation will be assessed based on the aggregate quantity of the POU contracts or procurement obligations in the joint contract, and that the identified joint parties may reallocate procurement among each other without affect to the characterization of the contract. The joint contract, or aggregate of the separate POU contracts, must also meet the requirements of a long-term contract with respect to each facility under contract.

Discussion Questions

1. Are there additional contracting scenarios staff should consider addressing to provide clarity and guidance?

PROPOSED POU REPORTING AND REVIEW PROCESS

Based on the updated requirements for long-term contracts described above, CEC staff anticipates that POU reporting and CEC staff verification of long-term contracts for purposes of compliance with the LTR will largely follow the established processes under which POU's report contract information and provide contract documents and the CEC verifies this information, with necessary modifications to address implementation of the new requirement.

Annual Reporting

Updated requirements for annual reporting were proposed in the 45-day express terms to address the new information and documentation needed for LTR-specific contract information, including the POU's initial characterization of the contract as long-term or short-term. Staff is now proposing additional clarifications to the reporting requirements to assist POU's and provide information on the expected timeline for CEC staff to complete the review of contract information and documentation submitted during annual reporting as well as those contracts previously reported to the CEC.

Staff proposes updating the information reported by POU's on contracts identified as long-term to address variation in procurement quantities, minimum pricing or quantity provisions, and no-cost early termination options, as well as explanations of contract provisions when needed to demonstrate compliance with a requirement. Staff also proposes that POU's report where in the contract the relevant provisions are found to facilitate the verification process and provide a copy of the contract(s) in annual reporting for the year the contract was executed, rather than when the POU began procuring from the contract, and allowing attestations in limited cases.

Previously Reported Contracts

Staff proposed in the second 15-day language that POU's must notify the CEC by April 1, 2021, of any previously reported contracts that the POU determines meet the requirements for long-term contracts for purposes of the new LTR. Staff is proposing updated language to require that POU's complete this identification during the annual reporting submitted for 2020, consistent with other contract reporting for new and modified agreements. After this reporting is submitted, CEC staff will verify the contract status as part of its verification activities for Compliance Period 3.

Review Process

Consistent with current contract verification practice, CEC staff anticipates reviewing all contracts including those contracts that a POU reports as long-term, along with any additional information submitted by the POU, to verify the contract status. CEC staff may request additional information if needed to verify the contract status, consistent with current processes. Once CEC staff has verified the contract status as long-term, staff anticipates notifying the POU using the RPS Online System, indicating staff's review is complete. If CEC staff is unable to verify the contract status as long-term, staff will notify the POU.

In response to stakeholder comments, CEC staff has proposed new regulatory language outlining the review process and anticipated timeframes for verifying the classification of long-term contracts, as well as a specific appeal process regarding the long-term or short-term determination.

REQUEST FOR EARLY CONTRACT REVIEW

In response to stakeholder comment, staff is also proposing a limited early review process under which POU's may request a review outside of the annual reporting process, only for contracts executed after July 1, 2020, that require additional information to be provided to demonstrate that one or more elements of the long-term contract requirements are met. This would allow for early review and verification of long-term contract status to allow POU's to better plan to meet the LTR requirement. With the additional specificity proposed for long-term contract requirements, staff anticipates this process would be needed only for contracts that are unable to demonstrate compliance with the requirements without the submittal of additional information. Staff proposes regulatory language outlining the review process, associated timeframes, and a parallel appeal process for the long-term contract determination as described above.

The determination provided by the advance review would function as a verification of the contract status as long-term. The contract would not require a subsequent review unless contract provisions change or there was a misrepresentation or error in the information submitted in support of the POU's advance review request. However, CEC staff would still verify the procurement that is claimed under the long-term contract, consistent with the CEC's responsibility to verify a POU's RPS procurement claims.

The proposed advance review process would allow POU's to obtain an early determination on a contract negotiated or executed after July 1, 2020, and for which CEC review of additional information is necessary to confirm the contract status as long-term. The limited use of this provision is necessary to help mitigate impacts to CEC resources. For contracts that satisfy the proposed requirements without additional information, the POU itself will be able to confirm the long-term status of the contract, so advance review would not be needed or expected.

ADDITIONAL LONG-TERM CONTRACT TOPICS FOR DISCUSSION

In addition to the proposed updated requirements for long-term contracts, staff seeks input on several changes proposed in response to stakeholder comments.

Additional quantity. Staff proposes clarifying the express terms to specify that electricity products procured in excess of the POU's procurement obligation under a long-term contract shall be classified as short-term. This provision was included in the first 15-day language to differentiate between procurement that a POU is obligated to purchase as part of its long-term contract from procurement that is optional to purchase and not part of the procurement commitment. Staff proposes this clarification to address concerns that procurement in excess of estimated quantities, or guaranteed quantities, in a contract would be classified as short-term, even if the POU was obligated under the contract to procure a certain percent of project output.

Discussion Questions

1. Is the proposed clarification sufficient to address all contracting scenarios?
2. On what basis should electricity products that a POU has the option, but not the obligation, to procure, be considered part of the long-term commitment represented by the long-term contract?

Duration of contracts that include multiple PCCs. Staff proposes clarifying that a POU's contract with a third-party supplier, in which the bundled electricity products supplied over the contract term change portfolio content category, may be classified as long-term as long as the POU's own contract and underlying contracts with the RPS-certified facilities otherwise meet the requirements for long-term contracts. Staff proposes this clarification in response to stakeholder comment. Staff considered this clarification reasonable because it provides a parallel treatment to the proposed requirements for substitute resources in a long-term contract.

Discussion Questions

1. Are there any concerns with this provision?

Renewals or extensions of contracts with the Western Area Power Administration (WAPA). Staff proposes updated regulatory language recognizing a POU's federal power contract with WAPA, or a renewal or extension of an agreement with WAPA that was in effect on January 1, 2015, is a long-term contract. Staff proposes this language based on stakeholder comment that 30-year renewals or extensions of WAPA contracts should be classified as long-term, even though these renewals or extensions would allow for termination or reductions in allocation share based on actions of WAPA or the Federal Regulatory Energy Regulatory Commission. Staff finds it reasonable to recognize the 20-year federal hydropower contracts, and their 30-year renewals or extensions, as long-term. However, this proposed language does not address any increases in allocation under a WAPA contract or its renewal or extension, which would be subject to the proposed regulatory requirements for amendments that increase contract quantity.

Discussion Questions

1. Is the proposed language sufficient to address RPS-eligible procurement through WAPA contracts?

2. Are there any concerns with this provision?

Replacement Energy. Staff proposes updating the proposed regulatory requirements for replacement energy to specify that replacement energy may be treated as part of the long-term contract if the RPS-eligible resource did not perform as required by the contract. Staff has proposed this change in response to stakeholder comments arguing that POUs may not have control over whether the need for replacement energy arose due to maintenance activities, curtailment, or other reasons, nor would the POU necessarily have information on these decisions. Staff found it reasonable to limit the use of replacement energy to situations in which the RPS-eligible resource did not perform as the contract required.

Appendix A: Illustrative Draft Language

~~Deletions~~ relative to second 15-day language version of express terms

Additions relative to second 15-day language version of express terms

3204(d)(2) Electricity products will be classified as long-term or short-term based on the contracts, ownership, or ownership agreements through which they are procured. For the purpose of this subdivision, long-term procurement refers to procurement from long-term contracts, ownership, or ownership agreements, subject to the following:

(A) A long-term contract is defined as a POU's contract to procure a nonzero quantity of electricity products from an RPS-certified facility for a duration of at least 10 continuous years, subject to paragraphs (B) and (C). ~~and includes contracts as specified in subparagraphs 1. and 2.~~

(B) A long-term contract includes the following contract structures:

1. ~~A long-term contract includes a~~ A jointly negotiated contract to procure electricity products from one or more RPS-certified facilities, if the procurement duration for each facility is at least 10 continuous years and each POU procures electricity products for at least 10 continuous years. For purposes of this subdivision, a jointly negotiated contract includes the following:

- i. A joint contract executed by at least two POUs with the RPS-certified facility.
- ii. A contract executed by a joint powers agency or third party supplier acting on behalf of at least two POUs with the RPS-certified facility, if all participating POUs are identified in the contract with the facility or in a correlated agreement with the joint powers agency or third party supplier.

iii. Separate contracts executed by two or more POUs with the same RPS-certified facility, where each of the separate contracts, as originally executed, expressly identifies the other POU(s) and specifies the ability of the identified POUs to adjust their relative share of the output of the RPS-certified facility to the other POU(s). If the separate contracts are amended to expressly identify the other POU and specify the ability of the POUs to adjust their relative share of the output of the RPS-certified facility, the contract shall be considered long-term only if each POU's procurement duration from the date of the contract amendment is at least 10 continuous years.

2. ~~A long-term contract includes a~~ A POU's contract or resale agreement with a joint powers agency or third-party supplier if both of the following are satisfied:

- i. The POU's contract or resale agreement with the joint powers agency or third-party supplier has a duration of at least 10 continuous years.
- ii. The RPS-certified facility or facilities supplying the electricity products in the long-term contract are owned by the joint powers agency or third-party supplier

or are subject to a long-term contract with a remaining duration of at least 10 continuous years, and the POU, or the [joint powers agency](#) or third-party supplier or other party on the POU's behalf, [submits](#) ~~can submit~~ documentation demonstrating this.

~~3. A POU may be required to provide additional information to the Commission, as provided in section 3207 (c)(5), to demonstrate that a long-term contract represents a long-term procurement commitment with an RPS-certified facility consistent with Public Utilities Code section 399.13 (b), including information that demonstrates 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. A POU's contract or resale agreement with a third-party supplier where, over the contract term, the electricity products provided can change from one bundled portfolio content category to a different bundled portfolio content category or from one bundled portfolio content category to multiple bundled portfolio content categories, as long as the contract satisfies all other applicable requirements of this section.~~

4. Notwithstanding paragraph (C), a POU's ownership agreement or contract between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project, including an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project that renews or extends the existing agreement as contemplated under the administration of the agreement in effect on January 1, 2015, or included in the Western Area Power Administration's Power Marketing Plan.

(C) Long-term contracts executed on or after July 1, 2020, shall additionally satisfy the requirements of subparagraphs (C)1.-3. Contracts executed prior to July 1, 2020, are not required to meet the requirements of subparagraphs (C)1. – 3. for the term of the contract in effect as of July 1, 2020. With the exception of extensions or renewals of contracts meeting the criteria of subparagraph (B)4., contracts executed prior to July 1, 2020, that are amended on or after July 1, 2020, where the amendment modifies the duration, quantity, pricing, or other provision that materially relates to the contract's classification as long-term, shall additionally satisfy all of the requirements of subparagraphs (C)1. – 3.

Option A:

1. Reasonably consistent contracted-for quantities. For purposes of this section 3204 (d), for a POU subject to the provisions of Public Utilities Code section 9621, the POU's contract and any associated underlying contract(s) shall specify reasonably consistent procurement quantities over the term of the contract, as provided in subparagraphs i.-iv.:

i. For a contract that specifies the contracted-for quantities on an annual basis, the contracted-for annual quantities vary no more than 33 percent above or below the average annual quantity for the entire contract term, except as provided in subparagraph iv. If the POU has contracted for a share of facility output, the variation shall be assessed based on differences in the contracted-for share.

- ii. Notwithstanding subparagraph i., for a contract to procure electricity products meeting the criteria of Portfolio Content Category 3, reasonably consistent procurement quantities means the average contracted-for procurement quantities vary by no more than 33 percent between any two adjacent compliance periods, except as provided in subparagraph iv.
- iii. For long-term contracts meeting the criteria of section 3204 (d)(2)(B)1., the aggregate quantities in a jointly negotiated contract shall be the basis for assessing reasonably consistent contracted-for quantities.
- iv. Notwithstanding subparagraphs i.-ii., reasonably consistent contracted-for quantities include procurement quantities that vary by more than 33 percent, or procurement quantities specified on a compliance period basis, if the POU demonstrates the contract represents a procurement commitment consistent with the purposes of the long-term procurement requirement, including supporting long-term planning and market stability, and investments in the development of new eligible renewable energy resources or improvements to existing eligible renewable energy resources. In making this demonstration, a POU may provide information to show that the contracted-for procurement quantities are associated with one of the following:
 - I. At the time of contract execution, the eligible renewable energy resource is already committed to a different entity during the individual year(s) in which the variation exceeds 33 percent and the POU's commitment supports the development of a new eligible renewable energy resource or the improvement of an existing eligible renewable energy resource.
 - II. At the time of contract execution, the POU had identified a forecasted reduction in retail sales associated with the anticipated loss of specific customer accounts or local industry or the POU had identified a forecasted increase in generation from other eligible renewable energy resources that will achieve commercial operation during the contract term;
 - III. The variation during the individual year(s) is associated with expected maintenance, repair, construction, or other modification of the eligible renewable energy resource.
 - IV. The variation is associated with anticipated transmission constraints.
 - V. The variation is associated with the POU taking over the share or purchases from another buyer for the same eligible renewable energy resource when that other buyer's contract term ends.
 - VI. The variation is only associated with the POU procuring increasing quantities or shares from the same eligible renewable energy resource over the term of the contract.
 - VII. The POU otherwise demonstrates that the variation supports the financing of the new eligible renewable energy resource or improvements

of the existing eligible renewable energy resource, or is otherwise consistent with the intent of the long-term procurement requirement.

Option B:

1. Reasonably consistent contracted-for quantities. For purposes of this section 3204 (d), the POU's contract and any associated underlying contract(s) shall specify reasonably consistent procurement quantities over the term of the contract, as provided in subparagraphs i.-iv.:

- i. For a contract that specifies the contracted-for quantities on an annual basis, the contracted-for annual quantities vary no more than 40 percent above or below the average annual quantity for the entire contract term, except as provided in subparagraph iv. If the POU has contracted for a share of facility output, the variation shall be assessed based on differences in the contracted-for share.
- ii. Notwithstanding subparagraph i., for a contract to procure electricity products meeting the criteria of Portfolio Content Category 3, reasonably consistent procurement quantities means the average contracted-for procurement quantities vary by no more than 40 percent between any two adjacent compliance periods, except as provided in subparagraph iv.
- iii. For long-term contracts meeting the criteria of section 3204 (d)(2)(B)1., the aggregate quantities in a jointly negotiated contract shall be the basis for assessing reasonably consistent contracted-for quantities.
- iv. Notwithstanding subparagraphs i.-ii., reasonably consistent contracted-for quantities include procurement quantities that vary by more than 40 percent, or procurement quantities specified on a compliance period basis, if the POU demonstrates the contract represents a procurement commitment consistent with the purposes of the long-term procurement requirement, including supporting long-term planning and market stability, and investments in the development of new eligible renewable energy resources or improvements to existing eligible renewable energy resources. In making this demonstration, a POU may provide information to show that the contracted-for procurement quantities are associated with one of the following:

I. At the time of contract execution, the eligible renewable energy resource is already committed to a different entity during the individual year(s) in which the variation exceeds 40 percent and the POU's commitment supports the development of a new eligible renewable energy resource or the improvement of an existing eligible renewable energy resource.

II. At the time of contract execution, the POU had identified a forecasted reduction in retail sales associated with the anticipated loss of specific customer accounts or local industry or the POU had identified a forecasted increase in generation from other eligible renewable energy resources that will achieve commercial operation during the contract term;

III. The variation during the individual year(s) is associated with expected maintenance, repair, construction, or other modification of the eligible renewable energy resource.

IV. The variation is associated with anticipated transmission constraints.

V. The variation is associated with the POU taking over the share or purchases from another buyer for the same eligible renewable energy resource when that other buyer's contract term ends.

VI. The variation is only associated with the POU procuring increasing quantities or shares from the same eligible renewable energy resource over the term of the contract.

VII. The POU otherwise demonstrates that the variation supports the financing of the new eligible renewable energy resource or improvements of the existing eligible renewable energy resource, or is otherwise consistent with the intent of the long-term procurement requirement.

2. No-cost, early termination. The contract does not include early termination provisions that allow the purchasing entity to unilaterally terminate the contract without cause and without incurring a penalty, fee or other form of liquidated damages under the contract during the first ten years from the contract start date, except as specified in subparagraphs i.-ii.

i. The early termination provisions prohibited by this paragraph 2 do not preclude the purchasing entity from terminating the contract because of, or including early termination provisions concerning, any the following:

I. The seller's default or other nonperformance under the contract.

II. A force majeure event that prevents the seller from performing its obligations or complying with a condition of the contract. A force majeure event includes any act or occurrence that delays or prevents the seller from timely performing an obligation under the contract or complying with a conditions required under the contract if such act or event is beyond the reasonable control of and without fault or negligence of the seller.

III. Mutual agreement of the purchasing entity and seller.

IV. A facility associated with the contract ceases to be an eligible renewable energy resource, ceases to comply with the Emissions Performance Standard pursuant to Section 2903(b), ceases to provide environmental attributes, or ceases to provide resource adequacy attributes due to the occurrence of a change in law and seller is unable to remedy the loss of any of these attributes as such obligation is limited under the terms of the contract.

V. The Commission determines that a facility associated with the contract does not qualify as an eligible renewable energy resource for reasons other than a change in law.

VI. A change in ownership of the seller.

VII. Facilitating a sale of the eligible renewable energy resource under the contract to the purchasing POU.

ii. This paragraph 2 does not prohibit early termination provisions where the purchasing POU submits information to the Commission that demonstrates the contract, notwithstanding any early termination provisions, secures a procurement commitment of at least 10 continuous years for the POU consistent with the purposes of the long-term procurement requirement, including supporting long-term planning and market stability, and investments in the development of new eligible renewable energy resources or improvements to existing eligible renewable energy resources.

3. Notwithstanding paragraphs 1. and 2., a contract that contains no specified output share or quantities of procurement or minimum pricing terms, such that the express intent of the parties to the contract is to individually negotiate the price and quantity terms in any year within the first 10 years of the contract term, or neither party has an obligation to procure or sell any quantity during any such individual year.

(DB) A short-term contract is defined as a contract to procure electricity products for a duration of fewer than 10 continuous years or a contract that does not meet the criteria of Paragraphs (A)-(C).

(E) The duration of a contract shall be measured from the contract start date until the contract end date, except as specified in paragraphs (C)1.-3. The duration shall be deemed continuous if the contract specifies nonzero procurement quantities on an annual or compliance period basis, or a combination of both, for the contract term. The contract start date may occur before, on, or after January 1, 2021.

1. If electricity products are procured under a long-term contract that has been amended to extend the end date of the contract, the electricity products procured under the amendment shall be classified as long-term, except as provided in paragraph (L).~~(J)~~

2. If electricity products are procured under a short-term contract that has been amended to extend the end date of the contract, the duration of the amended contract will be measured from the amendment execution date until the amendment end date. If the amended contract duration is at least 10 continuous years and the amended contract otherwise satisfies the requirements of a long-term contract, procurement from the amended contract shall be classified as long-term as of the month and year of the amendment execution date.

3. If electricity products are procured under a long-term contract that has been amended or terminated early such that the contract duration is no longer at least 10 continuous years, only the electricity products procured prior to the amendment execution date or termination notice may be classified as long-term.

(FD) Procurement from an ownership agreement shall be classified as long-term, unless the agreement specifies that the ownership duration is for a period of less than 10 continuous years. Procurement from an ownership agreement that specifies the ownership duration is for a period of fewer than 10 continuous years shall be classified as short-term.

(GE) Electricity products procured in excess of the quantity that the POU is obligated to procure under ~~is specified in~~ a long-term contract shall be classified as short-term.

~~(H)~~(F) Electricity products classified as Portfolio Content Category 2 under the requirements of section 3203 (b) shall count toward the long-term procurement requirement of this section 3204 (d) if the electricity products are procured under a long-term contract subject to paragraphs (A)-(C) or an ownership agreement subject to paragraph ~~(F)~~(E), even if the matching incremental electricity is not associated with a long-term contract or an ownership agreement.

~~(I)~~(G) Notwithstanding the requirements for underlying contracts in paragraphs (A)-(C), ~~(A) and (B)~~; electricity products classified as Portfolio Content Category 3 under the requirements of section 3203 (c) shall be classified as long-term, subject to the maximum limit for Portfolio Content Category 3 calculated in section 3204 (c), if the POU procures them through a contract that has a duration of at least 10 continuous years and the POU's own contract meets the requirements of paragraphs (A)-(C), or the POU procures the electricity products through its ownership or ownership agreement.

~~(J)~~(H) Electricity products that meet the criteria of section 3202 (a)(2) or historic carryover pursuant to section 3206 (a)(5) shall be classified as long-term without regard to the requirements of paragraphs (A)-~~(F)~~(E).

~~(K)~~(I) Excess procurement that was accrued in accordance with the requirements of section 3206 (a)(1)(C) or section 3206 (a)(1)(I)3. and applied to the RPS procurement target for a compliance period beginning on or after January 1, 2021, shall be classified as long-term without regard to the requirements of paragraphs (A)-~~(F)~~(E).

~~(L)~~(J) For purposes of this section 3204 (d), amendments, assignments, or modifications of long-term contracts or ownership agreements other than as specified in paragraph ~~(E)~~(B) will be treated as follows:

1. Amendments or modifications that increase the expected quantities or allocation of generation under the original contract or ownership agreement resulting from efficiency improvements or an expansion of the RPS-certified facility generating the procured electricity products shall be treated as part of the original long-term contract or ownership agreement.
2. Amendments or modifications that result in an increase in expected quantities or allocation of generation due to contractual changes other than those provided in paragraph ~~(L)~~(J)1., shall be treated as new agreements for the increase in expected quantities or allocation of generation, unless the increase was specified in the original long-term contract or ownership agreement.
3. Amendments or modifications that substitute a different eligible renewable energy resource shall be treated as new agreements for procurement of generation associated with the substitute eligible renewable energy resource unless the following conditions are satisfied:
 - i. The original long-term contract or ownership agreement specifies the ability to add or substitute eligible renewable energy resources.

ii. Any eligible renewable energy resources added to or substituted in the long-term contract or ownership agreement are owned by the seller or are subject to a long-term contract in its original term or an extension that has a remaining duration of at least 10 continuous years.

iii. Notwithstanding section 3204 (d)(2)(L)3.i-ii., replacement energy procured from another RPS-certified facility, as allowed by the original long-term contract, shall be considered part of the original long-term contract if the POU can submit information demonstrating that the need for replacement energy occurred because the RPS-certified facility specified in the original long-term contract ~~did not was unable to~~ perform as the contract required.

4. Amendments, assignments, or modifications of a jointly negotiated long-term contract or joint ownership agreement that reallocate electricity products among the identified joint parties shall be treated as part of the original long-term contract or ownership agreement.

5. 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 a long-term contract, provided the assignment maintains the commitment to procure the same type and quantity electricity products from the RPS-certified facility and the duration of the assignment is at least 10 years.

Section 3207 (c)

[...]

(2) RPS annual procurement information for the prior calendar year, including:

[...]

(F) Information [and supporting contract documentation](#) for each of the eligible renewable energy resources with which the POU has executed contracts or ownership agreements during the prior year, including but not limited to the contracted amount of MWh or the contracted percentage of the resource's total output, if applicable; resource fuel type; the execution date of the procurement contract or ownership agreement; the contract or ownership agreement start date; the duration of the procurement contract or ownership agreement in accordance with section 3204 (d); the anticipated portfolio content category classification(s) for the electricity products procured through the contract or ownership agreement; the anticipated long-term or short-term classification for the electricity products procured through the contract or ownership agreement; the seller's name, if the resource is not owned by the POU;-a summary of the resource names and identification numbers; [and for long-term contracts, information on how the contract meets the requirements in section 3204 \(d\), and identifies the location of the corresponding provisions in the contract.](#)

[1. Documentation demonstrating a long-term contract meets the requirements of section 3204 \(d\)\(2\)\(A\)-\(C\) may be submitted directly to the Commission by the third-party supplier or another party on the POU's behalf. The documentation may include an attestation by the POU that the contract with the RPS-certified facility\(ies\) meets the requirements of section 3204](#)

(d)(2)(A)-(C). An attestation may be submitted only if the POU possesses records to support the accuracy of the information for which it attests and the POU agrees to make such records available to the CEC upon request in the event of an audit or investigation.

(G) Documentation demonstrating the portfolio content category classification and long-term or short-term classification claimed for all of the POU's procured electricity products during the prior year. This documentation may include contract information, ~~if not previously submitted;~~ interconnection agreements;~~;~~ NERC e-Tag data;~~;~~ scheduling agreements;~~;~~ and firming and shaping agreements.

~~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.~~

(H) ~~An explanation~~ A description of any modifications to ~~long-term~~ contracts, ownership, or ownership agreements previously reviewed and evaluated by the Commission from which a POU intends to claim long-term procurement, including, but not limited to, changes to contract duration, procurement quantities, addition or substitution of resources or fuel, reallocation between parties of a jointly negotiated contract, and efficiency improvements or facility expansions that change procured generation. The POU's explanation shall include documentation supporting the modifications.

3207(c)(5) Review of long-term contracts

(A) Voluntary requests for early review

1. A POU may request the Executive Director of the Commission to review a contract to determine if the contract qualifies as a long-term contract pursuant to the requirements of section 3204 (d)(2)(A)-(C).

i. Requests shall be limited to contracts executed on or after July 1, 2020, which require additional information or justification to establish that the contracts meet the requirements of section 3204 (d)(2)(C). For purposes of this subparagraph, a contract includes an agreement that has been fully executed by the parties and an agreement that has been fully negotiated by the contracting parties but not formally approved by the governing board of the POU, as may be necessary.

ii. Requests shall be limited to contracts that were not previously reported to the Commission during the annual reporting process.

2. A complete request for review shall include the following:

i. A complete copy of the contract. The request shall also include any relevant upstream contract(s).

ii. A description of the contract terms corresponding to each of the long-term contract requirements and the associated page number(s) in the contract where the terms can be located.

iii. An explanation of how the POU has determined that the contract meets the requirements for characterization as long-term.

iv. Any other information necessary to assess the long-term nature of the contract.

3. The Executive Director may establish a voluntary review request form to facilitate the contract review process.

4. To the extent possible, the Executive Director, or his or her delegate, shall issue the determination within one hundred and eighty (180) days of submission of a complete request by the POU. Failure to meet the 180-day deadline does not constitute a determination that the contract qualifies as long-term.

5. The Executive Director, or his or her delegate, may request additional information from the POU, if necessary, to determine if the contract meets the requirements of section 3204 (d)(2)(A)-(C).

(B) Annual and compliance period review of long-term contract classification

1. Contracts reported to the Commission for reporting years ending on or prior to December 31, 2019, and reported to the Commission prior to December 31, 2020.

i. During the annual reporting for the reporting year ending December 31, 2020, each POU shall identify the long-term or short-term classification for all contracts previously reported to the Commission pursuant to section 3207 (c). Commission staff shall verify all contract claims specific to the long-term procurement requirements during the review process to verify procurement claims for the compliance period ending December 31, 2020.

2. Contracts reported to the Commission for reporting years after December 31, 2020

i. Following the POU submittal of new and amended contract information and supporting documentation during the annual report process specified in section 3207 (c), Commission staff will verify the information provided and review the supporting documentation submitted. To the extent possible, staff shall complete all reviews and notify the POU of the verification status within 365 days of the annual submittal of complete information and supporting documentation.

(C) A POU may request reconsideration of an Executive Director determination under paragraph (A) or a staff determination under paragraph (B) by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231 – 1232.5.

1. If the long-term contract determination was made solely by staff under paragraph (B), the petition for reconsideration shall be filed with and processed by the Executive Director in a manner consistent with section 1232.

2. If the long-term contract determination was made by the Executive Director, or his or her delegate, under paragraph (A) or in conjunction with staff under paragraph (B), the petition for reconsideration shall be filed with and processed by the Executive Director in a manner consistent with section 1232.5.

~~(A) Following the submittal of annual reports specified in section 3207 (c), Commission staff shall review each contract identified as long-term with the supporting information submitted in the annual report to determine if the contract provides a long-term~~

~~procurement commitment as required by section 3204 (d)(2)(A). The review will consider, but is not limited to, the following:~~

~~1. Consistency of quantities and deliveries specified in the contract. The POU may be required to explain contract provisions specifying procurement quantities that vary over the term of the contract and provide additional justification demonstrating that the contract provides a long-term procurement commitment consistent with the purposes of the long-term procurement requirement.~~

~~2. Completeness and specificity of procurement terms. The POU may be required to provide additional explanation for any quantity, term or delivery provisions that are not clearly defined or are subject to renegotiation prior to the end of the contract term.~~

~~3. Identification of RPS-certified facilities supplying electricity products in the contract.~~

~~4. Anticipated portfolio content category classification or designation as meeting the criteria of section 3202 (a)(2) for electricity products procured through the contract.~~

~~(B) Commission staff may request additional information and documentation as needed to complete its review.~~

~~(C) Upon completion of its review, Commission staff shall notify the POU of its determination whether the contract meets the definition of a long-term contract based on the submitted information.~~

~~(D) A contract that Commission staff determines is not consistent with the definition of a long-term contract shall be classified as a short-term contract for purposes of assessing a POU's compliance with the long-term procurement requirement.~~

~~(E) A POU may request the Commission to reconsider staff's determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231—1232.5.~~

~~(F) A POU's procurement claims for electricity products procured through a contract that is determined to meet the definition of a long-term contract shall be subject to verification by the Commission.~~

[...]

~~(o) In addition to applicable reporting requirements in section 3207 (a) (d), by April 1, 2021, a POU shall notify the Commission of any contracts, ownership, or ownership agreements reported for previous years in accordance with section 3207 (c) and from which the POU intends to claim long-term procurement to satisfy the requirements of section 3204 (d) for the compliance period beginning January 1, 2021. If needed by Commission staff to make a contract classification determination, a POU may be required to submit additional documentation to show a contract, ownership, or ownership agreement meets the requirements to be classified as long-term.~~