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NCPA Comments on RPS Key Topics Guide and Workshop

NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON KEY TOPICS GUIDE
AND LEAD COMMISSIONER WORKSHOP

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

**NORTHERN CALIFORNIA POWER AGENCY COMMENTS
ON KEY TOPICS GUIDE AND LEAD COMMISSIONER WORKSHOP**

The Northern California Power Agency (NCPA)¹ offers these comments to the California Energy Commission (CEC or Commission) on the *Key Topics Guide: Proposed Implementation of RPS Long-Term Procurement Requirement in RPS POU Regulations* (Key Topics Guide), dated October 30, 2020, and the November 5, 2020 *Lead Commissioner Workshop on Proposed Implementation of Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities* (November 5 Workshop).

I. INTRODUCTION

NCPA appreciates the opportunity to provide these comments on the Key Topics Guide and November 5 Workshop. NCPA also wishes to thank the Commission for working with stakeholders and in particular for recognizing the concerns that were raised by the stakeholders regarding the scope of changes that were proposed in the second 15-day changes. In addition to these comments, NCPA is a signatory to the Comments of the Joint Publicly Owned Utilities (Joint POU Comments),² and supports the comments and proposed refinements to the Illustrative Draft Language set forth therein. In these comments, NCPA offers further feedback regarding specific provisions on the Illustrative Draft Language.

As set many stakeholders pointed out, the proposed provisions in the Second 15-day changes would have allowed the Commission to review – and pass judgment on the sufficiency of – a long-term agreement by looking at provisions beyond the actual duration of the agreement without giving any guidance on what is acceptable or how that would be determined. The statutory requirements of Public Utilities Code section 399.13(b) focuses exclusively on the *duration* of a contract or ownership agreement, providing, in pertinent part that the procurement will come from “contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” Consistent with the express statutory

¹ NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

² The Joint POU's include the California Municipal Utilities Association (CMUA), NCPA, and Southern California Public Power Authority (SCPPA).

language, NCPA believes that in determining whether a contract meets the requirements of PUC section 399.13(b), the Commission’s focus should be solely on the duration of the contract. As such, all long-term commitments for 10 or more years should be recognized as meeting the statutory mandate and be eligible to meet the long-term requirement (LTR). NCPA understands, however, that some stakeholders feel that long-term commitments must also include minimum requirements regarding contract pricing, procurement quantities, and termination provisions.

While NCPA believes that these considerations are outside of the statutory mandate, in the interest of cooperation, NCPA has participated in ongoing discussions with other POU’s and The Utility Reform Network (TURN) at the Commission’s request. What came out of that process was a Joint Stakeholder Proposal.³ The Joint Stakeholder Proposal took into account a wide range of factors that recognized the need for POU’s to have both (1) the flexibility to negotiate renewable procurement contracts that meet their individual needs and (2) certainty regarding the statutory and regulatory requirements to ensure that their contracts are LTR-eligible. The Joint Stakeholder Proposal also acknowledged that outside factors like statewide long-term planning and market stability are not part of an individual contract negotiation, not recognized in the enabling legislation as consistent with the purpose of section 399.13(b), and therefore, not an appropriate consideration for determining whether an agreement qualifies to meet the LTR.

NCPA is pleased that Staff’s Illustrative Draft Language reflected in the Key Issues document reflects a large number of the provisions that were set forth in the Joint Stakeholder Proposal. In particular, NCPA **supports recognition** of the following:

- Contracts entered into on or before July 1, 2020 that are for a duration of 10 years or longer are deemed long-term eligible;
- Renewals or amendments to long-term contracts with the Federal government for hydroelectric resources should count as long-term commitments eligible to meet the LTR;
- Long-term contracts with variable delivery quantities entered into by small POU’s not subject to the provisions of Public Utilities Code section 9621 are not subject to the restrictions on quantity variations.

While the Commission has suggested several modifications to the proposal set forth in the Second 15-day language, NCPA urges staff to further revise the proposed text consistent with the recommendations in the Joint POU comments, and as set forth herein. In particular, the proposed regulations should:

- not include any requirements to demonstrate that their contracts are “consistent with the purpose of the long-term procurement requirements,” since such a demonstration would be outside the statutory mandate or officially stated legislative intent;

³ Joint Stakeholder Proposal on Implementation of Long-Term Procurement Requirement, dated October 20, 2020.

- modify the review period for proposed long-term contracts to provide an approval timeline that is meaningful and does not adversely impact the ability of a POU to negotiate a favorable long-term contract.

II. PROVISIONS IN THE ILLUSTRATIVE DRAFT LANGUAGE THAT SHOULD BE REFLECTED IN FURTHER 15-DAY CHANGES

A. Contracts Entered into by July 1, 2020 are Properly Deemed Long-Term Eligible

NCPA supports staff's proposal to recognize that contracts entered into on or before July 1, 2020 for a duration of 10 or more years are deemed eligible for the LTR. As set forth in the October Joint Stakeholder Proposal, it is critically important that POUs that have already entered into long-term contracts that meet the statutory requirement of a duration of 10 years or longer be deemed long-term eligible and that those investments not be compromised. As set forth in the Joint Stakeholder Proposal,⁴ POUs relied in good faith on the plain meaning of the statute in negotiating and entering into long-term commitments that best meet the needs of their individual procurement, including pricing and delivery obligations. It is appropriate for the Commission to recognize these investments and for all such long-term contracts to be deemed LTR-eligible. NCPA urges the Commission to issue 15-day changes that include this provision.

B. Renewable Energy Contracts with the Federal Government are Properly Designated Long-Term

The suggested revisions to the LTR provisions set forth in the Illustrative Draft Language would recognize the unique contract variations that may come out of the contracts between the POUs and federal government related to Western Area Power Administration (WAPA) and Central Valley contracts. NCPA strongly supports staff's recommendation to update the regulation to recognize 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. As set forth in the Joint Stakeholder Proposal,⁵ PUC section 399.30(k) expressly recognizes POU long-term commitments in federal power contracts; this includes any agreement in effect on January 1, 2015, between a local publicly owned electric utility and WAPA or the federal government as part of the federal Central Valley Project.⁶ While the majority of these contracts are large hydroelectric that is not RPS-eligible, some of the energy does come from RPS-eligible small hydro. The contract extensions recognized in PUC 399.30(k) include provisions that allow for termination or quantity adjustments upon certain actions by WAPA and the Federal Regulatory Energy Commission. Even with these provisions, the contract amendments are clearly long-term commitments that meet the state's objectives, and as such NCPA fully supports the Commission's recommendation these 30-year renewals or extensions of WAPA contracts

⁴ Joint Stakeholder Proposal, p. 3.

⁵ Joint Stakeholder Proposal, p. 5.

⁶ These federal contracts are more fully described in the Initial Statement of Reasons, p. 24.

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.” NCPA believes that the proposed revisions reflected in Section 3204(d)(2)(B)(4) of the Illustrative Draft Language should be included in the third 15-day changes.

C. Exclusion of Small POU Contracts from Procurement Variation Requirements is Appropriate

The Joint Stakeholders discussed the need for smaller POU's to have flexibility to enter into long-term contracts that may not include the same level of variability in annual procurement quantities as contracts entered into by larger utilities. Option A of the Illustrative Draft Language reflects this compromise, and NCPA encourages the Commission to adopt it. The 33% contract variability threshold for reasonably consistent contracted-for quantities is properly not applied to POU's not subject to the provisions of Public Utilities Code section 9621.

In this section, the Commission proposed that contracts with variations in procurement quantities of greater than 33% each year would require additional documentation and scrutiny before being long-term eligible, and that POU's that are not required to file IRPs not be subject to that additional scrutiny. NCPA supports this proposal because the need for flexibility in long-term procurement is critically important to small POU's, both in terms of meeting the energy needs of their customers and protecting their communities from significant levels of potential stranded investment. Small utilities need a higher threshold of contract procurement variability due to the significant impact that variations in load from just one customer may have on their procurement. This need for flexibility is particularly important for small POU's that have a single customer that accounts for a substantial portion of the utility's retail sales. In the absence of such an accommodation, communities that are served by such utilities will be at great risk for absorbing the financial impacts of a stranded long-term contract if the customer simply chooses to leave the utility service territory.⁷

Option A makes it possible for smaller POU's to retain the flexibility to enter into contracts of 10 years or longer that may have variations in load deliveries that are outside of what would be deemed acceptable parameters for larger entities. NCPA supports the provisions of Option A that would provide this necessary flexibility and urges the Commission to include this provision in further proposed amendments.

III. PROVISIONS IN THE ILLUSTRATIVE DRAFT LANGUAGE THAT NEED FURTHER REFINEMENTS

Proposed amendments set forth in the *Second 15-day Language* would have given the Commission authority to review long-term contract eligibility by assessing factors other than the

⁷ A specific example of the potential impacts was highlighted during the workshop by representatives from the City of Shasta Lake, a member of NCPA.

duration of the agreement, without any parameters or definitions to guide the Commission’s review of the agreements. The staff recommendations set forth in the Key Topics Guide go far toward addressing the concerns raised by stakeholders, but still require further refinements.

A. Arbitrary Demonstrations Outside the Statutory Mandates Should Not Be Included

NCPA remains concerned that the proposed text, although modified, continues to include extra-statutory provisions that leave considerable discretion to Commission staff, which subjective application undermines regulatory certainty, comprising the ability of POUs to successfully and confidently negotiate long-term contracts that meet their specific energy procurement needs. NCPA opposes the inclusion of language that would require a POU to demonstrate, as condition of determining whether the contract has reasonably consistent contracted-for quantities, that the procurement is “consistent with the purpose 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.” There is nothing in the plain text of 399.13(b) that states any of these elements are “consistent with the purpose of the long-term procurement requirement.” A determination of whether a contract meets any of these elements is not only outside the scope of the legislation, but totally subjective, and this type of subjective review undermines the carefully crafted provisions intended to provide regulatory certainty.

The Joint Stakeholder Proposal intentionally and purposefully removed references to any demonstration related to consistency with the purpose of the long-term procurement requirement (as none is stated in the legislation) as well as references to demonstrations related to “supporting long-term planning” (for whom?) and “market stability.” Neither of these factors are objectively determined, nor required by the statute. Further, POUs should not have to demonstrate that their long-term investments support “the development of new eligible renewable energy resources or improvements to existing eligible renewable energy resources,” for purposes of meeting the reasonably consistent requirements, as long as the POU demonstrates any of the other enumerated factors. This requirement is not only inconsistent with the Joint Stakeholder Proposal, but adds an entirely new requirement to the regulations that is not needed.⁸ There is nothing in the authorizing legislation that would require a POU’s long-term contracts to meet any of these criteria: they are not relevant to determining whether the agreement is for a duration of at least 10 years or whether the procurement quantities are reasonably consistent. NCPA urges the Commission to issue proposed amendments that do not include this language.

B. Expedited Review for Contracts Executed After July 1, 2020 is Necessary

NCPA appreciates the inclusion of section 3207(c)(5)(1) that allows for voluntary requests for early review. However, if the regulations are going to provide a meaningful

⁸ NCPA notes the same concerns with this proposed text that was present in the Second 15-day language occur in the present case.

opportunity for an up-front review of a POU's proposed long-term contract, that review process needs to occur within a reasonable timeframe. As more fully set forth in the Joint POU Comments, long-term contracts represent substantial investments and comprise a significant portion of a POU's procurement portfolio, which in some instances necessitates additional assurances regarding the LTR-eligibility of the contract. As proposed, the 6-month (180 days) review would not be workable, and would complicate or jeopardize the contracting process. While NCPA appreciates Commission concerns about agency staffing and timing constraints, voluntary review can only be a useful tool if the Commission can commit to providing the regulatory certainty the POU is seeking within a reasonable period of time. Failure to do so would jeopardize contract negotiations, or otherwise adversely impact the ability of the POU to reach the most favorable terms for its ratepayer customers from the counterparties. As set forth in the Joint Stakeholder Proposal,⁹ a sixty (60) day turn-around period for reviewing these pending contracts would provide the certainty needed for POU's to complete the negotiations and execute the agreements. The POU's acknowledge that this review would likely be necessary in instances where the contacts do not clearly fall into one of the enumerated categories set forth in the regulation. Subjective regulatory provisions make it more difficult for POU's to negotiate with certainty, and would likely require POU's to seek out voluntary early review.

IV. CONCLUSION

As noted herein, and in the Joint Publicly Owned Utility Comments of which NCPA is a signatory, NCPA urges the Commission to adopt the proposed changes reflected in the Joint Stakeholder Proposal and the modifications to the staff recommendations set forth in the Joint POU Comments and herein.

Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Dated November 13, 2020

Respectfully submitted,



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⁹ Joint Stakeholder Proposal, pp. 9-10.