

DOCKETED

Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	235971
Document Title:	Northern California Power Agency Comments - on Third 15-day Language
Description:	N/A
Filer:	System
Organization:	Northern California Power Agency
Submitter Role:	Public Agency
Submission Date:	12/16/2020 4:01:40 PM
Docketed Date:	12/16/2020

*Comment Received From: Northern California Power Agency
Submitted On: 12/16/2020
Docket Number: 16-RPS-03*

NCPA Comments on Third 15-day Language

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of:
Amendments to Regulations Specifying
Enforcement Procedures for the Renewables
Portfolio Standard for Local Publicly Owned
Electric Utilities**

Docket No. 16-RPS-03

NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON THIRD 15-DAY LANGUAGE

The Northern California Power Agency (NCPA)¹ appreciates the opportunity to provide these comments to the California Energy Commission (CEC or Commission) on the *Third 15-Day Language* (3rd 15-Day Changes), issued December 1, 2020, to the *Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (Proposed Amendments).

I. INTRODUCTION

In the 3rd 15-Day Changes, the Commission has addressed many of the outstanding issues that were raised by stakeholders regarding the Proposed Amendments, and in particular, concerns regarding previously suggested changes reflected in the 2nd 15-Day Changes.² NCPA appreciates the Commission's recognition of these critically important concerns, and willingness to work with stakeholders to ensure that the long-term procurement requirement (LTR) of the renewables portfolio standard (RPS) is implemented in a way that does not hinder or otherwise constrain the ability of publicly owned utilities (POUs) to enter into long-term agreements for renewable energy products that meet their specific and unique procurement needs. In these comments, NCPA offers additional feedback on some of these critically important long-term procurement contracting issues. NCPA is a signatory to the Comments of the Joint Publicly Owned Utilities (submitted on December 16, 2020), and the previously filed Joint POU comments;³ NCPA supports the comments set forth therein and incorporates them by reference.⁴

On its face, Public Utilities Code (PUC) section 399.13(b), which created the LTR, exclusively addresses the *duration* of a contract or ownership agreement. The statute provides in pertinent part that “[b]eginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period

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 Second 15-Day Language, issued August 18, 2020.

³ Comments of the Joint Publicly Owned Utilities on the Key Topics Guide (Joint POU November 13 Comments); the Joint POUs include the California Municipal Utilities Association (CMUA), NCPA, and Southern California Public Power Authority (SCPPA).

⁴ NCPA incorporates by reference the comments submitted on November 13 in response to the Commission's Key Issues Paper and corresponding Illustrative Draft Language, which addressed many of the substantive matters and proposed changes reflected in the 3rd 15-Day Changes (NCPA November 13 Comments).

shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” As such, NCPA believes that any evaluation of a POU long-term contract for LTR eligibility should likewise focus exclusively on the duration of the contract. Under such an analysis, all long-term commitments for 10 or more years would be recognized as meeting the statutory mandate and be eligible to meet the LTR, irrespective of other contract provisions, including delivery, pricing, and termination. NCPA recognizes that despite this, some stakeholders have expressed concerns with this literal interpretation of the statutory provisions, and believe that the Commission’s POU RPS regulations implementing the LTR should also reflect certain other minimum procurement requirements. While NCPA believes that these considerations are outside of the statutory mandate, in light of the concerns raised by other stakeholders, NCPA believes that the proposed 3rd 15-Day Changes capture the minimum essential elements of proposed long-term contracts reflected in the Joint Stakeholder Proposal developed collaboratively by the POU’s and The Utility Reform Network (TURN).⁵

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. NCPA believes that the suggested regulatory amendments set forth in the 3rd 15-Day Changes substantially reflect these key principles.

II. COMMENTS ON 3RD 15-DAY CHANGES

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

Section 3204(d)(2)(C) of the 3rd 15-Day Changes should be adopted. This provision properly recognizes that contracts entered into on or before July 1, 2020 for a duration of 10 or more years are deemed eligible to meet the LTR. Since the legislature passed Senate Bill 350 (Stats. 2015, ch. 547) establishing the new long-term procurement requirement in 2015, POU’s have been actively incorporating additional long-term procurement into their portfolios, and have done so guided by the statutory language that contracts must be for a duration of 10 years or more to meet this requirement. As such, it is critically important that POU’s that have already entered into long-term contracts that meet the statutory mandate of a duration of 10 years or longer be deemed long-term eligible; doing otherwise would compromise those existing investments. Notwithstanding concerns raised by some stakeholders about the need for additional parameters for long-term contracts to meet the LTR mandate, the Joint Stakeholder Proposal⁶ recognized the need for this “grandfathering” provision for pre-July 1, 2020 contracts. This is necessary in light of the POU’s’ good faith reliance on the plain meaning of the statute in negotiating and entering into long-term commitments that best meet their individual procurement needs, 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.

⁵ Joint Stakeholder Proposal on Implementation of Long-Term Procurement Requirement, dated October 20, 2020.

⁶ Joint Stakeholder Proposal, p. 3.

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

The unique nature of the procurement contracts between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project are properly addressed in Section 3204(d)(2)(B)4 of the 3rd 15-Day Changes and should be adopted. The proposed language in the 3rd 15-Day Changes is consistent with PUC section 399.30(k), and reflects the fact that these contracts are long-term commitments that meet the state’s renewable energy objectives. NCPA strongly supports this proposed amendment, which is also consistent with the Joint Stakeholder Proposal.⁷ The Commission should adopt the proposed revisions reflected in Section 3204(d)(2)(B)4.

C. Restrictions on Reasonably Consistent Contracted-For Quantities Properly Apply to POUs Subject to the Provisions of PUC Section 9621

NCPA supports the Commission’s recognition that restrictions on procurement quantity variations can be inherently more challenging for smaller POUs. As such, the provisions of proposed section 3204(d)(2)(C)1 of the 3rd 15-Day Changes that apply the reasonably consistent contracted-for quantity provisions only to POUs that are subject to the provisions of PUC section 9621 should be adopted. While the RPS statute does not create specific procurement requirements based on the size of the utility, NCPA believes that the Commission has properly recognized that such a distinction is needed in the instances where the Commission intends to apply long-term contract conditions that go beyond just the statutorily mandated 10-year requirement. This is necessary for several reasons. For example, many of the smaller POUs, including NCPA member utilities, engage in long-term procurement through a joint powers authority (JPA) or other joint agreements. This allows them to leverage the procurement needs of sister agencies to get favorable contract terms that many not otherwise be available for small agencies due to their varying load size or customer dynamics. However, these joint agreements are not always an option. In these instances, the contract terms can vary, and often include provisions that allow fluctuations and significant variations in delivery quantities over the term of the agreement depending on the specific needs of the POU’s load. Moving forward, there is every reason to believe that this flexibility will be even more important as the POUs enter into additional long-term agreements to meet the LTR. This is especially relevant right now, in the midst of such uncertainty regarding commercial and industrial load that can comprise a disproportionate part of a smaller POU’s total retail load.

Concerns regarding the ability of smaller POUs to meet strict contracted-for quantity requirements were raised in NCPA comments submitted on November 13, as well as in the comments filed by other stakeholders, including TURN. In its comments, TURN recognized “that there are some unique challenges facing very small POUs especially those with a significant proportion of retail sales attributable to a few large customers.”⁸ NCPA has several member organizations that fit this characterization. We offer two such examples that have vastly different profiles but similar needs.

⁷ Joint Stakeholder Proposal, p. 5; *see also* NCPA November 13 Comments, p. 3.

⁸ Comments of The Utility Reform Network on the Proposed Implementation of Long-Term Contracting Requirements for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, dated November 13, 2020; pp. 2-3.

The first is the Port of Oakland. The Port of Oakland is the third largest shipping port in California, but electric utility loads are small relative to most other utilities in the state: peak loads are approximately 20 MW and average loads are roughly 40% of the peak. Five customers account for roughly 80% of total retail sales, with one responsible for half of the Port's total load. As the Port is rapidly electrifying operations across its entire footprint, and as such committed to the use of renewables to meet power needs, its annual load is extremely vulnerable to disruptions from any of these five customers: such as instances where shipping lines may face financial difficulties, where air travel suddenly slows, or where electrification of heavy freight vehicles takes longer than expected to deploy. In each of these instances, the Port's load can significantly fluctuate; this requires the Port to contract for renewable resources with these externalities in mind, which can be especially challenging when looking to make long-term commitments.

The City of Shasta Lake faces similar challenges in long-term contracting, but under very different circumstances. As was noted during the November 5 workshop, Shasta Lake is a small community with a population of about 10,000. Census data shows that Shasta Lake has a higher degree of poverty and lower income (both per capita and per household) than the statewide average. The city is known as a retirement community, with a large part of the population over the age of 65, making them unable to absorb rate increases on their fixed incomes. While the majority of the city's customers are residential, the utility has a very small number of customers that represent "a super majority" of the city's retail sales. A loss of any one of these customers – or even a significant change in operations – could be financially devastating for the city and its remaining customers.⁹

In the absence of such a recognition, communities that are served by such utilities will be at great risk for absorbing the financial impacts of a stranded long-term contract if a customer that is responsible for a significant portion of a utility's load simply chooses to leave the utility service territory or alter their operations. Without question, the RPS program was never intended to place the possibility of a severe financial liability on the shoulders of non-IRP utilities, as a separate criteria above and beyond the statutory objectives of PUC Section 399.13(b). NCPA believes that it is reasonable to make a distinction between the size of the POU under these circumstances, consistent with the statutory distinction recognized in Public Utilities Code section 9621. The Commission should adopt the proposed language in section 3204(d)(2)(C)1 of the 3rd 15-Day Changes.

D. Reasonably Consistent Contracted-For Quantities Provisions are Appropriate

In light of the Commission's determination that procurement eligible to meet the LTR must not only be for a duration of 10 years or more, but also meet specific annual procurement quantity requirements, the Commission should adopt the 33% threshold for reasonably consistent contracted-for quantities reflected in section 3204(d)(2)(C)1.i of the 3rd 15-Day Changes. The Commission should also adopt the provisions in the 3rd 15-Day Changes which recognizes that specific types of contracts are deemed consistent with the 33% variation threshold if they are associated with contract provisions set forth in section 3204(d)(2)(C)1.iv.

⁹ See also November 5 Workshop Transcript, oral comments of James Takehara, City of Shasta Lake, Electric Utility Director, pp. 63-65.

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

NCPA has been among the parties, like TURN, that support the inclusion of a provision that allows POU's to have their prospective long-term contracts reviewed by the Commission to ensure the Commission agrees that the proposed procurement meets the LTR criteria.¹⁰ In light of the fact that the Regulations will include requirements that address more than just the duration of these agreements, it is important for the public agencies that have significant investments in these renewable resources to be able to ensure that the procurement would count towards the 65% mandate. For these reasons, NCPA supports the inclusion of section 3207(c)(5)(A) in the 3rd 15-Day Changes, and urges the Commission to adopt this provision.

As the procurement needs of each POU evolves to address the specific circumstances they may face, new or unique contract terms may be necessary to meet those needs; these terms may include provisions that have not previously been considered. This necessitates a process for meaningful, voluntary review of contracts that do not fall squarely within the parameters of what has already been addressed in the regulation. The long-term contracts will represent substantial investments of public funds and comprise a significant portion of a POU's procurement portfolio; as such, in some instances, risk-adverse POU's will require additional assurances regarding the LTR-eligibility of the contract. NCPA appreciates the inclusion of a process that enables Commission pre-review of a proposed agreement in order to provide the POU with the regulatory certainty within a reasonable period of time. Failure to include such a provision – or to provide timely review under the provision – could 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.

While NCPA had joined in the chorus of voices that advocated for a Commission pre-review process that exceeded no more than 60-days, NCPA does appreciate that the 3rd 15-Day Changes shorten the proposed review time originally suggested to 90 days, rather than 180 days. NCPA urges the Commission to adopt this provision, and also to include language in the FSOR that reflects that such review will be undertaken as expeditiously as possible given staffing and other constraints, and not necessarily require the full 90 days.

F. The Regulations Should Not Require Extra-Statutory Demonstrations Associated with Long-Term Planning and Market Stability

NCPA appreciates that the 3rd 15-Day Changes alter the previous proposal related to a POU's requirement to demonstrate compliance with the LTR and reasonably contracted-for quantities by showing that the POU's procurement agreement was “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.” However, as proposed, section 3204(d)(2)(C)2, would still require such a demonstration with regard to certain early termination provisions.

NCPA urges the Commission to strike references to “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” from the proposed text of the

¹⁰ See TURN November 13 Comments, p. 5; Joint Stakeholder Proposal, pp. 9-10; NCPA November 13 Comments, pp. 5-6; Joint POU Comments, pp. 6-7.

POU RPS Regulation. Not only is such a demonstration amorphous in nature and entirely subjective to determine (it is not clear how or when the measure of supporting market stability would be carried out), but this language is not in the statutory mandate or even legislative digest.

While NCPA appreciates what appears to be the Commission's objective here to ensure that long-term commitments provide overall market benefits, this language, even as modified from earlier iterations of the Proposed Amendments, continues to include extra-statutory provisions that leave considerable discretion to Commission staff, and thus results in untenable regulatory uncertainty. This subjective application undermines regulatory certainty, compromising the ability of POUs to successfully and confidently negotiate long-term contracts that meet their specific energy procurement needs. Furthermore, this requirement is inconsistent with the Joint Stakeholder Proposal and adds an entirely new requirement to the regulations that is not needed to effect any of the stated objectives of the RPS mandate. NCPA urges the Commission to strike this language from section 3204(d)(2)(C)2.ii in the 3rd 15-Day Changes.

III. CONCLUSION

NCPA thanks the Commission for the revisions to the Regulation and the Proposed Amendments reflected in the 3rd 15-Day Changes, and urges the Commission to adopt the Proposed Amendments consistent with the feedback provided in the previously filed 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: December 16, 2020

Respectfully submitted,



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