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Comments on Implementation of the RPS Long-Term Procurement Requirement

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: November 5, 2020 Lead
Commissioner
Workshop - Implementation of
the RPS Long-Term
Procurement Requirement

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) IN
RESPONSE TO THE CALIFORNIA ENERGY COMMISSION'S (CEC) REQUEST FOR PUBLIC
COMMENTS ON AMENDMENTS TO REGULATIONS SPECIFYING ENFORCEMENT PROCEDURES
FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC
UTILITIES**

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Dated: November 12, 2020

INTRODUCTION

Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments to the California Energy Commission (Commission) regarding the November 5, 2020 Lead Commissioner Workshop (Workshop) on Proposed Implementation of Renewable Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities (POUs). LADWP also acknowledges and supports the proposal by California Municipal Utilities Association (CMUA), Northern California Power Agency (NCPA), Southern California Public Power Authority (SCPPA), and The Utility Reform Network (TURN), herein referred to as the Joint Stakeholder Proposal, submitted on October 20, 2020, and the subsequent comments by CMUA, November 2020.

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 its customers and the communities it serves safe, reliable, and cost-effective water and power in a customer-focused and environmentally responsible manner.

SPECIFIC COMMENTS

LADWP appreciates Commission staff's effort involved in considering LADWP's previously submitted comments and the suggestions provided in the Joint Stakeholder Proposal. As a POU, LADWP is committed to advancing and expanding its clean energy portfolio to meet to the goals of the RPS program, while remaining sensitive to customer impacts. With that in mind, LADWP is supportive of the majority of the changes proposed by Commission staff in the Key Topics Guide as discussed during the Workshop, but proposes clarifications and revisions on certain areas for Commission staff's consideration.

I. Section 3204 – RPS PROCUREMENT REQUIREMENTS

a. Treatment of Contracts Executed Prior to July 1, 2020 [Section 3204 (d)(2)(C)]

LADWP strongly supports the treatment of contracts executed prior to July 1, 2020 as proposed in Section 3204 (d)(2)(C). Given that LADWP and other POU's have already executed numerous renewable energy contracts to meet RPS program goals prior to the establishment of the long-term procurement requirements, it is essential that existing contracts to be assessed only on the duration of the contract to determine their long-term treatment. This ensures that these existing contracts are not unnecessarily devalued and provides regulatory certainty for a POU's existing renewable energy portfolio. Therefore, LADWP strongly supports Commission staff's proposal to only apply the more stringent long-term procurement requirements to contracts executed on or after July 1, 2020 as specified in Section 3204 (d)(2)(C) of the Key Topics Guide.

b. Jointly-Negotiated Contracts [Section 3204 (d)(2)(B)]

LADWP supports the proposed revisions to Section 3204 (d)(2)(B) that allow for flexibility among POU's with jointly-negotiated contracts. Jointly negotiated contracts provide several benefits to POU's and the customers they serve. Some benefits include providing opportunities for additional renewable procurements that may otherwise be financially infeasible, reduce the procurement cost on POU's, and ultimately allow POU's to prudently manage their increasing renewables portfolios. LADWP supports the proposed revisions to Section 3204 (d)(2)(B) because it provides further flexibility and allows POU's to continue their longstanding procurement processes.

c. Reasonably Consistent Procurement Quantities [Section 3204 (d)(2)(C)(1)iv]

LADWP supports the conditions specified in Section 3204 (d)(2)(C)(1)(iv)I-VII in order to account for contract structures that support a stable renewable energy future that fully aligns with the intent of the long-term procurement requirements. Specifically, a contract that is 10 years or more with certain year(s) meeting one of the conditions in Section 3204 (d)(2)(C)(1)(iv)I-VII (such as lack of transmission for one of those years) still represents a POU's financial commitment towards procuring long-term renewable energy and does not negatively impact market stability. It is critical to provide POU's with some level of certainty that their significant investments are not at risk of being unexpectedly devalued. Therefore, it is vital to include the brief list of conditions, as proposed in the Section 3204 (d)(2)(C)(1)(iv)I-VII, that may allow a contract to

satisfy the reasonably consistent provision and still be considered long-term while not strictly meeting the quantity threshold.

However, the inclusion of the new additional requirement, as proposed in Section 3204 (d)(2)(C)(1) iv, to demonstrate that the contract supports long-term planning and market stability, improvements to existing renewable resources, or the development of new renewable resources adds an ambiguous layer to the reasonably consistent provision and renders the conditions specified in Section 3204 (d)(2)(C)(1)(iv)I-VII less effective.

In order to provide some level of certainty that a contract will qualify as long-term by fulfilling the reasonably consistent provision, LADWP strongly recommend reverting to the October 20, 2020 filed Joint Stakeholder Proposal or at a minimum considering the revision shown below:

iv. Notwithstanding subparagraphs i.-ii., reasonably consistent contracted-for quantities include procurement quantities that vary by more than 33 [or 40] percent, or procurement quantities specified on a compliance period basis, if the POU demonstrates that the variation beyond [33 or 40] percent is associated with one of the conditions in subparagraphs I through VII. In cases where a contract does not receive long-term classification due to a contract deviation not meeting one of the conditions, the POU may submit information to prove 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:~~

d. Excess Energy [Section 3204 (d)(2)(G)]

LADWP recommends revisions to Section 3204 (d)(2)(G) regarding the treatment of excess energy. LADWP previously submitted comments on the excess energy provision in response to Commission staff's 45-day, first 15-day, and second 15-day language, and would like to reiterate those comments, as well as provide additional solutions for Commission staff's consideration.

For a majority of LADWP's existing contracts, LADWP is contractually obligated to take delivery of all energy generated by the contracted renewable energy resource regardless of annual estimated generation. As shared in previous LADWP comments, it is important to note that forecasts related to "estimated" or "maximum" generation are typically included in long-term contracts for the sole purpose of allowing developers to plan expected revenues and to assist buyers in securing financing.

LADWP's existing contracts do not contemplate the Commission staff's new "obligated to procure" criteria which introduces significant uncertainty and severe and undue penalties for renewable resources generating above expectations.

Furthermore, knowing that renewable energy resources are variable and conditions or assumptions may change over a long-term period, buyers and sellers may define terms such as "excess generation" in some contracts to serve as a threshold beyond which the energy delivered is purchased at agreed rates. The estimated or maximum generation forecasts in contracts are necessary to determine defined pricing terms that depend on the associated resource's level of generation.

As a result, LADWP recommends the following changes:

- Amend Section 3204 (d)(2)(G) as follows to allow POUs to maximize the amount of renewable energy and RECs they are able to procure.

(G) Electricity products procured ~~in excess of the~~ beyond the "not-to-exceed" amount ~~quantity that the POU is obligated to procure under specified in~~ a long-term contract shall be classified as short-term.

- Alternatively, modify Section 3204 (d)(2)(G) to apply only to contracts executed on or after July 1, 2020 as shown below. This approach is consistent with the grandfathering provision for contracts executed prior to July 1, 2020 that assesses the long-term qualification only on the duration of the contract.

(G) For contracts executed on or after July 1, 2020, electricity products procured in excess of the quantity that the POU is obligated to procure under a long-term contract shall be classified as short-term.

Without either of the revisions proposed above, Section 3204(d)(2)(G) could inadvertently devalue contracts that have exceeded expectations.

e. Replacement Energy [Section 3204 (d)(2)(L)(3)iii]

LADWP supports the proposed modification in Section 3204 (d)(2)(L)(3)iii regarding the need for replacement energy because a facility was not able to meet its production requirements. Replacement energy is a provision in many of LADWP's contracts that allows a seller to compensate for a shortfall in energy or RECs in order to fulfill its contract obligations. In return, LADWP is assured that it will receive the committed amount of energy, including equivalent environmental attributes, further ensuring reliability and planning stability. The proposed requirement to demonstrate that the facility did not perform to meet its obligations. provides clarity over demonstrating that a facility was "unable to perform". Therefore, LADWP supports Commission staff's proposed modification to Section 3204(d)(2)(L)(3)iii.

II. SECTION 3207 – COMPLIANCE REPORTING FOR POU's

a. Early Review [Section 3207(c)(5)]

LADWP appreciates Commission staff's proposed voluntary early review process in Section 3207(c)(5). LADWP also recommends staff to consider ways to expedite the review process. LADWP applauds Commission staff's proactive proposal to implement a voluntary early review process that complements the annual and compliance period review of long-term contract classification. The voluntary early review process will provide further certainty to POU's who have completed negotiations and need to provide regulatory assurance to their governing bodies that the characterization of these contracts meeting the long-term requirement is accurate. In addition, the early review may be instrumental in identifying short-term contracts that a POU may have otherwise relied on as long-term contracts.

To ensure the effectiveness of the Commission staff's early review process and provide further clarity the obligations of POU's, LADWP strongly recommends

that Commission staff to consider and provide the following tools and guidelines in order to simplify the review process.

- **A checklist.** This checklist would include the minimum criteria a POU's long-term contract is required to meet, and if possible, examples of such provisions.
- **A template or guide.** Similar to the Federal government's Reliability Standard Audit Worksheet (RSAW), LADWP recommends for Commission staff to develop a template for long-term contract clauses that are already preapproved by Commission staff to ensure that POUs meet and exceed the Commission's requirements for long-term contracts.

These and other potential solutions may address a recurring concern that is shared among the Joint Stakeholders and LADWP, which is the need to have expedited review and determination from Commission staff. LADWP recommends the timeline for review specified in Section 3207(c)(5)(A)(2)4 should be reduced from 180 days to a maximum of 60 days to align with many POUs approval processes. Simplifying the review process should allow for a much shorter timeline.

LADWP's proposed revision to Section 3207(c)(5)(A)(2)4 is shown below.

4. ~~To the extent possible, T~~he Executive Director, or his or her delegate, shall issue the determination within ~~one hundred and eighty (180)~~ sixty (60) days of submission of a complete request by the POU. Failure to meet the ~~180-60-day~~ deadline does not constitute a determination that the contract qualifies as long-term.

b. Contracts Eligible for Voluntary Early Review [Section 3207(c)(5)(A)(1)i]

As a POU governed by a City Charter and City Administrative Code that require the review and approval of Power Purchasing Agreements both by the Water and Power Board of Commissioners and the City of Los Angeles City Council over a period of several months, LADWP recommends the revision of Section 3207(c)(5)(A)(1)i to ensure it is able to submit fully negotiated contracts to Commission's staff for early review prior to approval by the City of Los Angeles.

i. Requests shall be limited to contracts executed on or after July 1, 2020, which require additional information or justification to establish that the

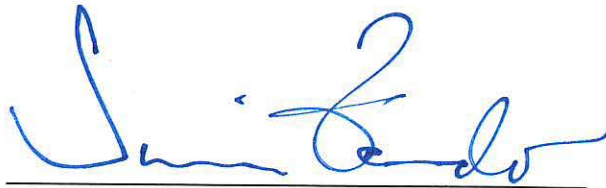
contracts meet the requirements of section 3204 (d)(2)(C). For purposes of this subparagraph, a contract includes an agreement that has been fully executed by the parties ~~and~~ or an agreement that has been fully negotiated by the contracting parties but not formally approved by the governing board of the POU, as may be necessary.

CONCLUSION

LADWP appreciates the opportunity to submit comments following the November 5, 2020 Lead Commissioner Workshop on the proposed implementation of the RPS Long-Term Procurement Requirement. LADWP looks forward to continued collaboration with Commission staff 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: November 12, 2020

Respectfully Submitted,



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