

DOCKETED

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**on the 3rd 15-Day Language Modifications to Proposed
Amendments to the RPS Regulations for POU**

Additional submitted attachment is included below.



December 16, 2020 | Submitted Electronically

Docket Unit
California Energy Commission
Docket No. 16-RPS-03
1516 Ninth Street, MS-4
Sacramento, CA 95814

RE: Comments of the Joint Publicly Owned Utilities on the Third 15-Day Language Modifications to Proposed Amendments to the Renewables Portfolio Standard (RPS) Regulations for Publicly Owned Utilities (POUs) [CEC Docket #16-RPS-03]

Dear Commissioner Douglas and Commission Staff,

The California Municipal Utilities Association (CMUA), Northern California Power Agency (NCPA), and Southern California Public Power Authority (SCPPA) (collectively the “Joint POUs”) respectfully submit these comments to the California Energy Commission (Commission) on the Third 15-Day Language Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (3rd 15-Day Language), issued on December 1, 2020.

The Joint POUs thank both the Commission and staff for their substantial efforts throughout this proceeding. When the POUs raised objections to the proposed implementation of the long term procurement requirement in the 2nd 15-Day Language (issued on August 18, 2020), the Commission responded with an extensive and robust process where the Commission sought further stakeholder feedback in an open and collaborative manner. This process involved both releasing the *Key Topics Guide: Proposed Implementation of RPS Long-Term Procurement Requirement in RPS POU Regulations* (Key Topics Guide), issued on October 30, 2020, and holding the Lead Commissioner Workshop on Proposed Implementation of Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities (November 5 Workshop) on November 5, 2020. Through this process, proposed changes to the regulations reflected in the 3rd 15-Day Language substantially address the concerns of the Joint POUs, and the Joint POUs urge the Commission to adopt the Proposed Amendments to the POU RPS Regulation as modified by the 3rd 15-Day Language.

I. COMMENTS ON 3RD 15-DAY LANGUAGE

A. The Joint POU's Support Adoption of the Proposed Amendments as Modified by the 3rd 15-Day Language.

On the whole, the Joint POU's believe that the changes reflected in the 3rd 15-Day Language implement the recent RPS-related legislation (including Senate Bills 350 (stats. 2015) and 100 (stats. 2018)) in a reasonable manner. While the regulatory language in areas such as the long term procurement requirement is highly detailed, it includes sufficient flexibility such that it should not inhibit normal contracting practices and should avoid stranding existing POU investments.

Below, the Joint POU's identify specific areas where additional clarity may be beneficial. However, the Joint POU's believe that this clarity can be adequately provided in responses within the Final Statement of Reasons (FSOR) and do not merit any changes to the regulatory language.

B. Issues Raised by the Joint POU's in Comments on the Key Topics Guide Have Been Reasonably Addressed in the 3rd 15-Day Language.

1. The Joint POU's Support Measuring Reasonable Consistency Based on a Threshold of 33 Percent and Only Applying this Limitation to POU's that are Required to File IRPs.

The Key Topics Guide presented two options for determining if a contract meets the reasonable consistency requirement specified in new Section 3204(d)(2)(C)1. In the option selected for the 3rd 15-Day Language, the measurement threshold is set at 33 percent above or below the average annual quantity over the term of the contract, and the reasonable consistency requirement only applies to POU's that are required by Public Utilities Code § 9621(a) to file integrated resource plans (IRPs).

The Joint POU's support the selection of this option for the implementation of the reasonable consistency requirement. In combination with the conditions that justify exceeding the reasonable consistency threshold (provided in Section 3204(d)(2)(C)1.iv.), a 33 percent measurement provides a good balance between ensuring that contract structures do not subvert the long term procurement rules, while not inhibiting normal contract structures. The Joint POU's support the inclusion of the most common scenarios where this threshold will be exceeded in Section 3204(d)(2)(C)1.iv. as arrangements that are deemed to qualify as long term procurement.

Further, only applying the reasonable consistency requirement to the medium and large POU's that are required to file IRPs is appropriate in light of the purpose of this provision and the substantial burden that such a requirement would impose on the smallest POU's. First, smaller POU's have less bargaining power than larger POU's, and thus, typically pay a higher contract price per MWh than larger utilities. Adding a complex new limitation on contract structures for long term contracts will disproportionately harm the smallest POU's by adding to these increased costs. Further, smaller POU's are much more

likely to have a single customer that accounts for a substantial percentage of total load and thus will be more likely to need special contract structures to address the risk of such a customer leaving the POU's service territory. Counter-parties may be less likely to consider negotiating such a provision if there is greater regulatory risk. This would increase the risk that the remaining customers would bear the costs of a stranded contract. Additionally, because a smaller POU may only have 2 to 3 long term contracts, it would provide little advantage to such a POU to execute a front-loaded contract, because that POU would need to execute a new such contract each year to meet the long term procurement requirement, adding significant administrative cost with little value. Finally, the contracting limitations in Sections 3204(d)(2)(C)2. and 3. provide adequate protections against contracts with termination clauses or pricing or quantity terms that may be seen as subverting the objectives of the long term procurement requirement.

2. The Joint POU's Support the Proposed Language For Demonstrating that a Contract Exceeding the Reasonably Consistent Threshold is Consistent with the Purposes of the Long Term Procurement Requirement.

As the Joint POU's stated in our November 13 Comments, a primary concern with the complexity of the reasonable consistency requirement for long term contracts is that there is the potential risk of a lack of regulatory certainty. The regulations must be structured in such a way that the parties to a contract have a high degree of certainty at the time of negotiation that the agreement will qualify as long term, even if the contracted-for quantities exceed the reasonable consistency measurement threshold. The 3rd 15-Day Language accomplishes this goal by clarifying that the requirement for a contract that exceeds the reasonable consistency threshold to demonstrate that the contract "represents a procurement commitment consistent with the purposes of the long-term procurement requirement" is "satisfied" if the contract meets one of the conditions specified in Section 3204(d)(2)(C)1.iv.I-VII. Because this qualification is automatic, this language provides the necessary regulatory certainty. Therefore, the Joint POU's support this proposed language.

3. The Joint POU's Support the Timeline for Voluntary Early Review of Long Term Contracts.

In our November 13 Comments, the Joint POU's recommended that the target timeline for completing the voluntary review process authorized by new Section 3207(c)(5)(A)1. be set at 60 days in order to align with normal contract negotiation and governing board approval timing. The 3rd 15-Day Language came closer to this request, setting the timeline at 90 days. The Joint POU's greatly appreciate the willingness of the Commission to set this more aggressive goal and support this proposal as a reasonable compromise.

The Joint POU's urge the Executive Director and Commission staff to work with the POU's during this initial period to determine if there are collaborative solutions that could help speed this process up without imposing an undue burden on Commission staff.

C. The Joint POU Request that Additional Clarification Be Provided in the Final Statement of Reasons on Certain Long Term Procurement Requirement Provisions.

As stated above, the Joint POU request that Commission provide limited additional clarification in the FSOR relating to the issues listed below. Additional clarifications and confirmation will provide value to regulatory entities that must interpret these regulations.

1. Clarify the Specific Requirements Applicable to the Underlying Contracts of a Third Party Suppliers.

The 3rd 15-Day Language specifies that the reasonable consistency requirement in Sections 3204(d)(2)(C)1 applies to “any associated underlying contract(s).” Further, Section 3204(d)(2)(B)2 specifies minimum term requirements that are also applicable to contracts of third party suppliers. Other requirements make no mention of underlying contracts or third party suppliers, such as the limits on termination clauses specified in Section 3204(d)(2)(C)2. Presumably, these distinctions are intentional and the provisions that do not reference third party suppliers are not intended to be applicable to those contracts.

Given the importance for clarity on this issue, the Joint POU request that the FSOR clearly state the extent to which any elements of the long term procurement requirements are applicable to the underlying contracts of third party suppliers.

2. Clarify that Requirements for a Nonzero Contracted-For Year During the Initial Ten Years of a Contract Term.

The 3rd 15-Day Language includes a new Section 3204(d)(2)(C)1.v., which provides a useful clarification that a contract can have a year of zero contracted-for procurement during the initial ten year term if there are still 10 total years of nonzero deliveries over the term of the agreement. The Joint POU request that the FSOR confirm that the following example would qualify as long term, assuming all other relevant requirements are met: a contract spanning 11 years, where in year 8 of the contract, the contracted-for procurement is 0 MWh because the facility is undergoing construction (consistent with Section 3204(d)(2)(C)1.vi.III), and there are nonzero deliveries in all other years of the contract.

II. CONCLUSION

The Joint POU appreciate the opportunity to provide these comments to the 3rd 15-Day Language and thank the Commission for its consideration of these comments.