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FINAL STATEMENT OF REASONS

Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

Docket No. 16-RPS-03
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I. INTRODUCTION

An introduction to these regulations is available in the “Problem Statement and Anticipated Benefits” section of the Initial Statement of Reasons (ISOR). That introduction includes an overview of the history of the Renewables Portfolio Standard (RPS) program and the statutory changes that have led to the adoption of these regulations. For brevity, this document incorporates that discussion by reference rather than reproducing it in this Final Statement of Reasons (FSOR), but it does guide the modifications to the enforcement procedures for the RPS for local publicly owned electric utilities (POUs) discussed in this document.

II. PROCEDURAL HISTORY

On May 7, 2020, the California Energy Commission (CEC) published a Notice of Proposed Action (NOPA) proposing modifications to existing regulations establishing enforcement rules and procedures for the RPS for POUs under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The existing regulations are set forth in Title 20, California Code of Regulations, sections 3201 - 3208 and 1240. The NOPA established a 45-day comment period on the 45-Day Express Terms that ended on June 22, 2020. The CEC additionally held a public workshop on June 8, 2020, to solicit oral and written comments on the proposed regulations.

After reviewing comments received during the 45-day comment period and during the June 8, 2020, workshop, the CEC determined that sufficiently related changes to the proposed regulations were necessary. These initial changes are referred to as the first proposed 15-day language. The CEC published the first proposed 15-day language on July 21, 2020, with a comment period ending on August 5, 2020, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=233978&DocumentContentId=66782>. On August 5, 2020, the CEC issued a Notice of Postponement, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=234232&DocumentContentId=67074>, postponing the August 12, 2020, public adoption hearing.

On August 18, 2020, the CEC scheduled a possible adoption hearing for September 9, 2020, and published second 15-day changes containing sufficiently related amendments in response to stakeholder comments, referred to as second proposed 15-day language, with a comment period ending on September 2, 2020, available at

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=234349&DocumentContentId=67208>.

On September 8, 2020, in response to comments received, the CEC issued a Notice of Postponement, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=234599&DocumentContentId=67445>, postponing the September 9, 2020, public adoption hearing.

On October 26, 2020, CEC issued a Notice of Lead Commissioner Workshop for November 5, 2020, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=235426&DocumentContentId=68316>. A staff proposal on key elements of the long-term procurement requirement was published in a Key Topics Guide prior to the October 30, 2020, workshop, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=235471&DocumentContentId=68367>.

On December 1, 2020, the CEC scheduled an adoption hearing for December 22, 2020, and published third 15-day changes containing sufficiently related amendments in response to stakeholder comments, referred to as the third proposed 15-day language, with a comment period ending on December 16, 2020, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=235823&DocumentContentId=68775>.

At the December 22, 2020, adoption hearing, the CEC adopted the proposed amendments to Title 20, California Code of Regulations, sections 3201, 3202, 3204 – 3208, and 1240 as set forth in the third proposed 15-day language. The CEC's resolution adopting these amendments is available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=236214&DocumentContentId=69184>.

III. UPDATE OF THE INITIAL STATEMENT OF REASONS (Government Code section 11346.9(a)(1))

Government Code section 11346.9(a)(1) requires the FSOR to include an update of the information contained in the ISOR. Other than the updates noted below, no other updates to the ISOR are necessary and all items from the ISOR that are not addressed below are incorporated by reference. Unless otherwise noted, the updates below are intended to supplement, not supersede, the purpose and necessity statements included in Section II of the ISOR.

Although the ISOR did not explicitly identify that portions of the express terms duplicate, or make reference to, state statutory language in the regulatory text, it is necessary to note that all instances of duplication were evaluated by the CEC and determined to be consistent with the standard for permissible duplication contained in

California Code of Regulations, title 1, section 12(b)(1). Specifically, all instances of duplication involve regulations that cite to the relevant statutory portions of the Public Utilities Code or Public Resources Code as “authority” or “reference” for the duplicated text, and the justifications for each regulatory provision in Section II of the ISOR, or the updates to the ISOR below, identify that some duplication or overlap is necessary for clarity and to ensure that the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities contain a complete set of the requirements and relevant definitions over which the CEC exercises oversight. The clearest example of this is Section 3201 of the regulations, in which the certain definitions duplicate state statutory definitions to make it clear that the CEC uses the appropriate statutory definitions in applying and enforcing these regulations.

SECTION 3201 – DEFINITIONS

Section 3201 (k) – A non-substantial and sufficiently related modification of this subdivision, added in the first proposed 15-day language, updated the word order to improve clarity and readability.

Section 3201 (r) – No modifications were made to this subdivision. However, both this subdivision and the ISOR explanation contain a reference to Public Utilities Code section 399.13 (b) which was affected by a recent change in legislation, effective January 1, 2021. Senate Bill (SB) 702 (Stats. 2020, ch. 305) renumbered the referenced provision to Public Utilities Code section 399.13 (b)(1). Because SB 702 also amends Public Utilities Code section 399.30 (d) to reference Public Utilities Code section 399.13 (b)(1), the amendments within SB 702 have no regulatory effect for POUs. Therefore, section 3201 (r), as amended, can be clearly understood in this statutory context to include only the long-term procurement requirements contained within section 399.13 (b) which are applicable to POUs—namely, those in what is now subdivision (b)(1), as made applicable to POUs through Public Utilities Code section 399.30 (d). The CEC is considering a section 100 update to the reference in section 3201 (r) following the conclusion of the current rulemaking.

Section 3201 (v) – Non-substantial and sufficiently related modifications to this subdivision, added in the first and second proposed 15-day language, were made for clarity. First, the word “energy” was added after “eligible renewable” so that the reference is to the defined term. Second, the condition upon which a facility may be considered an eligible renewable energy resource was updated for clarity to avoid confusion due to a lack of definition for “eligible renewable fuel.” Since “renewable fuel” or “renewable resource” is not a defined term within section 3201, the modification to this subdivision achieves the purpose of defining the condition upon which a facility may be considered an eligible renewable energy resource without requiring additional defined terms.

SECTION 3202 – QUALIFYING ELECTRICITY PRODUCTS

Section 3202 (a)(2)(A) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

Section 3202 (a)(2)(B) – A non-substantial and sufficiently related modification of this subdivision, added in the first proposed 15-day language, corrected a grammatical error.

The ISOR must also be updated for this subdivision to make a clarification for a “sleeving” arrangement, whereby a third-party is inserted between a POU and its contractual counterparty for an existing contract, and the third-party procures electricity products from the contractual counterparty and delivers those same electricity products to that same POU. “Sleeving” arrangements are allowed for electricity products that meet the criteria of section 3202 (a)(2) under existing regulations without changing their count in full status and the proposed long-term requirements without changing their long-term status.

Section 3202 (a)(3)(C) – No modifications were made to this subdivision. However, the ISOR explanation contained an error and the following update includes a correction and clarification.

The ISOR explained that electricity products meeting the criteria of section 3202 (a)(3) must be classified as long-term or short-term, “consistent with the explanation in subparagraph (A) specifying how these electricity products must be classified in a portfolio content category (PCC).” Electricity products meeting the criteria of section 3202 (a)(3) do not have to be classified into a PCC; only electricity products from contracts or ownership agreements executed after June 1, 2010, must be classified in a PCC. This corrects the error in the ISOR.

Unlike the portfolio balance requirement, the long-term procurement requirement applies regardless of the contract or ownership execution date. Electricity products meeting the criteria of section 3202 (a)(3) must be classified as long-term or short-term based on the contract or ownership agreement through which they are procured.

SECTION 3204 – RPS PROCUREMENT REQUIREMENTS

Section 3204 (a)(1) – A non-substantial and sufficiently related modification, added in the first proposed 15-day language, updated this subdivision for clarity. The modification replaces “total retail sales” with “retail sales,” which is a defined term that matches the usage in context.

Section 3204 (a)(3) – A non-substantial and sufficiently related modification, added in the first proposed 15-day language, updated this subdivision for clarity. The

modification replaces “total retail sales” with “retail sales,” which is a defined term that matches the usage in context.

Section 3204 (b)(1) – A non-substantial and sufficiently related modification, added in the first proposed 15-day language, updated this subdivision for clarity. The modification replaces “total retail sales” with “retail sales,” which is a defined term that matches the usage in context.

Section 3204 (b)(3) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

Section 3204 (b)(7)(B) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

Section 3204 (b)(7)(C) – Two non-substantial and sufficiently related modifications, added in the first and third proposed 15-day language, updated this subdivision for clarity and consistency. The first corrected a grammatical error and makes the language more precise. The second updated an internal reference for consistency.

Section 3204 (b)(8)(B) – Two non-substantial and sufficiently related modifications, added in the first and third proposed 15-day language, updated this subdivision for clarity and consistency. The first corrected a grammatical error and makes the language more precise. The second updated an internal reference for consistency.

Section 3204 (b)(8)(C) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

Section 3204 (b)(9)(A) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

Section 3204 (b)(9)(B)3. – The ISOR explanation for this subdivision must be updated to clarify that RECs are not retired on behalf of, or at the request of, specific customers for purposes of this optional retail sales reduction, set forth in section 3204 (b)(9), even though subdivision (b)(9)(B)3. requires that, in total, the “RECs associated with the electricity products are retired in a WREGIS subaccount designated for the benefit of participating customers.” Instead, this optional retail sales reduction is applicable to and directs the conduct of POUs, not customers of the POUs.

Further, a POU is not required to utilize section 3204 (b)(9) and exclude the quantity of qualifying green pricing program/shared renewable generation program RECs from its

RPS retail sales. The optional retail sales reduction requirements within section 3204 (b)(9) are relevant to the RPS program only when a POU elects to exclude qualifying generation from the POU's retail sales. However, as section 3204 (b)(9)(B)3. makes clear, any RECs associated with the electricity products that are excluded from the POU's retail sales under this provision must have the associated RECs retired to a WREGIS subaccount designated for participating customers and cannot, once excluded, also be used for the POU's RPS compliance obligation.

Section 3204 (b)(9)(B)3.i – This non-substantial and sufficiently related modification of the subdivision, added in the first proposed 15-day language, clarifies the definition of “monetized” by adding “financial” before “value” to better describe the meaning of “monetize” within the context of this provision.

The ISOR explanation for this subdivision must also be updated to clarify that any secondary economic benefits derived from, for example, charging higher rent due to LEED certification or green product claims are indirect benefits that are not fixed or quantifiable, and would not qualify as being “monetized” pursuant to this definition, whereas RECs retired for California Air Resources Board's (CARB) Low Carbon Fuel Standard (LCFS) program would directly lead to the creation of LCFS credits that have defined financial value to their owner. Furthermore, LCFS credits can be sold or traded.

Section 3204 (b)(9)(B)4.i – No modifications were made to this subdivision. However, the ISOR explanation for this subdivision must be updated to clarify that POUs that are not part of a California Balancing Authority (CBA) may procure electricity products for this retail sales reduction located outside their own balancing authority area if the POU is unable to procure, to the extent possible, within that area the same standard that is applied for the parallel requirement for POUs that are part of a CBA.

Section 3204 (b)(9)(C) – Non-substantial and sufficiently related modifications were added in the first and third proposed 15-day language. The modifications are necessary to (1) use “exclude” in lieu of “substitute” for consistency with statutory language;¹ (2) specify that it is the quantity of electricity products, rather than those electricity products themselves, excluded from retail sales; and (3) update the section for consistent internal reference format.

Section 3204 (b)(10)(C)1. – Two non-substantial and sufficiently related modifications, added in the first proposed 15-day language, updated this subdivision for clarity. The modifications replace “total retail sales” with “retail sales,” which is a defined term that matches the usage in context.

Section 3204 (b)(11)(B) – A substantial but sufficiently related modification, added during the first proposed 15-day language, updated the requirements for this partial

¹ For more information, refer to [SMUD Pre-Rulemaking Comments](#), 1/17/2020.

procurement target exemption, from requiring that the POU satisfy the condition described in section 3204 (b)(11) during each year of compliance period to requiring that the POU satisfy the condition on average over the whole compliance period.

The ISOR for this subdivision must be updated to reflect an improved understanding of the author's intent for this exemption, codified in statute at Public Utilities Code section 399.33 (a)(2) and (b), which took effect on January 1, 2019. At issue is the interpretation of the statute's language "...at, or below, a 20-percent capacity factor on an annual average during a compliance period." In the ISOR and 45-day language, CEC staff proposed that this exemption be structured as being calculated on an annual basis, while eligibility for and the calculation of the procurement target reduction shall occur on a compliance period basis. The ISOR also concluded that the power plant must operate below a 20 percent capacity each year for this condition to be satisfied on a compliance period basis.

Based on a review of all comments on this section and the statutory provisions, CEC staff has concluded that the ISOR interpretation needed updating. CEC staff's updated interpretation of annual average capacity factor during a compliance period shall be interpreted to mean the three-year compliance period average of annual average capacity factor, consistent with the modifications to this section added in the first proposed 15-day language. Accordingly, a qualifying power plant is not required to operate below a 20 percent capacity each year of a compliance period to potentially be eligible for this exemption. However, consistent with the ISOR, the exemption structure shall remain as being a compliance period adjustment, not an annual adjustment. CEC staff believes this updated interpretation best reflects the statutory language and understands it to be consistent with the author's intent.

Section 3204 (b)(11)(B)1. – Substantial but sufficiently related modifications to this subdivision were added in the first proposed 15-day language and non-substantial and sufficiently related modifications were added in the third proposed 15-day language. The modifications were made to (1) update for consistent internal references; (2) update a variable name to conform with the new capacity factor equation; and (3) modification to assessing how a condition is satisfied from annual average to average over compliance period, and add conforming modifications to reflect this in the numerical expression. The necessity for this modification is explained above under section 3204 (b)(11)(B).

Section 3204 (b)(11)(C) – A substantial but sufficiently related modification to this subdivision, added in the first proposed 15-day language, was made. The necessity for this change is explained above under section 3204 (b)(11)(B).

Section 3204 (b)(11)(E) – A non-substantial and sufficiently related modification, added in the first proposed 15-day language, updated this subdivision for clarity. The

modification replaces “total retail sales” with “retail sales,” which is a defined term that matches the usage in context.

Section 3204 (b)(11)(F) – Substantial but sufficiently related modifications were added in the first proposed 15-day language and non-substantial and sufficiently related modifications were added in the third proposed 15-day language. The modifications were made to (1) update for consistent internal reference format; (2) remove a duplicative word; and (3) conform the capacity factor evaluation modifications in this section to the other modifications made to section 3204 (b)(11). The necessity for this modification is explained above in section 3204 (b)(11)(B).

Section 3204 (d) – No modifications were made to this subdivision. However, the ISOR discussion of this subdivision must be updated. The ISOR notes that the Legislature did not declare intent specific to the long-term procurement requirement, but explains that, based on comments, the California Public Utilities Commission (CPUC) Decision D.17-06-026, and CEC staff’s research, staff concluded that the primary function of the long-term procurement requirement, as it applies to POUs, is to provide a long-term procurement commitment that may be relied upon for developing new and repowered resources. This conclusion failed to recognize another function of the long-term procurement requirement – supporting long-term planning and market stability.

Decision D.1706026 identifies two key values of long-term contracts: supporting the financing of new and repowered RPS-eligible generation, and the ability for both retail sellers and RPS-eligible generators to plan for years into the future. The Decision also notes that this planning ability feeds into integrated resource planning and other planning, and that together the financial stability and planning stability of long-term contracts advance the policy of the state to increase RPS-eligible resources and reduce greenhouse gas emissions.

Acknowledgement of long-term planning and market stability as one of the primary functions of the long-term procurement requirement (LTR) is echoed in stakeholder comments.² Consequently, CEC staff concludes the primary functions of the LTR are to support the development of new and repowered resources and to support long-term planning and market stability.

Section 3204 (d)(1) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

Section 3204 (d)(2) – A non-substantial and sufficiently related modification of this subdivision, added in the third proposed 15-day language, updated an internal reference for consistency.

² See, for example, [TURN & CUE Comments](#), 6/22/2020 (or FSOR Response to Public Comments Received #28A2), or [TURN Comments](#), 8/5/2020 (or FSOR Response to Public Comments Received #28D4).

Section 3204 (d)(2)(A) – Several substantial but sufficiently related modifications, added in the first, second, and third proposed 15-day language, updated this subdivision’s definition for “long-term contract.”

- 1) To clarify that this definition applies to the POU’s long-term contract, to reflect the importance of this utility long-term planning obligation.³
- 2) Require a nonzero electricity procurement quantity for a duration of at least 10 continuous years. This addition was necessary to clarify that a contract is not a “long-term contract” for purposes of section 3204 (d) if, for example, the POU is only procuring electricity products every third year of the contractual term. However, there is a limited exception to this requirement, based on the “reasonable consistency” standard, contained below in section 3204 (d)(2)(C)1.

Section 3204 (d)(2)(A)1. (Deleted) – This section of the 45-day language was deleted in the second proposed 15-day language and the discussion of jointly negotiated contracts was modified and moved to new section 3204 (d)(2)(B)1., and is discussed below in section 3204 (d)(2)(B)1.

Section 3204 (d)(2)(A)2. (Deleted) – A substantial but sufficiently related modification, made in the second proposed 15-day language, deleted this proposed subdivision, which allowed a POU to claim procurement from another POU’s or retail seller’s repackaged contract as long-term. The ISOR explained the term repackaged as generally similar to how the term was used in the CPUC’s decisions for retail sellers, and explained that, while the CPUC’s requirements for repackaged contracts to count as long-term differed for retail sellers, staff concluded that a short-term repackaging of another POU’s or retail seller’s long-term contract would count as long-term. However, commenters noted that this conclusion failed to acknowledge the importance of the long-term planning and market stability function and could inadvertently introduce opportunities for strategic circumvention of the LTR, providing an incentive for POUs to contract with other POUs or retail sellers acting as power brokers on a short-term basis.⁴ Thus, the proposed language was deleted.

Section 3204 (d)(2)(A)3. (Deleted) – A substantial but sufficiently related modification was made in the first proposed 15-day language, deleted the provisions regarding third-party contracts and moved them to new section 3204 (d)(2)(B)2., discussed below.

³ See, for example, [TURN & CUE Comments](#), 6/22/2020 (or FSOR Response to Public Comments Received #28A3).

⁴ See, for example, [TURN & CUE Comments](#), 6/22/2020 (or FSOR Response to Public Comments Received #28A8 –28A14), [TURN Comments](#), 8-5-2020 (or FSOR Response to Public Comments Received #28C2 – 28C6).

Section 3204 (d)(2)(B) – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to provide clarity on the different types of long-term contract structures.

Section 3204 (d)(2)(B)1. – A substantial but sufficiently related modification, made in the second proposed 15-day language, moved section 3204 (d)(2)(A)1. to this new subdivision. Several substantial but sufficiently related modifications to the second and third proposed 15-day language were made to this subdivision for the following reasons:

1. To clarify and provide guidance to POUs that long-term jointly negotiated contracts include contracts to procure electricity products from “an RPS-certified facility” to “one or more RPS-certified facilities.”
2. To clarify and provide guidance to POUs that procurement duration for each facility is at least 10 continuous years.
3. To clarify and provide guidance to POUs that each POU must procure electricity products for at least 10 continuous years.

These revisions were necessary after receiving public comments on the 45-day language in order to address the reality that many POUs fulfill their procurement through jointly negotiated contracts with a third-party that is responsible for the actual procurement of electricity from RPS-certified facilities. Often, in these contracts, a jointly negotiated contract is negotiated to procure electricity products from more than one RPS-certified facility, which is the reason added clarification was necessary. To ensure the jointly negotiated contract provides a long-term commitment, both a commitment of 10 continuous year from each RPS-certified facility and each POU is necessary to ensure that the jointly negotiated contract actually supports long-term planning and market stability and does not introduce incentives to circumvent the primary functions of the LTR.

Section 3204 (d)(2)(B)1.i. – This subdivision was added, in the second proposed 15-day language, to clarify and provide guidance to POUs on a specific example of a type of jointly negotiated contract structure that is permitted within the context of this provision. This substantial and sufficiently related addition was necessary to show that a joint contract can be between two POUs, or more, and an RPS-certified facility.

Section 3204 (d)(2)(B)1.ii. – This subdivision was added, in the second proposed 15-day language, to clarify and provide guidance to POUs on a specific example of a type of jointly negotiated contract structure that is permitted within the context of this provision. A joint powers agency or third-party supplier acting on behalf of at least two POUs and selling electricity from an RPS-certified facility is a permitted contracting structure 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. This substantial and sufficiently related addition prevents the introduction of opportunities for strategic circumvention of the LTR and incentives to contract on a short-term basis

with POUs or a third-party power broker while supporting long-term planning and market stability.

Section 3204 (d)(2)(B)1.iii. – This subdivision was added, in the third proposed 15-day language, to clarify and provide guidance to POUs on a specific example of a type of jointly negotiated contract structure that is permitted within the context of this provision. This subdivision covers a scenario where separate contracts are executed by two or more POUs with the same RPS-certified facility and amendments are made to these POU contracts. This substantial and sufficiently related modification is necessary to clarify that CEC staff will evaluate factors such as express identification of the other POU(s), specificity regarding ability to reallocate one’s relative share of the facility output, and requiring that amendments provide a continuous 10 year commitment from the contract amendment date when evaluating contracts of this type that are applied toward LTR compliance. These clarifications will minimize the potential for introduction of opportunities for strategic circumvention of the LTR involving short-term repackaged contracts that do not contribute to the primary functions of the LTR.

Section 3204 (d)(2)(B)2. – A substantial but sufficiently related modification, made in the first proposed 15-day language, moved section 3204 (d)(2)(A)3. to this new subdivision. Several substantial but sufficiently related modifications to the first, second, and third proposed 15-day language were made to this subdivision to:

1. Clarify and provide guidance to POUs on the conditions that must be satisfied for a long-term jointly negotiated contract or resale agreement.
2. Clarify and provide guidance to POUs that long-term jointly negotiated contract or resale agreement requirements apply to a POU contract or resale agreement with a joint powers agency or a third-party supplier.

Additionally, the ISOR discussion on this subdivision must be updated. The ISOR explained the implementation of this subdivision is conceptually consistent with the CPUC’s requirements for retail sellers and its allowance of the use of repackaged long-term contracts. However, Public Utilities Code section 399.30 (d)(1) requires a POU to adopt “consistent” requirements, rather than expressly the same requirements as retail sellers. By setting requirements that will not inadvertently introduce opportunities for strategic circumvention of the LTR while permitting POU contracting flexibility when possible, the modifications balance the statutory obligation to set “consistent” requirements with the CPUC while not expressly setting the exact same requirements.

Section 3204 (d)(2)(B)2.i. – This subdivision was added in the first and amended in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on the conditions that must be satisfied for a long-term jointly negotiated contract or resale agreement. Specifically, this section requires that the contract between the POU and the joint powers agency or third-party seller must meet the requirement of having a duration of 10 continuous

years. This substantial but sufficiently related addition prevents the introduction of opportunities for strategic circumvention of the LTR and incentives to contract on a short-term basis with POU's or a third-party power broker while supporting the primary functions of the LTR.

Section 3204 (d)(2)(B)2.ii. – This subdivision was added in the first and amended in the second and third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on the conditions that must be satisfied for a jointly negotiated contract or resale agreement to be considered long-term. In addition to the contract between the POU and the joint powers agency or third-party seller, this section clarifies that the underlying contract with the RPS-certified facility or facilities must also have a “remaining” duration of at least 10 continuous years at the time the contract with the POU is executed. Applying the 10 continuous year duration requirement to underlying contracts between joint powers agency or third-party sellers and RPS-certified facilities is necessary to ensure that all procurement counted for compliance with the LTR is sourced through actual long-term contracts, rather than remaining short-term portions of existing procurement contracts. This substantial and sufficiently related addition prevents the introduction of opportunities for strategic circumvention of the LTR and removes any incentives to use existing short-term periods of prior agreements instead of establishing new long-term contracts that support the primary functions of the LTR.

The ISOR explanation must be updated to clarify the necessity for the addition of the term “remaining.” This requires a joint powers agency or third-party seller’s contract with any RPS-certified facility or facilities to have at least 10 continuous years left when the POU’s contract starts. For example, if a POU’s contract with a third-party seller started in January 2018, the duration requirement would be assessed on the third-party’s contract with the RPS-certified facility or facilities as of January 2018.

Section 3204 (d)(2)(B)3. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's. This modification clarifies that the resources identified in a contract that change PCC over the course of the agreement can still maintain eligibility to be considered long-term. This modification addresses specific scenarios described by stakeholders in public comment. Allowing a POU’s contract or resale agreement with a third-party supplier to change electricity products over the contract term to a different PCC or categories enables POU's to have more flexibility while still providing a long-term procurement commitment consistent with the LTR.

Section 3204 (d)(2)(B)4. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to address contract or ownership agreements between a POU and the Western Area Power Administration

(WAPA) or the federal government as part of the federal Central Valley Project, and any extensions or renewals of these existing contracts. This substantial but sufficiently related modification provides clarity for POUs on the treatment of procurement from such contracts. Also, this section is necessary to clarify that contract extensions would include provisions that allow termination or quantity adjustments upon certain actions by WAPA and the Federal Energy Regulatory Commission, without impacting the long-term status of these contracts that exist and are in effect as of January 1, 2015.

Section 3204 (d)(2)(C) – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to address the different requirements specific to long-term contracts executed prior to July 1, 2020.

Differentiating the requirements for long-term contracts executed prior to July 1, 2020, is necessary because POUs had to execute long-term contracts to support compliance with the procurement requirements for Compliance Period 4 without the benefit of the updated regulations. The statute provided that long-term contracts must meet a 10-year contract duration requirement, however the additional conditions or criteria established through this rulemaking were not in place. Additional proposed requirements were addressed by CEC staff in the second proposed 15-day language. Therefore, providing criteria for contracts entered into prior to July 1, 2020, reasonably reflects POUs' understanding prior to the guidance from the CEC due to not having addressed the issues in section 3204 (d)(2)(C)1.-3. Subjecting contracts executed prior to July 1 to these additional criteria does not appropriately address good-faith long-term investments that did not specifically contemplate these criteria. Establishing July 1, 2020, as the cutoff date reasonably addresses contracts previously entered into but limits the opportunity for additional contracts to be entered into with less restrictive conditions before the effective date of these regulations. Thus, this date strikes a balance between establishing more extensive requirements for new agreements that were informed by the requirements developed in this rulemaking and POUs' reasonable reliance on only statutory language for long-term contracts executed before July 1, 2020 when reasonable guidance on additional requirements was made available. This section further addresses that contracts entered into prior to July 1, 2020, but are amended on or after July 1, 2020, where the amendment modifies the duration, pricing, or other provision that materially relates to the contract's classification as long-term, shall additionally satisfy the additional requirements in section 3204 (d)(2)(C)1.-3.

Staff determined the date of July 1, 2020 based on the recommendation in the Joint Stakeholder Consensus Proposal.⁵ The Joint Stakeholder Consensus Proposal was jointly written by CMUA, NCPA, SCPPA, and TURN⁶, indicating a broad range of stakeholders supported the date as reasonably addressing all viewpoints. This approach, which was

⁵ The Joint Stakeholder Consensus Proposal can be found at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=235365&DocumentContentId=68252>.

⁶ CMUA, NCPA, SCPPA, and TURN are the stakeholders' abbreviated names. Their full names are California Municipal Utilities Association, Northern California Power Agency, Southern California Public Power Authority, and The Utility Reform Network.

unanimously supported by POUs, allows these utilities to move into 2021 and the beginning of Compliance Period 4 with clear expectations of what is required for planned procurement to meet the requirements of Public Utilities Code sections 399.13 (b)(1) and 399.30 (d), once these provisions took effect on January 1, 2021.

Section 3204 (d)(2)(C)1. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a requirement for a contract to be considered long-term. This requirement addresses contract quantities, requiring that the contract specify reasonably consistent procurement quantities.

The requirement for reasonably consistent quantities was added 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. Stakeholders contended that a POU's contracted-for procurement that substantially deviates above or below the average annual quantity for the entire contract term, unless justified, should be treated as short-term.⁷

The reasonably consistent contracted-for quantities requirement is necessary to ensure that POUs provide a meaningful long-term procurement obligation that advances the primary functions of the LTR while providing sufficient flexibility for POUs that have reasonable deviations in procurement quantities or provide justification for how the contract represents a procurement commitment consistent with the LTR.

Under this section 3204 (d)(2)(C)1., if the POU is subject to file an Integrated Resource Plan (IRP) pursuant to Public Utilities Code section 9621 (i.e. if the POU has an annual electricity demand exceeding 700 gigawatt-hours (GWh)), then the POU's contract and any underlying contract(s) are required to comply with the requirements of this subdivision. POUs that are not subject to Public Utilities Code section 9621, generally referred to as "small POUs," are not required to specify reasonably consistent procurement quantities over the contract term, consistent with this subdivision.

CEC staff identified 700 GWh, as identified in Public Utilities Code section 9621, as a reasonable threshold in existing law which could be used to exempting certain small POUs from additional consistent contracted-for quantities requirements within sections 3204(d)(2)(C)1.i. – iv. Based on stakeholder comment, CEC established the exemption for small POUs because small POUs, due to their small total demand and resource constraints, would incur a greater administrative burden to comply with these sections. Additionally, small POUs more frequently need to adjust contracted-for procurement quantities due to the unanticipated arrival or departure of large users of electricity.

⁷ Joint Stakeholder Consensus Proposal, by CMUA, NCPA, SCPPA, and TURN, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=235365&DocumentContentId=68252>

Additional requirements on contract structures for long-term contracts would likely disproportionately affect small POU's through increased costs,⁸ both at the time of contract execution and when reporting to the CEC is required for verification of RPS compliance.

Smaller POU's are also likely to have a single large customer that accounts for a substantial percentage of total load and therefore will be more likely to require special contract structures to address the risk of a single large customer leaving the POU's service territory or altering their operations. Counterparties may also be less likely to negotiate such a provision or charge a higher premium if there is greater regulatory risk involved, or a possibility that the contract will be disapproved by the CEC as not long-term under 3204 (d)(2)(C)1. in the years after execution. Without a recognition of small POU's unique situation in these regulations, the ratepayers in these communities are at greater risk of having to absorb the financial impacts from a stranded long-term contract in the event of a large customer departure or alteration in their operation.⁹

The differentiation between small and large POU's in this section is consistent with the function of the LTR as supporting long-term planning and market stability. Over 93 percent of California POU retail sales would remain subject to the reasonable consistency requirements of this section. However, for small POU's, the risk of strategic circumvention of the LTR is minor when compared to the realistic possibility that requiring compliance with this section would impose transaction costs that small, resource-constrained POU's are less able to manage than large POU's.

Section 3204 (d)(2)(C)1.i. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on how the reasonable consistency provision will be assessed when the contract specifies contracted-for annual quantities or contracted-for share of facility output. In prior compliance periods, long-term contracts executed by POU's and submitted to the CEC for review have largely fallen below the 33 percent variation threshold and would therefore meet the reasonable consistency provision. A larger variation would suggest such a contract deviates from “normal” and should therefore not be considered a reasonable variation unless justification is provided. Contracts that deviate greater than 33 percent may therefore not represent a meaningful procurement obligation that can support the objectives of the LTR. Additionally, without sufficient barriers around contracted-for procurement quantities, a POU could strategically circumvent the LTR by structuring a contract to include meaningful procurement

⁸ See, for example, Joint Associations Comments, 11/13/2020, (or FSOR Response to Public Comments Received #11G3.

⁹ See, for example, [Shasta Lake Comments](#), 11/5/2020 (or FSOR Response to Public Comments Received #33E1), or NCPA Comments, [11/5/2020](#), [11/13/2020](#) (or FSOR Response to Public Comments Received #17E2, #17F3), or Joint Associations Comments, 11/13/2020, (or FSOR Response to Public Comments Received #11G3.

quantities in only one or two years of the ten-plus year contract; this is functionally equivalent to a short-term contract and would not support financing of new and repowered renewable resource development or support long-term planning and market stability.

Section 3204 (d)(2)(C)1.ii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on how the reasonable consistency provision will be assessed for contracts procuring only electricity products meeting the criteria of PCC 3 RECs. The reasonable consistency provision for PCC 3 REC-only contracts will assess the variation in average contracted-for procurement quantities between any two adjacent compliance periods. PCC 3 RECs are generally used to round out a POU’s RPS procurement portfolio to ensure their compliance obligations are met at the end of a given compliance period. Applying the reasonable consistency provision to PCC 3 REC-only contracts over the term of the contract would be unlikely to support the development of new and repowered resources or long-term planning, and doing could constrain the ability of POUs to execute long-term contracts for PCC 3 RECs without providing a tangible benefit.

Section 3204 (d)(2)(C)1.iii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on how the reasonable consistency provision will be assessed for jointly negotiated contracts meeting the criteria of section 3204 (d)(2)(B)1. For jointly negotiated contracts this subdivision clarifies that the cumulative, aggregate quantities procured by all of the POUs that are parties to the jointly negotiated contract, rather than the singular quantities procured by any given POU, will be used to assess whether the contract is within the 33 percent reasonable variation in quantity threshold.

Section 3204 (d)(2)(C)1.iv. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs. Demonstration by a POU that a contract meets at least one of the identified seven circumstances would represent a long-term procurement commitment consistent with the primary functions of the LTR, even if the procurement quantities vary by more than 33 percent or procurement quantities are specified on a compliance period basis. Inclusion of this subdivision is necessary to address contract structures that represent legitimate scenarios experienced by POUs¹⁰ that should not be prohibited. Because these circumstances represent a legitimate procurement commitment consistent with the primary functions of the LTR, it would be contrary to the purpose of having limits on variation in quantity (discussed above in the justification for section 3204 (d)(2)(C)1.) and for the CEC to exclude them from qualifying as long-term procurement commitments for RPS compliance purposes.

¹⁰ See, for example, [Joint Stakeholders Comments](#), 10/20/2020 (or FSOR Response to Public Comments Received #32I8), or [LADWP Comments](#), 12/16/2020 (or Response to Public Comments Received #14G1)

Section 3204 (d)(2)(C)1.iv.I. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific circumstance where contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with the LTR. The scenario described in this provision, in which the eligible renewable energy resource is already committed to a different entity during the quantity variation, is based on actual, real-world contract structures that exist or are anticipated by POUs. Additionally, criteria for this provision requires that the POU’s commitment supports the development of a new eligible renewable energy resource, which is one of the primary functions of the LTR.

Section 3204 (d)(2)(C)1.iv.II. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific circumstance where contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with the LTR. The scenario described in this provision, where quantity variation is forecasted by anticipated loss of specific customer accounts or local industry or forecasted increase in eligible renewable energy resources, is based on actual, real-world contract structures that exist or are anticipated by POUs. Up to the point of customer load loss, the POU would still be providing a procurement commitment consistent with the LTR – providing some necessary flexibility for POUs, mainly for small POUs with a few customers constituting the bulk of a POU’s load, is reasonable. Also, an anticipated load increase due to eligible renewable resources coming online is consistent with the primary functions of the LTR.

Section 3204 (d)(2)(C)1.iv.III. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific circumstance where contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with the LTR. The scenario described in this provision, where quantity variation results from expected maintenance, repair, construction, or other modification of the eligible renewable energy resource, is based on actual, real-world contract structures that exist or are anticipated by POUs. This scenario is consistent with the primary functions of the LTR because the scenario described can include activities such as expansion of an eligible renewable energy resource or repowering of an existing resource.

Section 3204 (d)(2)(C)1.iv.IV. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific circumstance where contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with

the LTR. The scenario described in this provision, where quantity results from anticipated transmission constraints, is based on actual, real-world contract structures that exist or are anticipated by POUs. This scenario provides reasonable flexibility in the event that circumstances cause transmission constraints, for example, if a wildfire results in a loss of transmission line to a remote geothermal facility. The POU still has a procurement commitment with an eligible renewable energy resource(s) that is consistent with the primary functions of the LTR, but factors outside its control are preventing the POU from receiving that electricity.

Section 3204 (d)(2)(C)1.iv.V. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific circumstance where contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with the LTR. The scenario described in this provision, where variation is associated with a POU taking over the share or purchases from another buyer from an eligible renewable energy resource when the other buyer’s contract term ends, is based on actual, real-world contract structures that exist or are anticipated by POUs. The new buyer is supporting the eligible renewable energy resource and risk of strategic circumvention of the LTR is low because the new buyer of the eligible renewable energy resource still has to comply with all the long-term procurement requirements.

Section 3204 (d)(2)(C)1.iv.VI. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific circumstance where contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with the LTR. The scenario described in this provision, where variation is associated with the POU procuring increasing quantities or shares from the same eligible renewable energy resource, is based on actual, real-world contract structures that exist or are anticipated by POUs. This scenario still supports the LTR because the commitment is still supporting the eligible renewable resource and therefore contributing to long-term planning and market stability.

Section 3204 (d)(2)(C)1.iv.VII. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific contract scenario whose contracted-for procurement quantities may vary more than 33 percent, or procurement quantities specified on a compliance period basis, but still represents a procurement commitment consistent with the LTR. Although the enumerated list of justifications described in section 3204 (d)(2)(C)1.I – VI. attempts to catalog the most common contract scenarios expected in the real-world, a catchall provision is necessary to account for the fact that all possible types of contract scenarios with greater than 33 percent variation that still support the LTR cannot be contemplated and listed. Without this catchall

provision, it may have the unintended effect of disallowing contracts, that still support the LTR but have not been contemplated in the regulations, during the verification process.

Section 3204 (d)(2)(C)1.v. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs that, notwithstanding the definition in section 3204 (d)(2)(A), stating “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*,” a contract that specifies a contracted-for quantity of zero during any year of the initial 10-year term of a long-term contract may still qualify as long-term if information can be submitted to demonstrate that the contract (1) meets one of the enumerated conditions in section 3204 (d)(2)(C)1.iv. and (2) the contract term includes at least 10 *total* years with nonzero contracted-for procurement quantities, even if they are noncontinuous. This modification is necessary to avoid an ambiguity in the regulations created by the definition in section 3204 (d)(2)(A) when compared to the justifications for exceeding the reasonable variation threshold in sections 3204 (d)(2)(C)1.iv., which was highlighted in comments.¹¹

By including this subdivision, the CEC provides flexibility to POUs for legitimate, real world contract scenarios while minimizing opportunities for strategic circumvention of the LTR. Use of this provision is likely to be rare, but if a POU were to utilize this section, additional documentation would be required to substantiate why there was a year with a contracted-for procurement quantity of zero within the initial 10-year term of the contract. For example, reasons could include a massive construction project at the generating facility or the replacement of a major transmission line.

Section 3204 (d)(2)(C)2. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs. Except as specified in section 3204 (d)(2)(C)2.i.-ii, a contract that contains early termination provisions that allow the purchasing entity a unilateral right of no cost, early termination within the first 10 continuous years of the contract term will not be considered a long-term contract. Prohibiting no cost, early termination is necessary to ensure contracts counted towards the LTR reflect a meaningful long-term commitment and a binding procurement obligation by the purchasing entity, while preventing any opportunities for strategic circumvention of the LTR that may render this commitment illusory by allowing a buyer to walk away in the middle of a contract for no particular reason. The specific termination provisions that are identified in section 3204 (d)(2)(C)2.i. and permitted under this provision are reasonable and represent legitimate contract scenarios and provisions seen in the real world that do not undermine the overall commitment reflected by a long-term procurement contract.

¹¹ See, for example, [Joint Associations Comments](#), 11/13/2020, (or FSOR Response to Public Comments Received #11F6), or [CMUA Comments](#), 11/5/2020 (or Response to Public Comments Received #5E5), or [TURN Comments](#), 11/5/2020 (or FSOR Response to Public Comments Received #28E3).

Section 3204 (d)(2)(C)2.i. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on the seven specific early termination provisions that purchasing entities are not precluded from using to terminate a contract. Rather than leaving the concept of a unilateral no-cost early termination open-ended, it was necessary to include these examples as an illustrative but non-exhaustive list of acceptable contracting structures and behaviors due to the need for clarity and settled expectations among stakeholders engaged in negotiations for long-term procurement contracts.

Section 3204 (d)(2)(C)2.i.I. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific contract scenario that is not precluded under the no cost, early termination provision. This subdivision is necessary to clarify that termination for a seller’s default or other nonperformance under the contract is not a prohibited action under this section. For-cause termination due to a breach or default is a fundamental principle of a contract, and although it may be unilateral and no-cost to the buyer, it is an allowable behavior that does not render the contract not long-term for RPS purposes.

Section 3204 (d)(2)(C)2.i.II. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific contract scenario that is not precluded under the no cost, early termination provision. This subdivision is necessary to clarify that a seller’s failure to perform due to a force majeure event, as defined, is not a prohibited action under this section. Force majeure clauses are standard contractual terms that do not render a long-term commitment illusory or undermine the overall commitment reflected by a long-term procurement contract.

Section 3204 (d)(2)(C)2.i.III. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs. This subdivision is necessary to clarify that termination of a contract by mutual agreement of the buyer(s) and seller(s) is not a prohibited action under this section. Termination by mutual agreement of the parties is a fundamental right of the parties to a contract, in addition to being a bilateral or multilateral act, rather than a unilateral one. Thus, including contractual terms to this effect would not undermine the overall commitment reflected by a long-term procurement contract.

Section 3204 (d)(2)(C)2.i.IV. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs. This subdivision is necessary to clarify that termination by a purchasing entity due to a scenario where a seller’s facility ceases to produce environmental attributes due to a change in law, such as RECs or other attributes

specified for sale under the contract, is not a prohibited action under this section. This is another example of a standard for-cause termination clause that is common within procurement contracts. Including contractual terms to this effect would not undermine the overall commitment reflected by a long-term procurement contract.

Section 3204 (d)(2)(C)2.i.v. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific contract scenario that is not precluded under the no cost, early termination provision. This subdivision is necessary to clarify that termination by a purchasing entity is appropriate in a scenario where the CEC has determined that a resource associated with a contract is not eligible for RPS certification. If a seller’s facility specified under a contract is no longer eligible for RPS certification, termination by the buyer would be appropriate because this contract would no longer meet the requirements of the RPS program generally.

Section 3204 (d)(2)(C)2.i.vi. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific contract scenario that is not precluded under the no cost, early termination provision. This subdivision is necessary to clarify that termination by the purchasing entity due to a change in ownership of the seller is not a prohibited action under this section. This is another example of a standard contractual term that would not undermine the overall commitment reflected by a long-term procurement contract.

Section 3204 (d)(2)(C)2.i.vii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on a specific contract scenario that is not precluded under the no cost, early termination provision. This subdivision is necessary to clarify that early termination of a contract intended to facilitate the sale of a sale of a renewable energy resource which is included in the contract from the seller to the purchasing POU is not a prohibited action under this section. Public Resources Code section 399.13 (b)(1) allows POUs to count towards the LTR for RPS purposes both contracts of 10 or more in duration and eligible renewable facilities over which a POU has ownership. Thus, termination to facilitate the sale of an eligible renewable energy resource is consistent with the LTR and would not undermine the overall commitment reflected by a long-term procurement contract.

Section 3204 (d)(2)(C)2.ii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs that information can be submitted to demonstrate that a contract, notwithstanding the inclusion of unilateral, no-cost early termination provisions (other than those explicitly permitted under section 3204 (d)(2)(C)2.i.), provides at least a 10 year continuous procurement commitment that is consistent with the primary functions of the LTR. This subdivision is necessary as a catchall that

provides flexibility to POUs for legitimate, real world contract scenarios that the CEC may have omitted from the listed examples, while minimizing opportunities for strategic circumvention of the LTR.

Section 3204 (d)(2)(C)3. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs with respect to a third category of contract language that may initially appear to qualify as long-term, but on further examination appears to circumvent the primary functions of the LTR. Specifically, this section states that a long-term contract does not include any contract with no specified quantity or minimum pricing terms, such that the express intent of the contracting parties is to individually negotiate the price and quantity terms at a future date within the first 10 continuous years of the contract term and neither party is obliged to procure or sell any quantity during any such individual year. This subdivision is necessary to provide reasonable guardrails to ensure a contract represents an enforceable procurement obligation on the buyer, which the seller can count on for at least 10 years and minimizes potential opportunities for strategic circumvention of the LTR. Essentially, it states that an agreement to agree in the future on price or quantity terms is illusory and would not represent a long-term commitment consistent with the LTR.

Section 3204 (d)(2)(D) – Non-substantial and sufficiently related modifications, made in the first and third proposed 15-day language, were made to this subdivision. The modifications renumbered this subdivision from section 3204 (d)(2)(B), updated internal references for consistency, and modified the language to address newly added criteria.

Section 3204 (d)(2)(E) – Non-substantial and substantial but sufficiently related modifications, made in the first and third proposed 15-day language, were made to this subdivision. The modifications renumbered from section 3204 (d)(2)(C), updated internal references for consistency, modified the language to address newly added criteria. Furthermore, it was necessary to add a clarifying definition of what a “continuous” duration is because the initial 45-day language was unclear how “continuous” duration would be interpreted in the case of PCC 3 contracts, where the contract allows for RECs to be delivered in batches once every year or once every compliance period, for example, or whether “continuous” duration would be met if a resource failed to deliver for multiple years due to mechanical failure. The clarifying definition of “continuous” duration provides guidance to POUs that PCC 3 contracts can meet the continuous duration requirement duration for qualifying long-term contracts and provides for flexibility in specific, justified situations as described in section 3204 (d)(2)(C)1.v. where the POU can demonstrate that a contract that specifies zero quantity during any years of the initial 10-year term still represents a procurement commitment consistent with the primary functions of the LTR.

Section 3204 (d)(2)(E)1. – Non-substantial and sufficiently related modifications, made in the first and third proposed 15-day language, were made to this subdivision. The modifications renumbered from section 3204 (d)(2)(C)1., updated internal references for consistency, and modified the language to address newly added criteria.

Section 3204 (d)(2)(E)2. – Substantial but sufficiently related modifications, made in the first proposed 15-day language, were made to this subdivision. The modifications renumbered from section 3204 (d)(2)(C)2. and clarified the requirements for amended short-term contracts to qualify as long-term contracts. The meaning of “commitment” in the 45-day language was unclear. The clarification that the amended contract has a duration of at least 10 continuous years and that the amended contract otherwise satisfies the requirements of a long-term contract is necessary to ensure that (1) there is a meaningful procurement obligation by the POU to the seller that supports the objectives of the LTR, (2) procurement counted for compliance towards the LTR is sourced through long-term contracts, and (3) minimizes opportunity for strategic circumvention of the LTR.

Section 3204 (d)(2)(E)3. – Non-substantial and sufficiently related modifications, made in the first proposed 15-day language, were made to this subdivision. The modifications renumbered from section 3204 (d)(2)(C)3. and made two clarifying edits, affecting contracts amended or terminated early, for consistency with the modifications to section 3204 (d)(2)(E) and (d)(2)(E)2.

Section 3204 (d)(2)(F) – A non-substantial and sufficiently related modification, made in the third proposed 15-day language, renumbered this subdivision from section 3204 (d)(2)(D) to accommodate the addition of new subparagraphs earlier in the section.

Section 3204 (d)(2)(G) – This section was added in the third-proposed 15-day language with substantial but sufficiently related modifications to address treatment of optional procurement exceeding the quantity identified in the contract for purposes of demonstrating POU compliance with the LTR. This section clarifies that electricity products procured in excess of the quantity that the POU is obligated to procure under a long-term contract shall be treated as a new agreement for the additional quantities unless additional quantities are (1) from the same RPS-certified facility or facilities, and (2) where the potential for the POU to procure the additional quantities is identified in the corresponding contract. If the additional quantities meet these two criteria, the additional procurement can be treated as part of the long-term contract. As described by stakeholders, in many cases, the eligible renewable resources in these long-term contracts are intermittent and variable resources like solar and wind, and the “expected” quantities from the resource are typically estimates based on forecasts and average conditions and actual deliveries may vary depending on weather conditions. If an eligible renewable energy resource produces a little more than expected due to favorable weather conditions, for example, and the potential for the POU to procure this

additional quantity is identified in the long-term contract, this additional procurement should be considered part of the long-term procurement obligation and not excluded.¹²

Section 3204 (d)(2)(H) – Two non-substantial and sufficiently related modifications, made in the third proposed 15-day language, renumbered this subdivision from (E) and updated internal references.

Section 3204 (d)(2)(I) – This section was added in the first and amended in the third proposed 15-day language with substantial but sufficiently related modifications to address the eligibility of PCC 3 long-term contracts under the RPS program. This addition was necessary to provide clarity to POU's that PCC 3 electricity products can be classified as long-term, subject to the maximum limit for these products in section 3204 (c), if procured through a contract, ownership, or ownership agreement whose duration is at least 10 continuous years and the POU's contract meets the LTR. Inclusion of these electricity products as eligible for counting towards the LTR provides contract flexibility, allows makeup in shortfalls in procurement, and minimizes potential for increased compliance costs. Additionally, the maximum limit on PCC 3 limits any attempt to strategically circumvent the LTR.

Section 3204 (d)(2)(J) – Non-substantial and sufficiently related modifications, made in the first and third proposed 15-day language, renumbered this subdivision from (F) and updated internal reference for consistency.

Section 3204 (d)(2)(K) – Non-substantial and sufficiently related modifications, made in the third proposed 15-day language, renumbered this subdivision from (G) and updated internal reference for consistency.

Section 3204 (d)(2)(L) – Non-substantial and sufficiently related modifications, made in the third proposed 15-day language, renumbered this subdivision from (H) and updated internal reference for consistency.

Section 3204 (d)(2)(L)1. (and now-deleted Section 3204 (d)(2)(L)1.i.) – Substantial but sufficiently related modification added in the first proposed 15-day language. Section 3204 (d)(2)(L)1.i. previously defined an efficiency improvement for the purposes of determining the types of amendments or modifications that increase the expected quantities or allocation of generation under the original contract or ownership agreement resulting from efficiency improvements that shall be treated as long-term. After a closer look at the topic of efficiency improvements and expansions, it was determined that all efficiency improvements or expansions of an RPS-certified facility or facilities is consistent with the primary functions of the LTR to support the development of new and repowered resources and support long-term planning and

¹² See, for example, [Joint Associations Comments](#), 11/13/2020 (or FSOR Response to Public Comments Received #11F12), or [TURN Comments](#), 11/5/2020 (or FSOR Response to Public Comments Received #28E11).

market stability, ensures that the procurement obligation is maintained, and should therefore be encouraged and considered part of the original long-term contract or ownership agreement. The risk of strategic circumvention of the LTR is also limited due to the modifications to the provision on substitutions in section 3204 (d)(2)(L)3. Since the regulations now treat all efficiency improvements and expansions as part of the long-term contract or ownership agreement, there is no longer any need for differentiating between the two, hence the reason for deleting section 3204 (d)(2)(L)1.i.

Section 3204 (d)(2)(L)2. – Non-substantial and sufficiently related modifications, made in the first and third proposed 15-day language, to update internal references for consistency and to conform this language to the modifications made section 3204 (d)(2)(L)1., discussed above.

Section 3204 (d)(2)(L)3. – Non-substantial and sufficiently related modifications, made in the first and second proposed 15-day language, to add “eligible” to the beginning of “renewable energy resource, and add “eligible renewable energy” to “resource” for both to read “eligible renewable energy resource,” in order to match a defined term. This subdivision describes the conditions upon which substitution of a different eligible renewable energy resource shall not be considered a new agreement.

Section 3204 (d)(2)(L)3.i. – This new subdivision, substantial but sufficiently related, was added in the first and amended in the second proposed 15-day language to clarify and provide guidance to POUs on one of the specific conditions that shall be satisfied to treat a substitution as part of the original long-term contract ownership agreement. This addition ensures that any substitutions that occur were previously contemplated and included in the original long-term contract or ownership agreement in order to be treated as part of the long-term contract thereby minimizing potential for strategic circumvention of the LTR while at the same time not precluding a normal contracting provision.

Section 3204 (d)(2)(L)3.ii. – This new subdivision, substantial but sufficiently related, was added in the first and amended in the second proposed 15-day language to clarify and provide guidance to POUs on one of the specific conditions that shall be satisfied to treat a substitution as part of the original long-term contract ownership agreement. The provision specifies that any additions or substitutions of eligible renewable energy resources 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. This addition ensures that any substitutions or additions of eligible renewable energy resources in the long-term contract or ownership agreement are in fact sourced through actual long-term contracts, rather than remnants of existing procurement contracts, and minimizes opportunity to strategically circumvent the LTR.

Section 3204 (d)(2)(L)3.iii. – This new subdivision, substantial but sufficiently related, was added in the second and amended in the third proposed 15-day language to clarify and provide guidance to POUs on under what conditions replacement energy shall be considered part of the original long-term contract. This provision was included in order to provide flexibility for POUs and the opportunity, in limited circumstances where the RPS-certified facility in the contract did not perform and the POU can submit information demonstrating this, to use replacement energy and consider it part of the original long-term contract. This addition is necessary to provide clarity and guidance to POUs on the criteria and parameters for use of replacement energy, a normal contracting provision, that can count towards the LTR.

Section 3204 (d)(2)(L)3.iii.I. – This new subdivision, substantial but sufficiently related, was added in the third proposed 15-day language to clarify and provide guidance to POUs on the definition of replacement energy for the purposes of this subdivision. The definition of replacement energy, an addition sought by stakeholders, is limited to situations in which the RPS-certified facility did not perform as the contract required and is meant to mean electricity products provided by the seller to offset the failure of the guaranteed electricity products otherwise guaranteed under the contract. The definition of replacement energy also intentionally precludes a seller from selling the RPS-certified facility’s output to another entity and using replacement energy to offset the failure of the seller to provide the guaranteed electricity products. This provision provides POUs flexibility to use a normal contracting provision in limited circumstances while minimizing opportunity for strategic circumvention of the LTR.

Section 3204 (d)(2)(L)4. – This subdivision was updated in the first and second proposed 15-day language with non-substantial and sufficiently related modifications by adding “joint ownership agreement” for improved consistency with a defined term and clarified a word to make it more precise.

Section 3204 (d)(2)(L)5. – This subdivision was updated in the first and second proposed 15-day language with a substantial but sufficiently related modification to clarify that this assignment provision also applies to retail sellers and that the assignment duration is at least 10 years. This update ensures that all procurement counted for compliance with the LTR is sourced through long-term contracts.

Authority cited – Non-substantial and sufficiently related modification to the Authority and Reference portion of Section 3204, added in the second proposed 15-day language, to include section 399.18, whose criteria was modified to specify that an electrical corporation or its successor is now required to meet the conditions on an ongoing basis to be exempt from the portfolio balance requirement. This addition is necessary to implement this provision of law in the proposed regulations.

SECTION 3206 – OPTIONAL COMPLIANCE MEASURES

Section 3206 (a)(1)(A) – A non-substantial and sufficiently related modification of this subdivision in the third proposed 15-day language updated an internal reference for consistency.

Section 3206 (a)(1)(C)3. – A non-substantial and sufficiently related modification of this subdivision in the third proposed 15-day language updated an internal reference for consistency.

Section 3206 (a)(1)(G) – A modification to this section was necessary in the third proposed 15-day language to account for fact that these regulations would not be effective by end of Compliance Period 3, which concluded on December 31, 2020. Under section 3206 (b), a POU ordinarily must have any rules specifying Optional Compliance Measures it intends to rely on for a given compliance period in place, described in a POU's renewable energy resources procurement plan or enforcement program for the compliance period, and adopted by the governing board of the POU at a noticed meeting before the conclusion of the compliance period.

However, because in this instance section 3206 (a)(1)(G) was specifically targeted at Compliance Period 3, and these regulations were not effective before the end of Compliance Period 3, it is necessary to allow a POU adopting rules pursuant to this section additional time to do so. The CEC is requiring that such rules be in place and adopted within "30 days after the effective date of these regulations." For compliance purposes, the CEC will treat any rules adopted in this manner as if they were properly in place by the end of Compliance Period 3 and compliant with section 3206 (b). The 30-day period was chosen because it balances the CEC's regulatory need to monitor voluntarily early compliance with section 3204 (d), with a reasonable amount of time for the POU to get these rules in place once the regulations have taken effect.

In addition, a non-substantial and sufficiently related modification of this subdivision updated an internal reference for consistency.

Section 3206 (a)(1)(I)3. – A modification to this section was necessary in the third proposed 15-day language for the same reasons discussed above, under Section 3206 (a)(1)(G).

In addition, a non-substantial and sufficiently related modification of this subdivision updated an internal reference for consistency.

Section 3206 (a)(2)(A) – A non-substantial and sufficiently related modification of this subdivision in the third proposed 15-day language updated an internal reference for consistency.

Section 3206 (a)(2)(A)4. – A non-substantial and sufficiently related modification of this subdivision in the third proposed 15-day language updated an internal reference for consistency.

Section 3206 (a)(5)(D)1. – Four non-substantial and sufficiently related modifications, added in the first proposed 15-day language, updated this subdivision for clarity. The modifications replace “total retail sales” with “retail sales”, which is a defined term that matches the usage in context.

Section 3206 (a)(5)(D)2. – Two non-substantial and sufficiently related modifications, added in the first proposed 15-day language, updated this subdivision for clarity. The modifications replace “total retail sales” with “retail sales”, which is a defined term that matches the usage in context.

SECTION 3207 – COMPLIANCE REPORTING FOR POUS

Section 3207 (c) – A non-substantial and sufficiently related modification of this subdivision in the third proposed 15-day language updated an internal reference for consistency.

Section 3207 (c)(2)(F) – This subdivision was updated with substantial but sufficiently related modifications in the third proposed 15-day language to clarify and provide guidance to POUs that information provided to demonstrate compliance along with annual reports may include supporting contract documentation as it relates to executed contracts or ownership agreements during the prior year. The update also includes a requirement to report information demonstrating how new long-term contracts executed by POUs within the prior year meet the long-term procurement requirements identified in section 3204 (d). This information is necessary for CEC staff to monitor and verify POU compliance with the RPS requirements in these regulations, as well as in statute and the *RPS Eligibility Guidebook*.

The FSOR should also clarify that POUs may reference information contained in annual compliance reports, instead of resubmitting each year, as provided in section 3207 (c). Information submitted in a prior compliance period may now include third-party submissions. This will cut down on possible duplicative reporting.

Section 3207 (c)(2)(F)1. – This subdivision was added in the third proposed 15-day language to clarify and provide guidance on how a POU with a long-term contract involving a joint powers agency or third-party supplier intermediary pursuant to section 3204 (d)(2)(B)2. can demonstrate that the underlying contract(s) between the intermediary and the eligible renewable energy generation facilities meet the requirements of section 3204 (d)(2)(A)-(C).

For contracts executed before July 1, 2020, documentation may include excerpted contract information, a third-party attestation, or both. Documentation is also required to be submitted only upon receiving a CEC staff request. Submission of documentation only upon request (rather than as a matter of course), and inclusion of an attestation, was added because tracking such underlying contracts is likely to be complex and administratively burdensome for the POU, third-party supplier, and CEC staff. An attestation as to the long-term status of the underlying contracts may also be beneficial to POUs if the POU does not retain rights under its existing contracts executed with third-party suppliers or joint powers agency to report on or disclose the actual content of these underlying contracts to the CEC. Thus, this requirement also serves as a signal that, before the execution of future contracts involving intermediaries that are consistent with section 3204 (d)(2)(B)2., POUs and their counterparties should consider including explicit contractual terms that provide POUs with a right of access and disclosure covering pertinent information relevant to the RPS and LTR compliance of underlying contracts with eligible generation facilities.

Section 3207 (c)(2)(F)2. – This subdivision, substantial but sufficiently related, was added in the third proposed 15-day language to supplement section 3207 (c)(2)(F)1. and provide guidance to POUs on how a POU with a long-term contract pursuant to section 3204 (d)(2)(B)2. can demonstrate that the underlying contract(s) meet the requirements of section 3204 (d)(2)(A)-(C). For contracts executed on or after July 1, 2020, this section clarifies that supporting documentation submitted for RPS compliance purposes may include an attestation by the POU that the intermediary’s contract with the RPS-certified facility or facilities meets the requirements of section 3204 (d)(2)(A)-(C). The inclusion of an attestation was added in this section because tracking such underlying contracts is likely to be complex and administratively burdensome for the POU, third-party supplier, and CEC staff. As noted in the previous section, sections 3207 (c)(2)(F)1. and 2. two serve as a signal for future contracting behavior. Before the execution of future contracts involving intermediaries that are consistent with section 3204 (d)(2)(B)2., POUs and their counterparties should now consider including explicit contractual terms that provide POUs with a right of access and disclosure covering pertinent information relevant to the RPS and LTR compliance of underlying contracts with eligible renewable energy generation facilities. Because of this signal, POUs will be more likely to anticipate the requirements to possess records supporting its attestations accompanying future compliance submittals in the development of future long-term contracts under section 3204 (d)(2)(B)2.

Section 3207 (c)(2)(G) – This subdivision was updated in the second and third proposed 15-day language with non-substantial and sufficiently related modifications to clarify and provide guidance to POUs that documentation submitted to the CEC may additionally include contract information to demonstrate a POU’s PCC and long-term or short-term classification. Also, the modifications clarify that this documentation does not need to be submitted if previously submitted, which cuts down on possible duplicative reporting. Lastly, the ISOR must be updated to clarify that contract information may

include information showing that the contract was the outcome of joint negotiations if other parties are not explicitly referenced in the contract.

Section 3207 (c)(2)(H) – This subdivision was added in the second and amended in the third proposed 15-day language with substantial and sufficiently related modifications to clarify and provide guidance to POU's on what modifications to previously reviewed and evaluated contracts, ownership, or ownership agreements would warrant a POU to submit new information and documentation to the CEC. This subdivision ensures that any contract modification(s) can be reviewed and verified for consistency with the LTR. The triggering changes to contracts include, but are 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." These triggering changes were chosen in order to help provide guidance to POU's on some of the types of modifications to an existing contract, ownership, or ownership agreement previously reviewed and evaluated by the CEC that would need to be reported in the POU's annual report.

Section 3207 (c)(2)(I) – A non-substantial and sufficiently related modification renumbered this subdivision from section 3207 (c)(2)(H) to accommodate the addition of new subparagraphs.

Section 3207 (c)(2)(J) – A non-substantial and sufficiently related modification renumbered this subdivision from section 3207 (c)(2)(I) to accommodate the addition of new subparagraphs.

Section 3207 (c)(3) – Two non-substantial and sufficiently related modifications to this subdivision updated internal references for consistency.

Section 3207 (c)(4) – Two non-substantial and sufficiently related modifications of this subdivision updated internal references for consistency.

Section 3207 (c)(5) – This subdivision was added in the second and amended in the third proposed 15-day language with substantial but sufficiently related modifications to provide clarity and guidance to POU's on the review process for long-term contracts. This subdivision makes explicit the CEC's review process to provide better guidance to POU's, provides information to POU's on CEC staff's review earlier in the compliance period, provides a limited, voluntary early review process, and provides a clear appeal process for POU's to appeal CEC staff's determination.

Section 3207 (c)(5)(A) – This new subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to provide clarity and guidance to POU's on the limited, voluntary early review process available to POU's. Review is limited to contracts executed on or after July 1, 2020 require additional

information or justification to establish that they meet the requirements of section 3204 (d)(2)(C). Examples of contracts that, on their face, would require the submission of additional information or justification to comply with section 3204 (d)(2)(C) include contracts with a greater than 33 percent variation that nevertheless qualify as long-term under one of the factors in section 3204 (d)(2)(C)1.iv., or contracts including unilateral, no-cost termination provisions that nevertheless qualify as long-term under section 3204 (d)(2)(C)2.ii.

This subdivision is necessary to provide POU's with improved regulatory certainty that both a contract that has been fully executed by all parties and a contract that has been fully negotiated but not formally approved by the POU's governing board will be viewed as long-term by the CEC. It provides for a timelier review that better reflects commercial realities and, additionally, may provide for identification and amendment of short-term contracts that a POU may have otherwise relied on as a long-term contract and had disapproved after the end of a compliance period, during the compliance verification process.

Section 3207 (c)(5)(A)1. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on the types of contracts that are eligible for the limited, voluntary early review request. POU seeking review under this section must address the request to the Executive Director. The responsibility of the Executive Director, or his or her designee, will be to review said contracts to determine if the contract qualifies as long-term contract pursuant to the requirements of section 3204 (d)(2)(A)-(C), subject to this subdivision.

Section 3207 (c)(5)(A)1.i. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's that the limited, voluntary early review requests shall be limited to contracts executed on or after July 1, 2020, which on their face require additional information or justification to establish that the contracts meet the requirements of section 3204 (d)(2)(C). Some examples of these types of contracts eligible for early review are discussed above, under section (c)(5)(A). It is necessary to limit the scope of contracts eligible for the voluntary review process to deter frivolous requests, such as instances where a POU might request that the CEC perform an early review of every contract executed by that POU, even if the contract on its face meets the requirements of section 3204 (d)(2)(C).

In addition, limiting the scope of contracts eligible for voluntary early review reduces the risk of this section imposing unreasonable administrative burdens on CEC staff and the Executive Director. If a POU requests early review of a contract that is not eligible under this section or section 3207 (c)(5)(A)1.ii., or the contract is eligible but the request is not complete under Section 3207 (c)(5)(A)2., then the Executive Director is

not obligated to issue a determination in response to the request under section 3207 (c)(5)(A)4. and 5.

Section 3207 (c)(5)(A)1.ii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs that previously reported contracts during the annual reporting process shall not be eligible for early contract review. This addition is necessary to reduce the chances of duplicative CEC staff review and lighten the administrative burden of this provision on CEC staff and Executive Director resources.

Section 3207 (c)(5)(A)2. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on the information and documentation required to be included in a POU’s complete request for voluntary early review. Requiring that requests be complete and contain the enumerated information is necessary to ensure that the Executive Director has the information required to evaluate and respond to the request within the timeline specified under section 3207 (c)(5)(A)4.

Section 3207 (c)(5)(A)2.i. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs of specific documentation that shall be included in the voluntary early review request. A complete copy of the contract and any underlying contracts is necessary to ensure that the Executive Director’s evaluation of whether the requirements of section 3204 (d)(2)(A)-(C) are met is based on the actual documents that POU intends to rely upon for RPS compliance.

Section 3207 (c)(5)(A)2.ii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs of specific information that shall be included in the voluntary early review request. A description and page numbers for the contract terms relevant to compliance with the requirements of section 3204 (d)(2)(A)-(C) is necessary to facilitate and expedite the Executive Director’s review of these contractual provisions within the allotted timeline.

Section 3207 (c)(5)(A)2.iii. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs of specific information that shall be included in the voluntary early review request. An explanation of how the POU has determined that the contract qualifies as long-term is necessary to facilitate and expedite the Executive Director’s review of these contractual provisions within the allotted timeline. This information is also necessary to ensure that only eligible contracts, consistent with the requirements of section 3207 (c)(5)(A)1., are being submitted for early review.

Section 3207 (c)(5)(A)2.iv. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs of specific information that shall be included in the voluntary early review request. This provision is necessary to facilitate and expedite the Executive Director’s review of these contractual provisions within the allotted timeline and to ensure that all relevant supporting documentation is in the CEC’s possession before the Executive Director begins evaluating the request.

Section 3207 (c)(5)(A)3. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs that the CEC may create a form to facilitate and streamline the voluntary early contract review process and reflect the requirements of this section.

Section 3207 (c)(5)(A)4. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs on the timeline by which POUs can ordinarily expect the CEC’s Executive Director, or his or her designee, to issue a determination in response to a request for early review under this section. The qualifiers here are necessary to clarify that, while 90 days reflects a reasonable estimate of the time it could take for CEC staff to respond to a request, more time may be necessary if the CEC is inundated with requests for early review. Because a failure to meet the 90-day deadline does not constitute a determination that the contract qualifies as long-term, these provisions make clear that requesters cannot compel the CEC to issue a determination if the review period exceeds 90 days. This provision also signals to POUs that, where possible, they should consider other ways to mitigate uncertainty in long-term contracts, such as including a contract provision that specifies that regulatory approval is required for the contract to take effect.

Section 3207 (c)(5)(A)5. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POUs that additional information may be requested from the POU in order to make a determination on the contract in review. This section is a necessary companion to section 3207 (c)(5)(A)2., allowing the CEC to request missing information in the event that a request is incomplete or does not contain sufficient information to evaluate whether the contract complies with section 3204 (d)(2)(A)-(C).

Section 3207 (c)(5)(B) – This subdivision was added in the third proposed 15-day with substantial but sufficiently related modifications to clarify and provide guidance to POUs on the annual and compliance period review process of long-term contract classification. This subdivision makes explicit the CEC’s review process to provide better guidance to POUs and provides POUs information on CEC staff’s review earlier in the compliance period.

Section 3207 (c)(5)(B)1. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on contract reporting requirements for the reporting years ending on or prior to December 31, 2019 and reported to the CEC prior to December 31, 2020.

Section 3207 (c)(5)(B)1.i. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's that each POU shall identify the long-term and short-term classification for all contracts previously reported to the CEC pursuant to section 3207 (c). This information is necessary to assist CEC staff in the timely verification of each POU's compliance with the LTR. CEC staff will verify contract claims specific to the LTR during the review process to verify procurement claims for Compliance Period 3. This information will be due to the CEC either by July 1, 2021, in accordance with the annual reporting deadline in section 3207 (c), or, if later, within 30 days of the effective date of these regulations.

Section 3207 (c)(5)(B)2. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on contract reporting requirements for the reporting years after December 31, 2020.

Section 3207 (c)(5)(B)2.i. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's that each POU shall report new and amended contract information previously reported to the CEC pursuant to section 3207 (c). CEC staff will verify the information provided and review any supporting documentation submitted. This section is also intended to provide nonbinding guidance to the POU's indicating that CEC staff will strive to complete all reviews and notify the POU's of its verification status within 365 days of the annual submittal of complete information and supporting documentation. CEC staff picked this timeframe as a reasonable estimate based on past review and verification of POU contract information submitted to demonstrate RPS compliance for prior compliance periods.

Section 3207 (c)(5)(C) – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide a clear process for POU's to request reconsideration of CEC staff's determination. This section is necessary to clarify the remedies available to POU's in the event that they disagree with CEC staff-level or Executive Director-level determinations as to the LTR-compliance of specific contracts.

Section 3207 (c)(5)(C)1. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on filing requirements for a petition for reconsideration if a POU disagrees with a determination by CEC staff, following the normal annual reporting

process, that a contract is short- or long-term. In this instance, because CEC staff is responsible for this review, the appropriate remedy is a request for reconsideration submitted to the CEC's Executive Director, consistent with the existing reconsideration provisions within section 1232.

Section 3207 (c)(5)(C)2. – This subdivision was added in the third proposed 15-day language with substantial but sufficiently related modifications to clarify and provide guidance to POU's on filing requirements for a petition for reconsideration following issuance of a determination by the CEC Executive Director or his or her designee in response to a request for voluntary early review, or a determination made by the Executive Director in conjunction with CEC staff following the normal annual reporting process. In these two circumstances, it would not be necessary for Executive Director to "reconsider" his or her own determination. Instead, requests for reconsideration filed under these circumstances shall be submitted by the Executive Director to the Chair of the CEC for review consistent with section 1232.5.

Section 3207 (d)(4) – A non-substantial and sufficiently related modification to this subdivision, added in the third proposed 15-day language, corrected a grammatical error.

Section 3207 (d)(4)(A) – This substantial but sufficiently related modification was made in the third proposed 15-day language to account for fact that regulations would not be effective by end of Compliance Period 3 on December 31, 2020, and may not be effective by the annual reporting deadline of July 1, 2021. The 30-day period balances the POU's need for ample time to respond to prepare information with the CEC's need to monitor compliance. In addition, a non-substantial and sufficiently related modification of this subdivision replaced "compliance" with "annual" to make it say "annual report" because the intended meaning of the term in this context is consistent with defined term applicable to "annual report" (see section 3207 (c)) not "compliance report" (see section 3207 (d)). The annual report is required submitted July 1, 2021 (or, if later, within 30 days of the effective date of these regulations), while the compliance report is submitted 90 days after draft verification results are published by CEC staff. In section 3207 (c)(5), POU's that elect for early compliance are required to report on long-term contracts for Compliance Period 3 in the annual report submitted on July 1, 2021.

Section 3207 (d)(5)(A)4.i. – Substantial but sufficiently related modification updated the reporting on cost limitations, for POU's that are required to adopt an IRP, to specify that the POU shall explain any differences related to cost and supply of eligible renewable energy resources and anticipated rate impacts. This addition is necessary to ensure that POU's sufficiently address any differences between cost limitation assumptions and IRP assumptions in support of consistency and transparency in approach to a POU's cost limitation development.

Section 3207 (h)(1) – No modifications were made to this subdivision. However, an explanation is needed to correct an error in the final express terms. The clause “~~the following information:~~” was added in the 45-day language. This clause is neither existing language in the regulations under current Title 20, Division 2, Chapter 13, sections 3201, 3202, 3204, 3205, 3206, 3207, and 3208, and in Title 20, Division 2, Chapter 2, Article 5, section 1240 of the California Code of Regulations nor is the underline/strikethrough convention used in the 45-day language. The first proposed 15-day language should have shown this clause as bold double strikethrough of underline “~~the following information:~~” which is the convention used in the first proposed 15-day language to show removal of added 45-day language.

Section 3207 (h)(2) – A substantial but sufficiently related modification to this subdivision in the third proposed 15-day language updated the reporting deadline to address the possibility that the regulations will not be effective by the July 1, 2021 annual reporting deadline. The 30-day period is necessary to balance the POU’s need for time to prepare information to submit to the CEC with the CEC’s need to monitor compliance.

Section 3207 (i) – A substantial but sufficiently related modification to this subdivision in the third proposed 15-day language updated the reporting deadline to address the possibility that the regulations will not be effective by the July 1, 2021 annual reporting deadline. The 30-day period is necessary to balance the POU’s need for time to prepare information to submit to the CEC with the CEC’s need to monitor compliance.

Section 3207 (i)(4) – A non-substantial and sufficiently related modification to this subdivision added in the third proposed 15-day language updated an internal reference for consistency.

Section 3207 (i)(4)(A) – A non-substantial and sufficiently related modification to this subdivision added in the third proposed 15-day language updated an internal reference for consistency.

Section 3207 (j) – A substantial but sufficiently related modification to this subdivision in the third proposed 15-day language updated the reporting deadline to address the possibility that the regulations will not be effective by July 1, 2021 annual reporting deadline. The 30-day period is necessary to balance the POU’s need for time to prepare information to submit to the CEC with the CEC staff’s need to monitor compliance.

Section 3207 (j)(4) – A non-substantial and sufficiently related modification to this subdivision added in the third proposed 15-day language updated an internal reference for consistency.

Section 3207 (j)(4)(A) – A non-substantial and sufficiently related modification to this subdivision added in the third proposed 15-day language updated an internal reference for consistency.

Section 3207 (k) – A non-substantial and substantial but sufficiently related modifications, added in the first and third proposed 15-day language. The first modification replaced “total retail sales” with “retail sales,” which is a defined term that matches the usage in context. The second modification updated the reporting deadline to address the possibility that the regulations will not be effective by the July 1, 2021 annual reporting deadline. The 30-day period is necessary to balance the POU’s need for time to prepare information to submit to the CEC with the CEC staff’s need to monitor compliance.

Section 3207 (n) – A substantial but sufficiently related modification to this subdivision added in the third proposed 15-day language updated the reporting deadline to address the possibility that the regulations will not be effective by July 1, 2021 annual reporting deadline. The 30-day period is necessary to balance the POU’s need for time to prepare information to submit to the CEC with the CEC’s need to monitor compliance.

Section 3207 (p)(1) – This substantial but sufficiently related modification, added in the first proposed 15-day language, allows the CEC Executive Director to extend deadline for a POU to submit or correct a missing, incorrect, or incomplete report by more than 10 business days, in the CEC Executive Director’s discretion. This modification is necessary to provide flexibility to noncompliant POUs in certain circumstances where the CEC Executive Director believes 10 days is an insufficient period to correct the instance of noncompliance.

Authority cited – Non-substantial and sufficiently related modification to the Authority and Reference portion of Section 3207, added in the second proposed 15-day language, to include Public Utilities Code section 399.18, whose criteria was modified to specify that an electrical corporation or its successor is now required to meet the conditions on an ongoing basis to be exempt from the portfolio balance requirement. This addition is necessary to implement this provision of law in the proposed regulations.

IV. CONSIDERATION OF ALTERNATIVE PROPOSALS (Government Code section 11346.9(a)(4))

The CEC determined that no alternative would be more effective in carrying out the purpose for which this action is proposed; would be as effective and less burdensome to affected persons than the adoption of the proposed regulations; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In the ISOR, the CEC discussed an alternative considered during the informal portion of the rulemaking and incorporates that discussion here by reference. Beyond the alternative addressed in the ISOR, the CEC has considered the following additional alternatives.

Long-Term Procurement Requirement

Underlying contract requirements

One commenter asserted that the CEC does not have the authority to make requirements for long-term contracts applicable to a third-party supplier's underlying contract(s) with the RPS-certified facility and proposed the alternative that the CEC not extend the requirements in these regulations to underlying contracts.¹³

The CEC has the authority to define long-term contracts and short-term contracts for purposes of POU compliance with the LTR and overall RPS compliance (See Public Utilities Code sections 399.25, 399.30). Applying the long-term contract requirements to an underlying contract with the RPS-certified facility is necessary to ensure all procurement counted for compliance with the LTR is sourced through long-term contracts, rather than a series of short-term transactions sold by a third-party supplier to a POU, and to treat POU contracts and third-party contracts equally. Despite the commenter's comments suggesting otherwise, this is an application of the CEC's authority over POUs, not an extension of that authority to a third-party supplier. Without this requirement, a POU could avoid contracting directly with RPS-certified facilities, because there would be fewer requirements for contracts with third-party suppliers and no long-term commitment with an RPS-certified facility would be necessary. In other words, the third-party supplier would be able to exact the benefits of long-term planning and market stability from its contract with the POU without being required to pass any of the benefits through to the RPS-certified facilities serving the POU under the supply contract. This is contrary to the function of the LTR which is to support the development of new and repowered resources and to support long-term planning and market stability.

Requirements for contract duration only

One commenter asserted that the CEC does not have the authority to establish requirements for long-term contracts other than a 10-year duration requirement. The commenter argued that the CEC's review of whether a contract or ownership agreement is deemed long-term should solely focus on contract duration because, in the commenter's view, the statute does not address any other contract terms that are necessary or relevant. The commenter noted, however, that they were aware that other stakeholders felt that "minimum requirements regarding contract pricing, procurement

¹³ See, for example, [Shell Comments](#), 11/13/2020.

quantities, and termination provisions” were necessary to ensure long-term contracts were not superficial and could actually be understood as long-term commitments.¹⁴

The CEC has the authority to define long-term contracts and short-term contracts for purposes of POU compliance with the LTR and overall RPS compliance (See Public Utilities Code sections 399.25, 399.30). These additional requirements are designed to differentiate between long-term contracts and contracts that nominally have a duration of at least 10 years, but are functionally short-term contracts that may have a 10-year duration but are functionally short-term in construction, and thus should not be counted as long-term for purposes of compliance with the LTR. Because this differentiation is consistent with the statutory framework of the LTR, the CEC did not believe that this alternative would be effective in carrying out the purpose for which this action is proposed.

Fixed pricing/quantity requirements

Some stakeholders advocated for requirements that long-term contracts include fixed prices or defined quantities to prevent “sham” (also referred to as contracts that strategically circumvent the LTR) contracts or other forms of strategic circumvention of the LTR. They argued that doing otherwise would invite market participants to offer POUs contracts that impose no meaningful obligations over an extended period and would frustrate the ability of developers to rely on such agreements to finance new and repowered generation.¹⁵

CEC staff found that the proposed alternative that long-term contracts include fixed prices or defined quantities is unduly restrictive and prescriptive and not necessary to implement the LTR. “Sham” contracts can be prevented from counting towards the LTR through the annual review of new contract information in section 3207. Further, the proposed regulations include a requirement for minimum quantity or pricing terms for the first 10 years of the contract term, which balances the need for flexibility while supporting the primary functions of the LTR by providing sufficient guardrails to ensure a contract represents an enforceable procurement obligation, and protects against a possible “sham” contracts.

Qualifying large hydroelectric generation provision

Some stakeholders advocated for a modified interpretation of the large hydroelectric generation partial procurement target exemption in section 3204 (b)(8). The exemption is applicable for the calendar years between 2019 and 2030, based on the effective dates of SB 100, which established the exemption, and the end of the last compliance period specified in Public Utilities Code section 399.30 (b), consistent with statute. In

¹⁴ See, for example, [NCPA Comments](#), 11/13/2020.

¹⁵ See, for example, [TURN Comments](#), 6/22/2020 (or FSOR Response to Public Comments Received #285).

comments, stakeholders argued that the exemption should be applied to compliance periods after 2030, consistent with the CEC's authority to establish multiyear compliance periods after 2030 in accordance with Public Utilities Code section 399.30 (c). The stakeholders argued that limiting the exemption through 2030 would have an absurd result because the duration of contracts under which the qualifying hydroelectric generation is procured last more than 20 years and would extend past 2030.¹⁶

However, Public Utilities Code section 399.30 (k)(2) clearly provides that the exemption applies "during a year within a compliance period set forth in subdivision (b)" of section 399.30. The multiyear compliance periods established by the CEC after 2030 are based on Public Utilities Code section 399.30 (c), not (b). Based on a fair reading of the statute it is appropriate to limit the exemption through 2030. The Legislature was very selective in establishing the different RPS exemptions for hydroelectric generation under SB 571, SB 350, SB 1393, and SB 100, and the Legislature may well have intended to limit the scope of the exemption at this time, while it further considered the state's broader renewable energy and zero-carbon policy post-2030. The statutory text and legislative history give no reason to conclude the Legislature was not purposefully selective and deliberate in limiting the scope of the RPS exemption here through 2030. Thus, the CEC chose not to include this proposed alternative.

Retail sales exclusion for qualifying generation from a voluntary green pricing program

Some stakeholders advocated for a modification to the CEC's proposed regulations or regulatory guidance that allows POU's to reduce their RPS retail sales figures by excluding the quantity of RECs that are retired to participate in the green tariff pathway for CARB's Low Carbon Fuel Standard (LCFS). One stakeholder is using a green tariff for electric buses, light rail, and cable cars to participate in the LCFS, and believes it should also be able to use the associated RECs retired for the LCFS to reduce its retail sales. Public Utilities Code section 399.30 (c)(4), the RPS statute associated with the stakeholder's contentions, requires qualifying electricity products to meet the requirements of PCC 1, and to the extent possible, to be procured from resources located in reasonable proximity to participating customers. Public Utilities Code section 399.30 (c)(4) also specifies that "... Any renewable energy credits associated with electricity credited to a participating customer shall not be used for compliance with procurement requirements under this article, shall be retired on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose." [Emphasis added].

The CEC did not adopt this alternative due to an understanding and interpretation of the statute that differs from the stakeholder. The CEC's interpretation of statute does not prevent the stakeholder from implementing their LCFS program but will not allow

¹⁶ See, for example, [NCPA Comments](#), 6/22/2020 (or FSOR Response to Public Comments Received #17A3).

them to reduce RPS retail sales, and thus RPS obligation, in addition to the benefit received from participation in the LCFS program. The stakeholder's contentions, and the CEC's response, are available in the FSOR's Response to Public Comments Received section, pages 53-57.

V. LOCAL MANDATE DETERMINATION (Government Code section 11346.9(a)(2))

If adopted, the proposed regulations would impose a mandate on local agencies, as POU's are local agencies. Pursuant to Government Code section 17556 (d), the costs would not be required to be reimbursed because the POU's, as local agencies, have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Public Utilities Code sections 10001, et seq., 11501, et seq., and 15501 et seq., and Water Code section 20500, et seq. provide revenue sources for the affected POU's to recoup any costs incurred through compliance with the proposed regulations.

VI. UPDATED INFORMATIVE DIGEST (Government Code section 11346.9(b))

Pursuant to Government Code section 11346.9(b), other than as discussed below, there have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Informative Digest to NOPA.

SB 702

As discussed above in Section III, Update of the Initial Statement of Reasons, for section 3201 (r), SB 702 (Stats. 2020, ch. 305) was enacted during the pendency of this rulemaking and has a minor effect on one section of the proposed regulations. Specifically, SB 702 modified Public Utilities Code section 399.13 to renumber what was previously section 399.13 (b) as section 399.13 (b)(1). This change took effect on January 1, 2021. The CEC could not adopt regulations implementing a law that had not yet taken effect.

As stated, because SB 702 also amended Public Utilities Code section 399.30 (d) to reference Public Utilities Code section 399.13 (b)(1), the amendments within SB 702 have no regulatory effect for POU's. The sole relevance is to section 3201 (r), which, as enacted, still references the previous Public Utilities Code section 399.13 (b), rather than the updated (b)(1). CEC staff believe the requirements of section 3201 (r) are still clear in context, given that the substantive portion of SB 702 added to Public Utilities Code section 399.13 (b)(2) explicitly does not affect POU's. For additional clarity, the CEC is considering a section 100 update to the reference in section 3201 (r) following the conclusion of the current rulemaking.

VII. INCORPORATION BY REFERENCE (California Code of Regulations, title 1, section 20(c)(1) and (2))

The proposed regulations do not incorporate any documents by reference.

VIII. ALTERNATIVES THAT WOULD LESSEN ECONOMIC IMPACT ON SMALL BUSINESSES (Government Code section 11346.9(a)(5))

The CEC considered and discussed impacts to small businesses and alternatives in the NOPA and the ISOR, and hereby incorporates these discussions by reference. The CEC did not identify any small businesses that will be adversely impacted by the proposed regulations. The proposed regulations apply only to POU, which are local agencies and not independently owned and operated small businesses.

The adopted regulations will not have a significant adverse economic impact on small business and no alternatives were proposed that would lessen any adverse economic impact on small business. For the purposes of this analysis, the CEC used the consolidated definition of small business in Government Code section 11346.3(b)(4)(B).

IX. DOCUMENTS RELIED UPON (Government code sections 11346.9(a)(1) and 11347.1)

In addition to the documents identified in the ISOR, the documents listed in this section below were relied upon by the CEC in developing the final express terms. Copies of the documents or their pertinent parts are included in the rulemaking file for this proceeding (Docket No. 16-RPS-03) and are available for public inspection at the California Energy Commission located at 1516 9th Street, in Sacramento, California.

In accordance with Government Code section 11347.1, these documents were made available for public comment at least 15 days before the CEC's consideration and adoption of the proposed regulations. The CEC's *Notice of New Public Hearing Date and Notice of Availability of Third 15-Day Language* (TN 235823), sent on December 1, 2020, identified the CEC's reliance on and availability of these documents for public inspection and comment.

California Energy Commission. *Key Topics Guide: Proposed Implementation of RPS Long-Term Procurement Requirement in RPS POU Regulations*. October 30, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235471&DocumentContentId=68367>

California Energy Commission. *Transcript of 11-5-2020 Lead Commissioner Workshop on Implementation of RPS Long-Term Procurement Requirement for*

POUs. December 1, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235817&DocumentContentId=68769>

California Municipal Utilities Association, Northern California Power Agency, and Southern California Public Power Authority (collectively "Joint Associations").

Comments on the Key Topics Guide. November 13, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235590&DocumentContentId=68522>

California Municipal Utilities Association, Northern California Power Agency, Southern California Public Power Authority, and The Utility Reform Network (collectively "Joint Stakeholders"). *Joint Stakeholder Proposal for Implementation of the Long Term Procurement Requirement*. October 20, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235365&DocumentContentId=68252>

Los Angeles Department of Water and Power. *Comments on Implementation of the RPS Long-Term Procurement Requirement*. November 13, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235582&DocumentContentId=68514>

Northern California Power Agency. *Comments on RPS Key Topics Guide and Lead Commissioner Workshop*. November 13, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235595&DocumentContentId=68526>

Pasadena Water and Power. *Comments on the Key Topics Guide*. November 13, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235594&DocumentContentId=68539>

Roseville Electric Utility. *Comments on the Lead Commissioner Workshop on November 5, 2020*. November 13, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235592&DocumentContentId=68524>

The Utility Reform Network. *Comments on Proposed Implementation of Long-Term Contracting Requirements for the Renewables Portfolio Standard for local publicly owned electric utilities*. November 13, 2020.

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=235602&DocumentContentId=68544>

X. SUMMARY AND RESPONSE TO PUBLIC COMMENTS RECEIVED
 (Government Code section 11346.9(a)(3))

LEGEND

THE COMMENTER	COMMENT NOS./DATE
Alameda Municipal Power (AMP)	1D1/September 2, 2020
Alliance for Retail Energy Markets (AReM)	2C1-2/August 5, 2020
Biggs, City of (Biggs)	3D1/September 2, 2020
Burbank Water and Power (BWP)	4D1/September 3, 2020
California Municipal Utilities Association (CMUA)	5A1-28/June 1, 2020 5B1-3/June 8, 2020 5E1-9/November 5, 2020 5H1/December 22, 2020
The Coalition of California Utility Employees (CUE)	6A1-15/June 22, 2020
Healdsburg, City of (Healdsburg)	7D1/September 2, 2020
Independent Energy Producers (IEP)	8D1-5/September 2, 2020
Imperial Irrigation District (IID)	9D1/September 3, 2020
J Aron & Company LLC (J. Aron)	10A1-5/June 22, 2020
Joint Associations ¹⁷	11D1/August 21, 2020 11F1-14/November 13, 2020 11G1-9/December 16, 2020
Joint POU Group ¹⁸	12D1-13/September 2, 2020
Joint POUs ¹⁹	13A1-14/June 22, 2020 13C1-13/August 5, 2020
Los Angeles Department of Water and Power (LADWP)	14A1-13/June 22, 2020 14B1-2/June 8, 2020 14C1-13/August 6, 2020 14D1-10/September 2, 2020 14E1/November 5, 2020 14F1-11/November 13, 2020 14G1-10/December 16, 2020
Lodi Electric Utility (LEU)	15D1/September 2, 2020
Modesto Irrigation District (MID)	16C1-2/August 5, 2020
Northern California Power Agency (NCPA)	17A1-15/June 22, 2020 17B1-3/June 8, 2020 17C1-6/August 5, 2020 17D1-15/September 2, 2020 17E1-4/November 5, 2020 17F ²⁰ 1-6/November 13, 2020 17G1-8/December 16, 2020

¹⁷ Includes CMUA, NCPA, and SCPA.

¹⁸ Includes CMUA, MID, MSR, NCPA, SCPA, and Lassen.

¹⁹ Includes CMUA, MID, MSR, NCPA, SCPA, SMUD, and TID.

²⁰ Commenter submitted the same comments twice, TN 235595 and TN 235598.

	17H1/December 22, 2020
Palo Alto, City of (Palo Alto)	18D1/September 1, 2020
Powerex Corp. (Powerex)	19A1-4/June 22, 2020 19C1-4/August 5, 2020 19G1/December 16, 2020
Pasadena Water and Power (PWP)	20A1-16/June 22, 2020 20B1/June 8, 2020 20C1-10/August 5, 2020 20D1-16/September 2, 2020 20D17/September 3, 2020 20E1-4/November 5, 2020 20F1-14/November 13, 2020 20G1/December 16, 2020
Redding, City of (Redding)	21A1-4/June 22, 2020 21B1/June 8, 2020 21C1/August 5, 2020 21D1/September 2, 2020
Roseville, City of (Roseville)	22A1-13/June 22, 2020 22B1-2/June 8, 2020 22C1-4/August 4, 2020 22E1-4/November 5, 2020 22F1-9/November 13, 2020
Southern California Public Power Authority (SCPPA)	23H1/December 22, 2020
San Francisco Public Utilities Commission (SFPUC)	24A1-6/June 22, 2020 24B1-3/June 8, 2020 24C1-8/August 5, 2020 24D1-9/September 2, 2020 24G1-4/December 16, 2020 24H1-4/December 22, 2020
Shell Energy North America (US), L.P. (Shell)	25A1-2/June 1, 2020 25A3-8/June 22, 2020 25C1-5/August 5, 2020 25F1-3/November 13, 2020 25G1-2/December 15, 2020 25G3-4/December 17, 2020
Sacramento Municipal Utilities District (SMUD)	26B1/June 8, 2020 26D1-8/September 2, 2020
Silicon Valley Power (SVP)	27D1/September 2, 2020
The Utility Reform Network (TURN)	28A1-15/June 22, 2020 28C1-10/August 5, 2020 28D1-6/September 2, 2020 28E1-11/November 5, 2020 28F1-7/November 13, 2020 28G1-4/December 16, 2020 28H1/December 22, 2020
Mr. Steve Uhler (Uhler)	29A1/June 1, 2020 29A2/June 8, 2020

	29A3-5/June 10, 2020 29A6/June 12, 2020 29A7-8/June 12, 2020 29A9/June 15, 2020 29A10/June 15, 2020 29A11/June 17, 2020 29A12/June 17, 2020 29A13/June 17, 2020 29A14-15/June 19, 2020 29A16/June 22, 2020 29A17/June 22, 2020 29A18/June 22, 2020 29A19-20/July 3, 2020 29B1-6/June 8, 2020 29C1-3/July 22, 2020 29C4-7/July 22, 2020 29C8/July 22, 2020 29C9/July 22, 2020 29C10-12/July 22, 2020 29D1-3/September 1, 2020 29D4/September 2, 2020 29D5/October 8, 2020 29D6/October 8, 2020 29D7/October 21, 2020 29D8-9/October 23, 2020 29D10/November 3, 2020 29D11/November 4, 2020 29E1-4/November 5, 2020 29F1/November 6, 2020 29F2/November 9, 2020 29F3/November 12, 2020 29G1/December 14, 2020 29G2-3/December 14, 2020 29G4/December 15, 2020 29G5/December 23, 2020 29G6/December 23, 2020 29G7/January 3, 2020 29G8/January 6, 2020 29H1-3/December 22, 2020
Ukiah, City of (Ukiah)	30D1/September 2, 2020
Yocha Dehe Wintun Nation (Yocha Dehe)	31G1/December 7, 2020
Joint Stakeholders ²¹	32I1-14/October 20, 2020
Shasta Lake, City of (Shasta Lake)	33E1/November 5, 2020
Charles Adams, Albion Power Company (Albion Power Company)	34E1/November 5, 2020

²¹ Includes CMUA, NCPA, SCPPA, and TURN.

*Note: Responses to comments are indented. Responses apply to all comments grouped together below, including situations in which multiple paragraphs are grouped above one response.

The naming convention for this Section X, Summary and Response to Public Comments Received, is as follows:

- Read from left to right, the first number corresponds to the commenter, for example, "1" corresponds to Alameda Municipal Power.
- The uppercase letter corresponds to where the commenter's oral or written public comment was made:
 - o "A" corresponds to a 45-day language written public comment.
 - o "B" corresponds to a 45-day language oral public comment.
 - o "C" corresponds to a first 15-day language written public comment.
 - o "D" corresponds to a second 15-day language written public comment.
 - o "E" corresponds to a Lead Commissioner Workshop oral public comment on November 5, 2020.
 - o "F" corresponds to written public comment on the November 5, 2020, Lead Commissioner Workshop and workshop materials.
 - o "G" corresponds to a third 15-day language written public comment.
 - o "H" corresponds to a public hearing oral public comment.
 - o "I" corresponds to written public comments included in the Joint Stakeholders Proposal, which was not submitted to the CEC during a noticed comment period.
- Comments submitted outside of a noticed comment period were assigned the letter corresponding to the period that closed most recently prior to the date of the comment.
- The second and final number corresponds to the specific oral or written public comment within the commenter's submitted comments. In most cases, this number is listed in numerical order, for example, "1, 2, 3,..." from top to bottom within the submitted public comments, but this is not necessarily always the case.

SECTION 3201: "SLEEVING ARRANGEMENT"

COMMENT NO. 10A5: The commenter requested that a definition for "sleeving arrangement" be added, whereby a third-party is inserted between the retail seller or POU and its contractual counterparty for an existing contract, and the third-party procures electricity products from the contractual counterparty and delivers those same electricity products to that same retail seller or POU. The commenter requested this addition to clarify aspects of LTR implementation and modifications to contracts containing electricity products that meet the criteria of section 3202 (a)(2) that count in full towards the LTR.

RESPONSE: No change to the regulations. CEC staff believes the language is clear, unambiguous, and adequate, despite the comment. However, a clarification related to sleeving arrangements is appropriate for the avoidance of doubt, and has been made in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3202 (a)(2)(B).

SECTION 3201 (r): "LONG-TERM PROCUREMENT REQUIREMENT"

COMMENT NO. 29G4: The commenter requested to change the definition's statutory reference to "paragraph (1) of subdivision (b) of, section 399.13" in order to reflect the amendment from SB 702 (Hill, Ch. 305, 2020).

RESPONSE: No change to the regulations. The bill in question, which addresses a special case for one retail seller, renumbers the LTR from Public Utilities Code section 399.13 (b) to (b)(1). The bill was signed into law in late September 2020 and took effect January 1, 2021. Because SB 702 also amends Public Utilities Code section 399.30 (d) to reference Public Utilities Code section 399.13 (b)(1), the amendments of SB 702 have no regulatory effect for POUs. Therefore, section 3201 (r), as amended, can be clearly understood in this statutory context to include only the long-term procurement requirements contained within section 399.13 (b), which are applicable to POUs—namely, those in what is now subdivision (b)(1), as made applicable to POUs through Public Utilities Code section 399.30 (d). Nevertheless, the CEC is considering a section 100 update to the reference in section 3201 (r) following the conclusion of the current rulemaking.

SECTION 3202 (a)(2)(B)

COMMENT NO. 13A13: The commenters support the characterization and treatment of amendments or modifications to electricity products with count in full status.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 13A14, 17A12, 13C12, 17C4, 16C1: The commenters requested clarification in the regulations that modifications, such as assignments for financial purposes, other than those prohibited by statute, to contracts containing electricity products that meet the criteria of section 3202 (a)(2) should not affect its count in full status.

COMMENT NO. 10A2: The commenter requested that the proposed regulations should clarify that sleeving arrangements, a financial-only assignment, do not affect electricity products with count in full status.

COMMENT NO. 16C2: The commenter argued that regulatory certainty is needed on the effect of financial-only assignments on PCC and long-term status.

RESPONSE: No change to the regulations. CEC staff believes the language is clear, unambiguous, and adequate, despite the comments. However, a clarification related to financial-only assignments is appropriate for the avoidance of doubt, and has been made in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3202 (a)(2)(B).

COMMENT NO. 14A1: The commenter recommended that contract assignments, exercise of buyout options, or modifications due to efficiency improvements should not affect electricity products with count in full status. In other words, the commenter argued that the amendments or modifications to electricity products with count in full status should receive similar treatment as amendments or modifications under the LTR. The commenter argued that contract assignments to another POU or third-party would provide long-term planning stability for the developer.

RESPONSE: No change to the regulations. It is important for these modifications to change count in full status for electricity products procured through the modified contract because the purpose of the LTR is different than the purpose of allowing electricity products with count in full status to be applied towards RPS procurement obligations. Specifically, the LTR is focused on supporting the development of new and repowered resources and supporting long-term planning and market stability, whereas count in full status was created to protect certain existing contractual obligations from being undermined by the implementation of the RPS. Thus, the reasoning for protecting count in full status for existing agreements does not necessarily extend to amendments or modifications of existing agreements.

SECTION 3202 (a)(3)(D)

COMMENT NO. 26B1: The commenter suggested that the ISOR language for section 3202 (a)(3)(D) is inconsistent with section 3202 (a)(3)(B) in the proposed regulations.

RESPONSE: No change to the regulations. CEC staff disagrees with the comment that the two sections are inconsistent. However, a clarification related to this subdivision is appropriate to provide additional information about the CEC's intended meaning for an important phrase, and has been made in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3202 (a)(3)(D).

SECTION 3204 (a)

COMMENT NO. 29A9, 29B1: The commenter requested clarification of the percentages of total kWh for each compliance period required for each POU to comply with the RPS procurement target. The commenter contended that use of percentage of total kWh for each compliance period may not work for all conditions, e.g. a situation where customer participation in a POU's voluntary green pricing program results in zero retail sales for the compliance period or soft target years, or a situation where a POU charges only by time period instead of kWh. The commenter also requested clarification of how soft targets show reasonable progress if they show greater amounts than results claimed for power content labels for the same year.

RESPONSE: No change to the regulations. The RPS procurement target is calculated by multiplying the annual soft target and each POU's annual retail sales and summing the total over the compliance period. Percentages are determined after the compliance period because annual retail sales vary. If all of a POU's customers signed up for a voluntary green pricing program and all generation was supplied with qualifying PCC 1 products, the POU would have no separate RPS obligation. However, under any other scenario, a POU would have a separate RPS obligation. In terms of soft targets showing reasonable progress, there cannot be a single percentage because retail sales are not fixed; retail sales vary annually.

COMMENT NO. 20A1: The commenter supports the compliance period target methodology and interim years between the compliance period targets.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 14A12: The commenter argued that the proposed regulations should be clarify the definition of "EPx" by using different variables for each unique definition to minimize confusion and add consistency.

RESPONSE: No change to the regulations. The purpose of the revisions to this section is to clarify only variables/equations used for current and future compliance periods, not to assign new definitions applicable to past compliance periods.

SECTION 3204 (b)(8)

COMMENT NO. 20B1: The commenter requested clarification on the requirements for qualifying generation and the meaning of generation is exempted.

RESPONSE: No change to the regulations. The eligibility criteria and exemption calculation are already specified in the regulations in a manner that is clear and consistent with Public Utilities Code section 399.30 (k), as modified by SB 100, and Public Utilities Code section 399.30 (b).

COMMENT NO. 5A11, 17A4, 17C2, 17B2, 17C3: The commenters argued that the prohibited use of this large hydro exemption after 2030 should be removed because it fails to properly apply a reasonable and commonsense statutory interpretation that is consistent with its intent and purpose.

COMMENT NO. 5A12, 17A5: The commenters argued that the addition of compliance periods after 2030 in Public Utilities Code section 399.30 (c) instead of (b) appears to be in error and creates a disjointed reading of the statute.

COMMENT NO. 17A6: The commenter argued that the objective of the legislation was to address treatment of long-term contracts between public agencies and the federal government, and to provide certainty regarding RPS program treatment of these resources before making a commitment of up to 30 years.

COMMENT NO. 17A3: The commenter argued that sunseting the exemption in 2030 would render the provision moot for some of the anticipated extensions, which would continue for another 25 years.

RESPONSE: No change to the regulations. Public Utilities Code section 399.30 (k)(2) does not give the CEC discretion to allow this exemption to continue after 2030, and this outcome is not absurd. The CEC response to the commenters' arguments are explained in depth above in Section IV, Consideration of Alternative Proposals, of the FSOR under "Qualifying large hydroelectric generation provision".

SECTION 3204 (b)(9)

COMMENT NO. 20A2: The commenter supports the retail sales exclusion of voluntary green pricing programs and the CEC's intent to clarify terms.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 29C1: The commenter requested clarification on how the CEC determines when the participating customer does not elect to have some, or all its retail sales satisfied under a voluntary green pricing or shared renewable generation program.

RESPONSE: No change to the regulations. Pursuant to Public Utilities Code section 399.30, the CEC's enforcement regulations, including this optional retail sales reduction, are applicable to POUs, not the customers of the POUs. However, any electricity products that are excluded must have the associated RECs retired on behalf of the customer and cannot be used for the POU's RPS compliance obligation.

COMMENT NO. 29C2: The commenter requested clarification on the disposition of RECs from an eligible renewable energy resource credited to a participating voluntary green pricing program or shared renewable generation program customer when the POU does not elect to exclude from its retail sales these MWh.

RESPONSE: No change to the regulations. A POU is not required to exclude the quantities of qualifying green pricing/shared renewable generation program RECs from its RPS retail sales. Voluntary green pricing program requirements are relevant to the RPS program only when qualifying generation is excluded from a POU's retail sales at the sole election of the POU. The RPS statute, Public Utilities Code section 399.30 (c)(4), does not otherwise provide for regulation of a POU's green tariff.

COMMENT NO. 29C9: The commenter requested clarification as to how the CEC will ensure that only PCC 1 RECs will be excluded under this provision because there may be situations where a participating customer may not always consume its total allocated capacity and that the unused credit will be PCC 3.

RESPONSE: No change to the regulations. The requirements for PCC 1 classification are based on whether the resource is located in a CBA or, if the resource is outside a CBA, the generation is scheduled into a CBA on an hourly or sub hourly basis without substitution. The requirements for PCC 1 RECs are not based on delivery to and/or consumption by a specific end-use customer.

COMMENT NO. 29C3: The commenter argued that POU voluntary green pricing or shared renewable generation programs should be required to register with the CEC to ensure no double counting pursuant to Public Utilities Code section 399.21 (a)(1).

RESPONSE: No change to the regulations. The requirement that excluded RECs are retired in a WREGIS subaccount on behalf of participating customers will be verified by the CEC to ensure no double counting for RPS compliance or compliance with another voluntary or state program.

COMMENT NO. 29A11: The commenter requested explanation on how a REC can be counted for the RPS and LCFS program, VRE program, and Title 24, Part 1, section 10-115 community solar program without double counting, consistent with Public Utilities Code section 399.21.

RESPONSE: No changes to the regulations. RECs in a voluntary green pricing/shared renewable generation program cannot be counted for the RPS, so there is no double counting under this regulation. This provision exists so that a POU only has to procure RPS-eligible generation once for a green tariff customer, as long as specified requirements are met. The ISOR explains how LCFS and VRE

relate to voluntary green pricing/shared renewable generation program retail sales reduction, and for RPS purposes there is no double counting because the POU is not claiming the REC but rather is excluding the quantities of qualifying green pricing/shared renewable generation program RECs from its RPS retail sales calculations. Regarding Title 24, Part 1, section 10-115, it is enrollment in a community solar program itself, not individual RECs, that may be used as an alternative to the rooftop solar requirement. Thus, this scenario also does not involve double counting.

COMMENT NO. 29A1, 29B5: The commenter argued that the proposed regulations should require POUs to submit the enforceable contract signed by the voluntary green pricing program's participating customer to avoid double counting.

RESPONSE: No change to the regulations. Based on REC retirement requirements, the customer would not be able to further sell or transfer RECs, and it is unclear how the customer could monetize the RECs without the title to those RECs or why submission of a signed contract would be necessary to avoid double counting.

COMMENT NO. 29G1, 29H3: The commenter recommended that temporal proximity should be limited to the hour the program participant consumed the energy and should not include use of "historic carryover" pre-June 1, 2010 RECs for this provision. The commenter believes the proposed language for this provision addresses reasonable proximity spatially but does not address it temporally in the same manner.

RESPONSE: No change to the regulations. The comment misstates the requirements for qualifying generation and the function of this retail sales exclusion. The retail sales exclusion requires qualifying RECs to be retired on behalf of participating customers and not be used for RPS compliance. A POU's historic carryover and excess procurement, which are retired for purposes of RPS compliance, cannot be provided to customers in a qualifying green pricing program. In addition, the requirement that qualifying generation meet the criteria of PCC 1 (electricity and RECs procured bundled) partially establishes a temporal requirement, as it precludes the use of RECs generated prior to the time the electricity is procured for the customer.

COMMENT NO. 5A28, 20A12: The commenters requested information on the rationale for the clarification that LCFS participation represents monetization of green tariff RECs.

RESPONSE: No change to the regulations. The ISOR explains the rationale for rejecting this request in depth, as does the FSOR's Section IV above, Consideration of Alternative Proposals, under "Retail sales reduction".

COMMENT NO. 20A13: The commenter argued that LCFS participation should not count as monetization of voluntary green pricing program RECs because it allows a POU to optimize its climate change programs that foster and support statewide carbon reductions.

RESPONSE: No change to the regulations. The LCFS is a further monetization of the RECs, which is prohibited by statute. The ISOR explains the rationale for rejecting this request in depth, as does the FSOR's Section IV above, Consideration of Alternative Proposals, under "Retail sales reduction".

COMMENT NO. 24A4, 24C1, 24D1: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – preventing the exclusion of LCFS credits will require POUs to double retire RECs – one for the RPS obligation and one for LCFS, therefore increasing costs and hindering California's GHG reduction goals.

RESPONSE: No change to the regulations. There is no "double retirement" of RECs, because LCFS RECs are not counted for compliance with the LCFS program. While POUs that retire RECs for LCFS credits will not be able to benefit from lowering RPS retail sales, which will reduce the RPS target but on a less than 1-1 basis, this implementation is based on the plain language of statute, pursuant to Public Utilities Code section 399.30 (c)(4), which prevents excluded RECs from being "further sold, transferred, or otherwise monetized for any purpose."

COMMENT NO. 24D9, 24G1, 24H2: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – preventing the exclusion of LCFS credits will require POUs to double retire RECs and would therefore make it uneconomical for a green tariff customer to participate in the LCFS program.

RESPONSE: No change to the regulations. This assertion is incorrect; no "double retirement" is required. Green tariff retail sales that are not eligible for exclusion will be treated as part of the RPS retail sales, from which the annual soft target will be calculated as a percent of retail sales. Furthermore, the prohibition on monetizing excluded RECs is based on the plain language of the statute, pursuant to Public Utilities Code section 399.30 (c)(4).

COMMENT NO. 24A6, 24C2, 24D3, 24G2, 24H1: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – the proposed regulations would undermine CARB's transportation electrification initiative, which anticipates relying on funding from LCFS credits.

COMMENT NO. 24B1: The commenter requested justification how the proposed regulations are helping achieve California's transportation electrification goals in Public Utilities Code section 740.12 (a)(2).

RESPONSE: No change to the regulations. Implementation is based on the plain language of the statute, pursuant to Public Utilities Code section 399.30 (c)(4), which prevents excluded RECs from being "further sold, transferred, or otherwise monetized for any purpose." Further, CARB's transportation electrification initiative is not a matter for the CEC to address in its RPS rulemaking.

COMMENT NO. 24D5: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – CEC staff has not identified what "initial" monetization of the REC means, which is a necessary step in order for RECs to be "otherwise" or "further" monetized.

RESPONSE: No change to regulations. This comment mischaracterizes the statutory requirement prohibiting monetization for any other purpose. There is no "initial" monetization of a green pricing program REC to be retired and excluded from RPS retail sales that is allowable under the statute, pursuant to Public Utilities Code section 399.30 (c)(4).

COMMENT NO. 24C6, 24D6: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – a better interpretation of "otherwise monetized" is that a customer can use green tariff participation for its participation in only one other program, and that any additional usage constitutes "double counting" and is prohibited. Thus, a customer could use green tariff participation to meet either Title 24 standards or LCFS participation but not both. This is consistent with CARB's position on the LCFS that double counting doesn't include reporting for the CPUC's Green Tariff/Shared Renewables Program.

RESPONSE: No change to the regulations. The issue at hand does not pertain to "double counting" RECs but rather the statutory prohibition on monetization.

COMMENT NO. 24A3, 24B3, 24C3, 24D4: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – it is a customer's participation in a green tariff program that provides the financial value. The REC itself is not monetized, it only documents that the customer met the green tariff requirements.

RESPONSE: No change to the regulations. The quantity of RECs retired to substantiate a quantity of low carbon intensity affects the determination of LCFS credits that the POU may receive. It is not merely enrollment in a green tariff that provides financial value, but the quantity of electricity and associated RECs procured through the tariff.

COMMENT NO. 24C7, 24D7: The commenter argued that POUs must be able to exclude LCFS green tariff RECs from RPS retail sales – any prohibition on "monetization" applies only to the POU, not the POU's customers. The entirety of the RPS program

applies to POU's and governing boards, not customers of the POU. A customer could never further sell or transfer RECs because the RECs aren't transferred to them, so these prohibitions must apply only to the POU. Logically, the third prohibition (on monetization) would also apply to the POU.

RESPONSE: No change to the regulations. Public Utilities Code section 399.30 (c)(4) prohibits monetization of the RECs that are retired and excluded from a POU's retail sales but does not differentiate between that some forms of monetization are acceptable, depending on the party.

COMMENT NO. 24A2, 24B2, 24C4: The commenters argued that POU's must be able to exclude LCFS green tariff RECs from RPS retail sales – any "monetization" of RECs through LCFS participation is no different than participation in Title 24 community solar program or green-e certification, through which customers also benefit economically. It is the customer's participation in these programs that provides the benefits, not the REC retirement.

COMMENT NO. 24G3, 24H3, 29H1: The commenters argued that, if strictly implemented, a customer's use of green tariff participation for any program (e.g. LEED certification, Title 24 compliance, or green marketing) that provide a financial value to a customer should be prohibited.

RESPONSE: No change to the regulations. Any secondary economic benefits derived from, for example, charging higher rent due to LEED certification or green product claims are indirect and not fixed or certain, whereas the quantity of RECs retired for the LCFS directly factor into LCFS credits that have defined financial value. Furthermore, LCFS credits can be sold or traded, such that the representation of low carbon intensity electricity does not necessarily remain with the green tariff customer.

COMMENT NO. 24A5: The commenter argued that POU's must be able to exclude LCFS green tariff RECs from RPS retail sales – the proposal would establish inconsistent treatment between POU green tariff programs and their investor-owned utility counterparts, as the LCFS regulation states that IOU Green Tariff/Shared Renewables Program (GTSR) do not constitute a double claim.

RESPONSE: No change to the regulations. Regardless of LCFS regulation's statement about "double claim", IOUs cannot use in practice use their green tariff programs in the LCFS. In implementing the green tariff program requirements for IOUs, the CPUC required IOUs to retire allowable GHG allowances in the Cap-and-Trade VRE program, which requires its own REC retirement and is incompatible with LCFS participation. Furthermore, the issue at hand does not pertain to "double counting" RECs but rather the statutory

prohibition on monetization pursuant to Public Utilities Code section 399.30 (c)(4).

COMMENT NO. 24D2, 24G4, 24H4: The commenter argued that POU's must be able to exclude LCFS green tariff RECs from RPS retail sales – the proposal would establish inconsistent treatment between POU green tariff programs and CEC's Title 24 Solar Standards, as the proposed regs state that Title 24 community solar programs are not precluded from this provision but that the LCFS program is. Both programs are voluntary, both meet the Public Utilities Code section 399.30(c)(4) requirements, and both are alternative tools to meet an otherwise mandatory compliance obligation. The ISOR's reasons for differing treatment between the two programs are unconvincing.

RESPONSE: No change to the regulations. One notable difference between the two programs is that participation in the Title 24 community solar option is based on enrollment in a shared solar program for a share of project capacity, not based on the RECs themselves. Conversely, LCFS credits accrue based on the quantity of RECs retired for the LCFS; using SFPUC's example, 100 RECs translate into roughly 35 LCFS credits, each of which has a value of ~\$200.

COMMENT NO. 24C8: The commenter argued that POU's must be able to exclude LCFS green tariff RECs from RPS retail sales – any comparison to CPUC implementation must account for statutory differences in requirements for POU and IOU green tariff programs. Unlike the RPS retail sales reduction for POU's, IOU's are statutorily required to retire GTSR RECs in the Cap-and-Trade Voluntary Renewable Electricity Program. After Voluntary Renewable Electricity Program expires, CEC staff should work with CPUC to encourage policies to promote LCFS participation.

RESPONSE: No change to regulations. CEC implementation of RPS retail sales reduction for POU's is not based on CPUC GTSR implementation for IOU's, which is fundamentally different because it regulates IOU green tariff programs, not just green tariffs that may be excluded from RPS retail sales. The only comparison to CPUC implementation is simply to identify there is unequal treatment between POU's and retail sellers, not necessarily to remedy it given the differences in applicable sections of the law.

COMMENT NO. 24A1, 24C5, 24D8: The commenter argued that the ISOR incorrectly states that RECs are retired on behalf of participating customers for purposes of the RPS retail sales reduction; this statement is inconsistent with the proposed regulations' definition of "retire".

RESPONSE: No change to the regulations. CEC staff believes the ISOR language is consistent with the proposed regulations, despite the comment. However, a clarification related to this subdivision is appropriate to provide additional information about the CEC's intended meaning for an important phrase, and has

been made in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3204 (b)(9)(B)3.

COMMENT NO. 29C8: The commenter argued that the meaning of “monetized” should be revised to exclude program tariffs or subscriptions only where payment is received prior to REC retirement.

RESPONSE: No change to the regulations. As long as the POU's voluntary green pricing program meets the statutory requirements for excluding RPS retail sales, the specific program details are a matter to be resolved between the POU and participating customer, not by the RPS regulations.

COMMENT NO. 29B6: The commenter argued that a customer claiming “renewable power” constitutes value.

COMMENT NO. 29A5: The commenter requested clarification on whether the definition of “value” has been arrived at pursuant to Public Resources Code section 25000.1 (c).

COMMENT NO. 29B3: The commenter requested clarification of the definition of “value” in the context of monetization of RECs as it appears to require double counting.

RESPONSE: No change to the regulations. However, refer to the Update of the Initial Statement of Reasons, section 3204 (b)(9)(B)3.i. for a related revision which addresses these comments.

COMMENT NO. 14C2: The commenter supports the clarification that monetization refers to derived “financial value”.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 5A25, 17A13: The commenters requested modification of the meaning of “seek to procure” for POUs located outside a CBA to be the same as the meaning for POUs located within a CBA.

RESPONSE: No change to the regulations. However, the Update of the Initial Statement of Reasons section for this subdivision, section 3204 (b)(9)(B)4.i., has been updated with a clarification that responds to this comment.

COMMENT NO. 20A3: The commenter supports the definition of “reasonable proximity” but requested the CEC consider allowing procurement from outside its own CBA, and evaluate the potential economic implications of reasonable proximity given the diversity of renewable project locations, especially as the market sees consolidation and CAISO promotes the EIM.

RESPONSE: No change to the regulations. The definition of “reasonable proximity” includes a CBA, not just the POU’s own balancing authority. And, as noted in the ISOR, a POU is not precluded from procuring resources from outside a CBA.

COMMENT NO. 5A2: The commenter supports the definition of “reasonable proximity”. The commenter noted that the implementation provides sufficient flexibility and strikes the appropriate balance between encouraging local development while not punishing POUs based on their geography and provides sufficient certainty for POUs contemplating new voluntary green pricing programs.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3204 (b)(10)

COMMENT NO. 20A6: The commenter supports the inclusion of this provision because many POUs over-procured resources via long-term contracts to comply with the RPS. The commenter noted the inclusion of this provision protects against disproportionate rate impacts in the event of over-procurement.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3204 (b)(11)

COMMENT NO. 5A13, 17A9, 21A4, 22A11: The commenters argued that the proposed regulations add extra-statutory requirement to the SB 1110 exemption – if the Legislature intended the 20 percent to apply for the duration of the compliance period, the statute would have stated “throughout the compliance period” rather than “during a given compliance period”.

COMMENT NO. 22C4: The commenter argued that the regulations should clarify that the exemption applies on a yearly basis to be consistent with statutory intent.

COMMENT NO. 21A3, 17A7, 21C1, 17C1: The commenters argued that the proposed language does not provide vital relief intended by the law and should be revised remove extra-statutory provisions that limit ability of eligible POUs to use the provision.

COMMENT NO. 13C13: The commenter argued that the first proposed 15-day language does not result in an annual assessment and frustrate the intent of SB 1110.

COMMENT NO. 17D14: The commenter argued that the second proposed 15-day language does not result in annual assessment and therefore disappoint the commenter

– this provision applies to a select few number of generation facilities that were meant to protect ratepayer investments in facilities built to address reliability needs. The commenter also noted the recent heat waves and blackouts show how important reliable electricity is to the state's residents and businesses.

COMMENT NO. 17B3, 17A8, 21A1, 21B1, 22A10: The commenters argued that SB 1110 was intended to protect taxpayers from the construction debt of certain power plants built the energy crisis – a more reasonable interpretation of this exemption would be to allow the reduction in years that the natural gas plant runs below 20% regardless of what happens in other compliance years. Debt services and operating costs are budgeted on an annual basis not over a compliance period and a single low hydro year could eliminate eligibility.

COMMENT NO. 17A10, 22A12: The commenters argued that the plain language in the statute that speaks to the annual average on a yearly basis, and nothing speaks to averaging the capacity factor over a compliance period.

COMMENT NO. 17C5: The commenter argued that focusing on power plant performance over compliance period instead of annually is neither required by statute nor consistent with implementation of other optional compliance measures. The commenter continued by contending that this provision has always been about ensuring ability to make bond payments on these plants is not compromised by having the plant perform at less than 20% of its total capacity in any given year, which is what drives the need for the RPS mitigation that SB 1110 calls for.

COMMENT NO. 17A11, 22A13, 17C6: The commenters contended that the legislation was intended to address concerns associated with bond payments and ensuring unemployment impacts and these are urgent issues that must be dealt with annually, so too should the adjustment.

COMMENT NO. 17B1: The commenter sought clarification on how implementation considers statutory objective.

RESPONSE: In response to stakeholder comments, CEC staff revised the proposed regulations to remove the requirement that 20 percent capacity must be satisfied each year of the compliance period. In addition, based on review of all comments on this section, the statutory provisions, the 45-day language, and an informal call with the author's office, CEC staff revised the proposed regulations' interpretation of annual average capacity factor on a compliance period basis as the three-year compliance period average of annual average capacity factor, and updated the associated equation. CEC staff believes this revision better reflects the statutory language and understands it to be consistent with the author's intent. Additional discussion about the CEC's revisions to proposed regulations in response to these comments can be found in

Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3204 (b)(11)(B).

COMMENT NO: 21A2: The commenter noted that they anticipate relief of \$450,000 to \$750,000 each year if SB 1110 is implemented as an annual adjustment but could be zero under the proposed regulations.

RESPONSE: No change to the regulations aside from the revision described in the response directly above for Comment No. 17B1 which structures the exemption as a compliance period adjustment and implements interpretation of annual average capacity on a compliance period basis as the three-year compliance period average of annual average capacity factor. The benefits received by the commenter are limited by statute. However, the revisions to the proposed regulations are likely to increase benefits to the commenter relative to the 45-day language.

SECTION 3204 (c)

COMMENT NO: 20A4: The commenter expressed support for allowing PCC 2 and 3 electricity products post-2020 under the portfolio balance requirement because it provides flexibility to meet SB 100 requirements.

RESPONSE: The CEC appreciates this statement of support, however the requirements for PCC 2 and 3 electricity products under this subdivision are fixed by statute.

SECTION 3204 (d) – 3204 (d)(2)(B)2.

COMMENT NO. 5A3: The commenter expressed support for the CEC’s characterization of the LTR purpose to provide a long-term commitment for new development or repowering existing facilities, consistent with CPUC discussion in Decision 17-06-026.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 5A4, 13A2, 14A3, 20A5: The commenters expressed support for independent compliance implementation of the LTR that allows use of delay of timely compliance as an optional compliance measure. The commenter contended that this implementation is supported by legislative history and statutory structure, provides fairness and process protections, clear and straightforward direction, and avoids absurd outcomes.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 28A3, 6A3: The commenters expressed support for the requirement that the 10-year contract duration should also apply to the underlying contract(s) with the RPS-certified facility because it is a key criterion for implementing the LTR.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 20C4, 20D1: The commenters requested that the proposed regulations provide for the CEC Executive Director to grandfather contracts as long-term if the POU can show disproportionate rate impacts, the contract was executed with intention to meet the LTR, or other reason. The commenter continued by noting that applying LTR requirements retroactively to existing contracts would strand contracts and penalize "early action" POUs that signed contracts prior to development of regulatory guidance.

COMMENT NO. 19A4: The commenter requested that the proposed regulations grandfather long-term contracts executed prior to the passage of SB 350 – failure to count contracts signed prior to the passage of SB 350, which met the then-existing requirements for long-term contracts and were specifically valued for meeting the then-existing long-term definition, reduces those contract benefits.

COMMENT NO. 22A1: The commenter requested that the proposed regulations grandfather long-term contracts because applying LTR requirements retroactively to existing contracts would strand contracts; this negative impact is not addressed in ISOR.

COMMENT NO. 22A5, 20A8, 20D2: The commenter requested that the proposed regulations grandfather long-term contracts because it is necessary to prevent economic harm, encourage renewable energy development and repowering, and preserve regulatory certainty and integrity of program.

COMMENT NO. 22A3: The commenter requested that the proposed regulations grandfather long-term contracts because significant staff resources would be required to verify LTR eligibility of pre-2021 RECs, and that POUs may not have incentive to try and meet the LTR if existing contracts won't qualify.

COMMENT NO. 22A2: The commenter requested that the proposed regulations grandfather long-term contracts – the commenter's previously executed long-term contracts, made under existing rules, make up 86 percent of their 2021 – 2024 needs; this warrants the need for grandfathering.

COMMENT NO. 5B2: The commenter requested that the proposed regulations grandfather long-term contracts – previously executed long-term contracts during the previous nine years include many standard provisions; the proposed regulations therefore should not preclude a useful, or normal contracting provision.

RESPONSE: In response to stakeholder comments, the CEC revised the second proposed 15-day language such that long-term contracts executed prior to July 1, 2020, will be evaluated differently by the CEC than long-term contracts executed or amended on or after July 1, 2020 when submitted to the CEC for compliance verification after the effective date of these regulations. Differentiating the requirements for long-term contracts and amendments executed prior to a cutoff date is necessary because POUs had to execute long-term contracts for compliance with Compliance Period 4 without the benefit of finalized updated RPS enforcement regulations. While the statutory 10-year contract duration requirement was well-established, additional conditions or criteria to establish safeguards around that 10-year duration were not addressed until the second proposed 15-day language of this rulemaking. CEC staff agrees that subjecting contracts executed prior to July 1 to these additional criteria could create regulatory uncertainty for good-faith long-term investments that did not specifically contemplate these criteria.

Moreover, staff assessed the risk that any long-term contracts executed prior to July 1 intended to circumvent the LTR and concluded the risk was low. All of these contracts were executed prior to the LTR taking effect on January 1, 2021, and some were even executed prior to the LTR being enacted by SB 350. Staff also reviewed a sample of long-term contracts executed prior to July 1 and did not find evidence suggesting any were intended to circumvent a 10-year duration requirement.

The July 1, 2020 cutoff is based in part on the recommendation of the Joint Stakeholder Consensus Proposal, which consists of a large percentage of the stakeholders that are subject to these regulations. A prospective cutoff date beyond the January 1, 2021 effective date of the LTR statute, such as an effective-date cutoff, might have created an inadvertent loophole by incentivizing for strategic entry into prohibited contract types during the pendency of the rulemaking. The July 1, 2020 historic cutoff reduces the likelihood of “sham” or “shell” contracts being generated in bad faith after it became clear that the CEC intended to regulate certain contracting behaviors that were inconsistent with the LTR but before the effective date of the regulations. This balances CEC’s interest in effective enforcement of the LTR against POUs and interests of POUs that had already executed contracts in good faith reliance on the statutory provisions alone.

COMMENT NO. 22A4: The commenter requested that the proposed regulations grandfather long-term contracts – even if POU can use optional compliance measures for “non-compliant” long-term contracts, economic harm would be caused due to inability of a POU to utilize excess procurement.

RESPONSE: See response directly above for Comment No. 5B2 for information on the changes to the regulations in response to stakeholder comments on this topic. Also, the proposed regulations do not prevent POU's from applying banked excess procurement to the RPS procurement target for a compliance period in which they use optional compliance measures. However, use of optional compliance measures precludes a POU from banking excess procurement.

COMMENT NO. 11F1, 14F2, 22F1, 5E1, 17F1, 17E1: The commenters express support for the treatment of pre-July 1, 2020 contracts as only using contract duration to determine classification as long-term for purposes of compliance with the LTR – prior contracts were executed without the knowledge or reasonable anticipation of the new requirements and should therefore not be subject to retroactive review and be unnecessarily devalued.

COMMENT NO. 28E1: The commenters express support for the treatment of pre-July 1, 2020 contracts as long as amendments/extensions aren't exempted.

COMMENT NO. 17G1: The commenter expressed support for the proposed application of additional criteria to long-term contracts executed after July 1, 2020 because POU's negotiated and entered into long-term commitments that best met their individual procurement needs, including pricing and delivery obligations, based on good faith reliance on the plain meaning of the statute.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 20F4, 20E1: The commenter contended that grandfathered contracts should not be subject to the 10-year duration requirement for underlying contracts – contracts executed prior to 7/1/20 did not contemplate 10-year duration requirement for underlying contracts and some do not require counterparty to show contract with facility is at least 10 years, so POU must entirely rely on "good faith" efforts of counterparties. Further, the commenter noted, some counterparties also have confidentiality requirements with their underlying contracts and cannot share the facility contract with a third-party.

COMMENT NO. 25F3: CEC should not apply long-term requirements to underlying third-party contracts, but if so, any such requirements (including duration) should apply only to contracts executed after 7/1/20.

RESPONSE: No change to the regulations. Underlying contracts between JPAs and third-party sellers and RPS-certified facilities will be subject to the same requirements as POU procurement contracts if applied towards the RPS, and will only be reviewed for consistency with the consistent procurement quantity, minimum pricing/quantity, and early termination requirements of these regulations if executed after July 1, 2020.

COMMENT NO. 5B1: The commenter requested that proposed regulations or FSOR provide examples of long-term contracts that meet the LTR requirement – improved regulatory certainty for POU with long-term contracts of 10, 25 years in duration is needed.

RESPONSE: No change to the regulations. Clarifications to the LTR provisions should provide sufficient guidance to the commenter. The voluntary early review and annual review processes should also provide POU with additional information on the types of contracts that meet the LTR and the regulatory guidance needed to proceed with procurement decisions.

COMMENT NO. 2C1: The commenter contended that short-term contracts or resales between POU should not be counted as long-term – language allowing special carve-out for POU contracts is discriminatory to other retail sales, because POU will be less interested in non-POU resources. This will decrease the flexibility that ESPs and other third parties have for selling available long-term supply.

COMMENT NO. 5A5, 13A3: The commenters expressed support for resales from a retail seller or POU to a second POU counting as long-term.

COMMENT NO. 13C1: The commenter expressed support for the provision allowing short-term contracts or resales between POU to count as long-term – the provision is consistent with and supports purpose of LTR, as described in the ISOR. Additionally, the commenter contended that where a POU has purchased or executed a long-term contract with a renewable generating facility, that POU has provided the necessary financial commitment and associated customer base to support financing construction and ongoing operations of facility; any subsequent resale of the output to another POU has no negative impact on the developer or facility owner, nor does it diminish legislative intent.

COMMENT NO. 25C4: The commenter requested clarification of the meaning of a joint powers agency executing a contract “on behalf of” a POU because the language is unclear – only if the JPA is acting as a POU's agent is the provision consistent with Public Utilities Code section 399.13(b). The commenter noted that the first proposed 15-day language, as written, would only require the JPA, and not the POU, to have the long-term contract and that this language is contrary to statute and places LSEs and third-party suppliers at a competitive disadvantage/would be unduly discriminatory.

COMMENT NO. 25C5: The commenter contended that this provision is contrary to Public Utilities Code section 399.13(b). This provision is unduly discriminatory and would unjustly favor POU and disfavor other suppliers of RPS resources. It would also unduly discriminate against LSEs that must meet CPUC requirements under Public Utilities Code section 399.13(b).

COMMENT NO. 2C2: The commenter contended that this provision is inconsistent with CPUC's implementation for retail sellers, provides POUs an unfair advantage, and is counter to intent of statute (which is meant to provide support for new renewable resource development).

COMMENT NO. 28A8, 6A8, 28C3, 28C1: The commenters contended that allowing short contracts or resales between POUs violates explicit statutory requirements, which limit the eligibility of POU or retail seller procurement to meet the LTR to "its contracts of 10 years or more in duration". The commenters noted further that, in this construction, "its contracts" plainly means the specific commitment made by the POU or retail seller and that this provision does not allow for the transfer, sale or assignment of long-term contract credit amongst POUs through short-term transactions that convey the characteristics of any preexisting underlying contract held by the seller.

COMMENT NO. 28C4, 28A10, 6A10: The commenter contended that the ISOR assertion that statute "appears to identify a preference for the retail seller's own long-term contracts" has no basis and suggests that the CEC may entirely ignore the requirement established by the Legislature, which is flatly inconsistent with statute, has no basis in any other section, and would not withstand judicial review.

COMMENT NO. 28A13, 6A13, 28C6, 28A12, 6A12, 28A1, 6A1: The commenters contended that the statutory obligation articulated in Public Utilities Code section 399.13 (b) and cross-referenced in Public Utilities Code section 399.30 (d)(1), is identical for retail sellers and POUs. The commenter further noted that the applicable statutory language neither exempts transactions between POUs from this obligation nor allows differential treatment based on prior contracts executed by the seller.

COMMENT NO. 28A14, 6A14: The commenter contended that resales from retail seller or POU to a second POU should not count towards LTR – this treatment would functionally allow short-term procurement commitments to be "laundered" through retail sellers like electric service providers to provide long-term procurement credit to POUs, resulting in gaming and loopholes.

COMMENT NO. 28A2, 6A2: The commenter contended that the proposed regulations do not reflect the understanding that, as recognized by the CPUC, a long-term contract is essential for a project developer to finance construction of new renewable generation.

RESPONSE: In response to stakeholder comments, the 45-day language has been revised to allow short-term contracts or resales between POUs to count as long-term only in the context of joint procurement, in which POUs are jointly negotiate and/or execute a contract or ownership agreement to develop a project, or a JPA executes a contract or develops a project on behalf of one or

more POU. In these circumstances, the aggregate joint procurement provides the long-term procurement from the RPS facility. This provides comparable treatment between POU and retail sellers when accounting for the established POU contracting structure of joint procurement and does not provide any unfair advantages to market participants. This revision to the 45-day language subsequently garnered widespread stakeholder support.

COMMENT NO. 28C5, 28A11, 6A11: The commenter contended that the ISOR assertion that requirements governing "repackaged contracts" are "generally similar" to those adopted by CPUC is incorrect, and reliance on Decision 07-05-028 is fundamentally misplaced because that decision implemented a different statutory provision (399.14 (b)) and CPUC placed no reliance on this decision or permit short-term contracts with newly developed resources to satisfy the SB 350 LTR obligation. Furthermore, the commenter noted, the CPUC explicitly rejected "slicing and dicing" of a repackaged long-term contract in later decisions.

RESPONSE: No change to the regulations. The ISOR reference to Decision 07-05-028 was to compare treatment of repackaged contracts to the proposed POU requirement that underlying contracts with facility also have a 10-year duration. CEC staff understand that requirement still applies to retail seller repackaged contracts. The Update of the Initial Statement of Reasons section for this subdivision, section 3204 (d)(2)(A)2. has been updated to reflect this clarification.

COMMENT NO. 28A4, 6A4: The commenters contended that "sham" contract would be allowed unless changes were made – namely fixed prices or defined quantities over an extended period. The commenter gave an example of a 10-year contract that provides 99 percent of deliveries from an RPS-certified facility in year one with the remaining 1 percent of total deliveries occurring between years two and ten.

COMMENT NO. 28A5, 6A5, 28C8: The commenters contended that fixed prices or defined quantities over an extended period are needed to prevent "sham" contracts – doing otherwise would invite market participants to offer POU contracts that impose no meaningful procurement obligation and would frustrate developers' ability to rely on such agreements to finance new or repowered generation.

COMMENT NO. 28C7: The commenters contended that the proposed requirement that long-term contracts must specify "nonzero" procurement over the contract duration is insufficient to prevent "sham" contracts.

COMMENT NO. 28A6, 6A6, 28C9: The commenters contended that contracts that deviate from fixed prices or quantity requirements should be subject to advance certification – doing so would ensure that POU are able to retain reasonable flexibility for agreements that satisfy the objectives of the LTR.

COMMENT NO. 28A7, 6A7: The commenter urged the CEC to take advance action to address “sham” contracts; failure to have clear guidelines could result in a flood of “sham” contracts that are later disallowed, or grandfathered, after being submitted for the 2021 – 2024 compliance period.

RESPONSE: No change to the regulations. The proposed requirement that long-term contracts include fixed prices or defined quantities is unduly restrictive and prescriptive. “Sham” contracts can be prevented from counting towards the LTR through the additional requirements added in the third proposed 15-day language for reasonably consistent contracted-for quantities, no zero-cost early termination clauses, and defined output share or quantities of procurement and minimum pricing terms, as set forth in sections 3204 (d)(2)(C)1.i.-iii., 3204 (d)(2)(C)2., and 3204 (d)(2)(C)3. respectively. These additional requirements balance the need for flexibility while supporting the core purposes of the LTR by providing sufficient guardrails to ensure a contract represents an enforceable procurement obligation and protects against a possible loophole for “sham” contracts. These three guardrails were motivated by similar concerns to those noted by these comments, including the importance of avoiding “sham” contracts, but the CEC’s approach balances these concerns against the need for POUs to retain some flexibility in long-term contracting.

COMMENT NO. 28C10: The commenter urged the CEC to clarify that it will consider future modifications to the rules if it determines, through an ongoing review of actual transactions, that POUs are engaging in creative contracting structures designed to circumvent the LTR’s intent to enable financing new generation – putting market participants on notice would allow the CEC to ensure that market behavior is consistent with the Legislative intent and the state’s clean energy goals.

RESPONSE: No change to the regulations, but the CEC agrees with the comment. If the regulations provide loopholes or have unintended consequences, it is the CEC’s obligation to address them in future modifications to these rules.

COMMENT NO. 28D1: The commenter expressed strong support for the clarification that a POU must enter into a 10-year procurement commitment of at least 10 years to receive LTR credit.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 14C1: The commenter expressed support for the clarification to the definition of a long-term contract in the first proposed 15-day language.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 5A10, 25A1, 25A4, 13A4: The commenters contended that the 10-year duration should apply only to the POU's contracts and not the underlying contract(s) – requiring a POU to demonstrate third-party supplier's underlying contract with RPS resource is long-term is not supported by statutory language, is administratively complex, and may result in increased ratepayer costs.

COMMENT NO. 17D2: The commenter contended that the statute does not address any other contract terms that are necessary or relevant besides ensuring a contract is for a duration of 10 years or more – the CEC's review of whether a contract or ownership agreement is deemed long-term is restricted by statute to only reviewing the duration of the contract; statute does not address any other contract terms that are necessary or relevant.

COMMENT NO. 25A3, 25C1, 25F1: The commenter contended that the 10-year duration should apply only to the POU's contracts and not the underlying contract(s) – applying requirement to underlying contracts would impose a new RPS compliance requirement that is not reflected in Public Utilities Code section 399.13(b), or in the CPUC's implementing decision (D.17-06-026), and represents unlawful overreach and presents the risk of a legal challenge.

RESPONSE: No change to the regulations. This requirement is needed to effectuate the purpose of the statute to support development of new/repowered resources and long-term resource planning and to avoid a mechanism for strategic circumvention of the LTR. Because these terms are not otherwise defined in statute, it is within the CEC's role to "interpret and make specific" the statute by defining long-term contracts and short-term contracts for purposes of POU compliance with the LTR (*See also* Public Utilities Code section 399.30 (n)). Applying the long-term contract requirements to an underlying contract with the RPS-certified facility is necessary to ensure to all procurement counted by a POU for compliance with the LTR is sourced through long-term contracts, rather than a series of short-term transactions sold to a POU through a contract that is only superficially long-term, and to treat POU contracts and third-party contracts equally. Without this requirement, a POU may have an incentive to avoid contracting directly with RPS facilities, because there would be fewer requirements for contracts with third-party suppliers and no long-term commitment with an RPS-certified facility would be necessary. Administrative complexity can be mitigated, and flexibility is provided to POUs through other provisions that may help limit costs. The assertions that this reflects an overreach are misplaced, because this requirement extends only to underlying contracts with RPS-eligible facilities that are in turn sold to POUs and reported as long-term for compliance with the LTR. With this requirement in place, POUs will be on notice and able to ensure that future contracts with third-party suppliers specify that underlying contracts with RPS-eligible resources must also meet the

requirements of these regulations if the POU's contract with the third-party seller is to be reported for compliance with the LTR.

COMMENT NO. 25A6, 25C3: The commenter contended that the 10-year duration should apply only to the POU's contracts and not the underlying contract(s) – allowing third-party seller to provide portfolio of RPS generation through combination of new, repowered and existing projects will increase procurement flexibility and reduce the cost of POU/retail seller RPS procurement, while maintaining the commitment necessary to support development of RPS projects. The commenter noted further that the length of third-party supplier agreements with developers does not drive RPS resource development - the procurement target does.

RESPONSE: No change to the regulations. However, see the response to Comment No. 25A3, 25C1, 25F1 directly above. Also, contracting for short- and mid-term projects are allowable for up to 35 percent of RPS procurement requirement and it's unclear how this necessarily leads to increased demand for new resources.

COMMENT NO. 25A7: The commenter contended that the 10-year duration should apply only to the POU's contracts and not the underlying contract(s) because a POU/retail seller served by a third-party with a portfolio of long-term and short-term RPS supplies will be in a better position to address load migration and generation outages (or contract termination) that may occur with contracted RPS resources.

RESPONSE: No change to the regulations. However, see the response to Comment No. 25A3, 25C1, 25F1 above. Also, while a long-term contract with a third-party seller that has a portfolio with short-term resources may serve POU/retail seller planning, it does not facilitate long-term contract duration needed to obtain financing for new/repowered RPS-eligible resources. This would subvert one of the core the purposes of the LTR.

COMMENT NO. 25A5, 25C2: The commenter contended that the 10-year duration should apply only to the POU's contracts and not the underlying contract(s) – the increased RPS procurement targets provide a compelling incentive for developers to pursue new and/or repowered RPS resources, and in and of themselves provide strong incentive for the development of RPS resources. The commenter also noted that the increased RPS procurement target under SB 350 and SB 100 will continue to encourage RPS resource development through 2030 and beyond.

RESPONSE: No change to the regulations. However, see the response to Comment No. 25A3, 25C1, 25F1 above. Also, if the procurement target alone was sufficient to drive development of new long-term resources, there would have been no reason to add new LTR. It is also unclear how "downstream" commitments between POU and a third-party would support project development

if the long-term commitment is not required to extend to the contracts with RPS-eligible generators.

COMMENT NO. 19A1: The commenter contended that the proposed regulations should clarify the meaning of “third-party” to allow more than one party.

RESPONSE: No change to the regulations in response to comment. However, upon reviewing all comments submitted and the 45-day language, the proposed regulations were revised to better clarify requirements of long-term contracts under different scenarios. The revisions do not restrict “third-party” to a single third-party and no further clarification is needed.

COMMENT NO. 20A11, 20C5: The commenter argued that implementation of the LTR with third-party suppliers should be more direct for contracts with a third-party supplier – POU’s with existing long-term contracts, that procured with full and good faith intention to meet the LTR, but do not stipulate that the underlying contracts must also meet the LTR, should not be disqualified.

COMMENT NO. 22A6: The commenter argued that implementation of the LTR with third-party suppliers should only apply to contracts signed after the proposed RPS regulations are approved; existing contracts should be grandfathered.

RESPONSE: No change to the regulations. The ability to show a long-term contract with an RPS facility is needed to achieve purpose of LTR. Reliance on short-term contracts does not achieve this purpose, even if the short-term procurement from RPS-eligible facilities was executed with the idea that it might qualify for the LTR. In the worst case, POU’s with existing long-term contracts with third-party suppliers that fit this category have a path to compliance through optional compliance measures; trying to fit all existing contracts—even those that fail to meet the 10-year duration requirement—into new long-term requirement would render the LTR meaningless.

The concern raised by these comments is also addressed by the addition of Section 3207 (c)(2)(F)1. in the third proposed 15-day language. Under this section, POU’s contract with a third-party seller will not be “disqualified” just because it fails to stipulate that the third-party seller’s underlying contracts with RPS facilities used to serve the POU are not also long-term. Rather, documentation demonstrating RPS compliance in this instance “may include excerpted contract information” such as a stipulation like this, *or* “an attestation by the third-party supplier regarding the underlying contract duration or ownership of the RPS-certified facility or facilities.” Thus, if existing contracts do not include such a stipulation, an attestation by the third-party supplier is a suitable substitute that the POU could submit to demonstrate LTR compliance.

COMMENT NO. 20D3: The commenter requested clarification of the meaning of "remaining" as it relates to "the RPS-certified facility or facilities...are subject to a long-term contract with a remaining duration of at least 10 continuous years..." The commenter suggested that, under the proposed regulations, a POU's procurement must be at least 10 years, each compliance period, and anything less than 10 years would be considered short-term. The commenter expressed confusion as to what happens if a facility owner is the same for the first 9 years of a 10 year agreement then decides to sell in year 10 – does the buyer have to enter into another 10 year agreement to qualify for the LTR.

RESPONSE: No change to the regulations. The regulation is clear that "remaining" means at the time the POU starts procuring from its contract with a third-party, the facility (or facilities) supplying the electricity products has at least 10 years left on its underlying contract.

COMMENT NO. 25G1: The commenter argued that the requirement for third-party suppliers' underlying contracts to have a remaining term of at least 10 years should be stricken – the proposed requirement would diminish the value and potentially strand existing long-term RPS contracts, conflict with CPUC decision 17-06-026, could lead to legal challenges, and increase costs for ratepayers.

RESPONSE: No change to the regulations. Commenter may be misunderstanding use of "remaining" - this requires a third-party contract to have at least 10 years left when the POU's contract starts, not as of a specific date or in perpetuity. For example, if a POU's contract with a third-party supplier started in 2021, the remaining duration requirement would be assessed on the third-party supplier contract as of 2021, not as of 2024 or whenever the POU reports the contract. CEC staff's implementation does not preclude existing contracts from counting for compliance with the LTR - this requirement applies to procurement counted for compliance in a given compliance period regardless of the associated contract's execution date. As discussed elsewhere in response to other comments, this requirement is expressly aimed at eliminating the incentive for POU's to enter into contracts with third-party suppliers and joint powers authorities that appear long-term, but are actually supplied by underlying energy contracts with RPS facilities that are short-term in nature.

COMMENT NO. 25F2, 25G2: The commenter contended that the CEC should not apply the additional proposed requirements to underlying third-party contracts – the statute (Public Utilities Code section 399.13(b)) does not provide the CEC authority to dictate the terms and conditions of an underlying third parties' contract with its supplier or RPS facility. Commenter requests to remove language.

COMMENT NO. 11F7, 5E3: The commenter contended that the CEC should not apply the additional proposed requirements to underlying third-party contracts – the proposed

requirements for underlying third-party contracts are much more complex than a simple duration analysis, would potentially be burdensome to track such contracts, and are likely to be confidential and not accessible to POUs. In addition, the reasons for greater variation are specific to POU contracts and unlikely to address power marketer contract scenarios.

RESPONSE: No change to the regulations. Applying duration requirements to underlying contracts is necessary to ensure that all procurement counted for compliance with LTR is sourced through long-term contracts. However, see the response to Comment No. 20F3, 20F11, 20C6, 20D6 for a revision to reporting requirements, added to Section 3207 (c)(2)(F)1., which is intended to ease reporting requirements for underlying contracts due to similar concerns over access to underlying contracts such as stated in these comments.

COMMENT NO. 28G2: The commenter recommended that the CEC should reject Shell's arguments for bare-bones long-term contract requirements – it would create massive loopholes that would encourage POUs to launder short-term contracts through a third-party that circumvents the purpose of the LTR.

COMMENT NO. 28G3: The commenter recommended that the CEC should reject Shell's concerns about third-party contracts – their arguments are an inappropriately narrow view of CEC's authority and the statutory language.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 11G8: The commenter recommended that the CEC should clarify in FSOR which long-term contract requirements are applicable to underlying third-party contracts – some requirements (e.g., 3204 (d)(2)(C)1., 3204 (d)(2)(B)2.) explicitly refer to requirements for underlying third-party contracts; others (like provisions on early termination in 3204 (d)(2)(C)2.) do not reference them.

RESPONSE: No change to the regulations. All long-term contract requirements apply to POU contracts and any underlying third-party contracts to ensure they are treated equally. Had differential treatment been intended for underlying contracts used by POUs for RPS or LTR compliance, the CEC would have stated so explicitly.

COMMENT NO. 20F3, 20F11, 20C6, 20D6: The commenter recommended that the third-party or parent company should be able to submit information, including an attestation, to demonstrate 10-year duration requirement – this would allow the POU's counterparty, or the counterparty's parent company that owns or operates the resource, to demonstrate the 10-year duration or ownership requirement and alleviate confidentiality issues in the counterparty's contract(s).

RESPONSE: In response to comments, the CEC revised the reporting requirements in the proposed regulations with the text added to Section 3207 (c)(2)(F)1. and 2. The CEC agrees that it is likely to be complex and burdensome to evaluate all existing underlying contracts for compliance with the LTR requirements, especially if the contracts are confidential, meaning the POU cannot report on them or attest to them. In response, proposed regulations have been revised such that pre-July 1, 2020 contracts may be attested to by the third-party supplier of the underlying contract on the POU's behalf. For post-July 1, 2020 contracts, the POU may attest to the underlying contract. In both cases, providing this documentation shall be required only upon request from CEC staff.

COMMENT NO. 28D4: The commenter expressed support for the new language which establishes that a POU may be required to provide additional information demonstrating that a long-term contract represents a long-term commitment – the criteria that a POU's 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" reflect the core objectives of the LTR; any legitimate long-term procurement commitment should be capable of satisfying one of these enumerated criteria.

COMMENT NO. 12D8: The commenter requested removal of the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR. The commenter contended that this is not an express or implied requirement of Public Utilities Code section 399.13 (b), nor is it in any sense reasonably necessary to effectuate the purpose of the statute.

COMMENT NO. 12D9: The commenter requested removal of the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR – there is no expressly-stated legislative intent, and presumed legislative purpose is not an independent mandate that can be imposed on POU's.

COMMENT NO. 17D7: The commenter requested removal of the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR – there is nothing in the authorizing legislation that would require that a POU's long-term contracts to demonstrate that the contracts support "market stability" - any consideration of such information would be capricious and arbitrary. Further, the commenter noted, the proposed regulations are devoid of guidance or parameters that would allow POU's to understand exactly what's required to make such a demonstration and whether a contract supports the objectives of the LTR is not relevant to determining whether the agreement is at least 10 years in duration.

COMMENT NO. 14D1: The commenter requested clarification regarding what type of “additional information” must be submitted to demonstrate contract represents long-term procurement commitment.

COMMENT NO. 8D1: The commenter contended that the "additional information" that may be required goes well beyond information needed to determine if a contract or ownership agreement qualifies as long-term because, in most cases, a long-term commitment will be documented by a contract, and the contract will have explicit terms about its duration that are easy to verify. The commenter also noted that how a particular resource supports other resources or long-term planning or other extraneous information goes beyond the focus of the documentation.

COMMENT NO. 8D2: The commenter requested removal of the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR – if the CEC or its staff determines that a contract with an explicit term of 10 years does not qualify as long-term, contracts where power producers represented by the commenter may be counterparties to the POU's contract, that determination alters an essential, bargained-for element of the contract and in effect interprets the terms of the parties' agreement - interpretation of contracts is not the responsibility of the CEC but rather the responsibility of courts or an arbiter.

COMMENT NO. 8D3: The commenter requested removal of the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR – the duration of a contract should be readily apparent from the explicit terms of the contract; gathering information on how the contract supports the LTR objectives is not only irrelevant but may also suggest the simple determination of whether the contract is greater than 10 years or more might be influenced by factors other than what the parties explicitly agree to.

COMMENT NO. 8D4, 20D4: : The commenters requested removal of the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR – information about "the financing and development of eligible renewable energy resources" or "major capital investments in existing eligible renewable energy resources" will in many cases be confidential, commercially sensitive that if made public would be the disclosing entity at a competitive disadvantage.

RESPONSE: In response to stakeholder comments, the second proposed 15-day language which specified that the POU may be required to submit additional information to demonstrate that a long-term contract supports the core objectives of the LTR was removed from the regulations. The extent of information, such as how a contract supports long-term planning, was intended

only to give POUs an option to demonstrate that a contract, that may appear to be a "sham" long-term contract, or in which the explicit duration or extent of procurement commitment is unclear, should be treated as long-term. Nevertheless, the CEC appreciates the insights and concerns shared by the commenters.

COMMENT NO. 20D5: The commenter requested clarification if the CEC is looking for "new" contracts for LTR compliance. The commenter noted that if the CEC's narrow interpretation places great emphasis on "new" contracts, this would be inconsistent with current POU practices to secure renewable resources, would unfairly discriminate against existing contracts, and would lead to disproportionate impacts by devaluing current and future contracts.

RESPONSE: No change to the regulations. As written, the proposed regulations are clear that they do not preclude contracts with existing or new facilities from being used for LTR compliance.

COMMENT NO. 14B1: The commenter requested that long-term status should be maintained for procurement prior to and post exercise of ownership option in long-term Power Purchase Agreement (PPA).

RESPONSE: No change to the regulations. Procurement from the long-term contract and procurement from ownership meets the LTR. This is statutorily mandated by Public Utilities Code section 399.13 (b)(1).

COMMENT NO. 14B2: The commenter requested clarification of the effect on long-term status if POU exercises a buyout option in a long-term contract, and then demolishes facility before 10 years of ownership.

RESPONSE: No change to the regulations. The proposed regulations sufficiently address this scenario. As the original contract was long-term and ownership is assumed to be permanent (unless otherwise stated), demolishing facility would not change its status unless the POU's contract or ownership agreement identified plans for ownership and demolition to occur less than 10 years into the contract. Compliance with the LTR depends on whether procurement comes from owned eligible resources or from "contracts of 10 years or more in duration," not on whether the facility actually continues to be operational for the full 10+ year duration of the contract.

COMMENT NO. 14A13, 13A6, 17A1: The commenters noted that subparagraphs for this section changed from (i)-(iii) in the pre-rulemaking amendments to (1.)-(3.) in the proposed regulations.

RESPONSE: In response to comments, the proposed regulations were revised to update references in this section for consistency.

COMMENT NO. 22B1, 20A9, 13A5: The commenters requested that the proposed regulations should expressly recognize that PCC 3 electricity products may count towards the LTR regardless of timing of distribution of RECs because contracts for PCC 3 RECs often allow RECs to be delivered in batches, either annually or by compliance period. The commenter noted that a strict application of continuous duration requirement to PCC 3 could hinder use and cause increased compliance costs, reduce contract flexibility, result in inability to address shortfalls in procurement, and would functionally increase the LTR from 65 to 75 percent.

RESPONSE: In response to comments, the proposed regulations were revised to clarify that PCC 3 RECs will be classified as long-term if procured through a POU's contract of at least 10 continuous years, and the procurement quantities are specified annually or on a compliance period basis. PCC 3 RECs are essentially a compliance mechanism, capped statutorily at the percentages in Public Utilities Code section 399.16 (c)(2), and are not likely to ever support development of new resources or long-term resource planning. Applying the same requirements to have long-term underlying contracts with RPS facilities or specify only annual quantities are unlikely to support either purpose and would likely just limit POU ability to use this compliance mechanism.

COMMENT NO. 5A14, 22B2, 20A7: The commenters requested that the proposed regulations should clarify how "continuous" will be evaluated when determining whether a contract is long-term. For example, the commenters noted that it's unclear how the long-term requirement would apply to a reduction in output specified in the contract; PCC 3 contracts in which RECs are delivered in batches once per year or per compliance period; failure of delivery due to drought or mechanical failure. The commenters also advocated for an evaluation of the contract term, rather than continuous delivery.

COMMENT NO. 22A9: The commenter requested that "continuous" should refer to the underlying contract term, rather than requiring annual deliveries – allowing deliveries by compliance period lowers cost and promotes third-party portfolio optimization of resources. The commenter noted too that their largest contract allowed for delivery by compliance period, and if delivery must be annual, then all the RECs it receives from this contract - or just over half of its portfolio - through at least 2020, and potentially through 2024, would not count as LT.

RESPONSE: In response to stakeholder comments, the CEC revised the proposed regulations to clarify a continuous duration is satisfied when the contract specifies a nonzero procurement quantity or allocation percentage on an annual or compliance period basis, except as provided in section 3204 (d)(2)(C)1.v.

COMMENT NO. 22A8: The commenter requested that “continuous” refer to the underlying contract term, rather than a fixed/minimum quantity of RECs – allowing quantities to vary, if specified in the contract, preserves contractual flexibility, enhancing the economic viability and affordability of new/repowered renewable projects.

RESPONSE: No changes to the regulations. The scenario described is allowed under the regulations and sufficiently clear under the proposed regulations and other proposed revisions.

COMMENT NO. 22C2: The commenter expressed support for the clarification that "continuous" refers to underlying contract term – the first proposed 15-day language’s changes to the LTR preserve the integrity of the RPS program, advance California’s climate change goals, and shield ratepayers from the burden of paying for higher cost, higher risk new/repowered renewables in CA.

COMMENT NO. 13C2: The commenter expressed support for the clarification that "continuous" refers to underlying contract term – the provision prevents POUs from treating as long-term procurement, a contract where the quantity amount could be zero for an entire compliance period, which strikes an appropriate balance of specifying minimum quantity terms without unnecessarily restricting contracting structures.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 11F6, 5E5: The commenters argued that any year(s) of zero contracted-for procurement within the first continuous 10-year term should be evaluated on the basis of the reasonably consistent procurement quantity provision – there may be legitimate reason for zero quantity in a given year, such as major construction at the facility or replacement of a transmission line, as recognized in the justifications for greater variation. The commenter noted further that, however, likely to be rare, additional documentation would support it and no justification is needed for zero contracted-for procurement should be necessary prior to or after a 10-year term.

COMMENT NO. 11G9: The commenter requested clarification in FSOR about a zero-quantity year in a 10-year contract – the commenter wishes to confirm that an 11-year contract, where contracted-for procurement in year 8 is zero due to major construction but procurement is nonzero in all other years, qualifies as long-term assuming all other requirements are met.

COMMENT NO. 28E3: The commenter contended that nonzero procurement quantities within the contract are critical, but an exception could be made for a nonzero year very for specific, demonstrable reasons.

RESPONSE: In response to comments on this topic, section 3204 (d)(2)(C)1.v. was added to the third proposed 15-day language, which allows a zero-quantity year during the initial 10-year term under very specific, limited circumstances if the appropriate demonstration is made to the CEC. For Comment No. 11G9, the example scenario described above, would qualify, subject to other requirements being satisfied (including the reasonable consistency standard for other years).

COMMENT NO. 20F2, 20F7: The commenter recommended that the long-term contract definition should explicitly clarify that zero quantities are allowed in initial years of contract if a 10-year period of nonzero quantities follows.

RESPONSE: No change to regulations. The definition of contract start date is based on when the POU begins procuring (nonzero) electricity products through the contract, so initial zero years would not affect continuous duration or reasonably consistent quantities.

SECTION 3204 (d)(2)(B)3.

COMMENT NO. 19C2: The commenter requested that the CEC clarify that contract duration is not PCC-specific – it is unclear if contract length will be based on duration of contract length as a whole or based on duration associated with each PCC.

COMMENT NO. 19C3: The commenter requested that the CEC clarify that contract duration is not PCC-specific – allowing long-term contracts to contain variable product categories offers additional flexibility for both buyers and sellers, which reduces costs for CA ratepayers while maintaining financial security for project developers.

COMMENT NO. 19C4: The commenter requested that the CEC clarify that contract duration is not PCC-specific – the CEC and CPUC should treat contract length consistently so that all CA LSEs are on a level playing field, and the CPUC only requires that its jurisdictional LSEs report compliance with the LTR based on whole contract length, not specific terms of the PCC products sold within the contract.

COMMENT NO. 20C10, 20D13: The commenter requested that the CEC clarify that contract duration is not PCC-specific – a single contract may have procurement of multiple products (PCC 1, PCC 2, and/or PCC 3) with various delivery schedules within the contract. Products that fulfill the duration of at least 10 continuous years shall be considered long-term, thus deeming the contract as LTR compliant.

COMMENT NO. 11F14, 22F8: The commenters recommended clarifying that multi-PCC contracts can not only change from one PCC to multiple PCCs, but also from multiple PCCs to fewer PCCs.

RESPONSE: In response to comments, the proposed regulations were revised to clarify that a POU's contract with a third-party supplier, in which the bundled electricity products supplied over the contract term change PCCs, may be classified as long-term as long as the POU's own contract and underlying contract(s) with the RPS-certified facilities otherwise meet the requirements for long-term contracts.

SECTION 3204 (d)(2)(B)4.

COMMENT NO. 11F4, 22F3, 17F2, 17E4, 22E1: The commenters expressed support for the added clarification in proposed regulations on treatment of extensions of POU-WAPA contracts.

COMMENT NO. 17G2: The commenter expressed support for the proposed treatment of WAPA contracts as long-term – the contracts are long-term commitments that meet the state's renewable energy objectives.

RESPONSE: The CEC appreciates these statements of support.

SECTION 3204 (d)(2)(C)1.

COMMENT NO. 28F1, 28E5: The commenter expressed support for either establishing the requirement that contracted-for quantities in each year vary no more than 33 percent from average contract quantity over the contract term, but limiting this requirement to POUs that are required to file an Integrated Resource Plan (IRP) with the CEC (Option A) or establishing the requirement that contracted-for quantities in each year vary no more than 40 percent from average contract quantity over the contract term, but applying the requirement to all POUs, not just those that file IRPs with the CEC (Option B). The commenter prefers applying requirements to all entities regardless of size, but recognizes unique challenges facing very small POUs with significant proportion of retail sales attributable to a few large customers.

COMMENT NO. 20F5: The commenter expressed support for Option B as threshold for reasonably consistent quantities because it applies equally to all POUs, regardless of size.

COMMENT NO. 33E1: The commenter expressed support for Option A as threshold for reasonably consistent quantities – for the commenter, 9/10 customer meters are residential and just a handful represent supermajority of load. Therefore, the commenter noted, the impact of one of these customers leaving would result in other ratepayers having to pay greater share, and population is small (<10,000), with higher degree of poverty, lower incomes, and typically not part of workforce (retirement).

COMMENT NO. 17F3, 17E2: The commenter expressed support for Option A as threshold for reasonably consistent quantities – flexibility in long-term procurement is critically important to small POU, both in terms of meeting customers' energy needs and protection from stranded investments. For example, the commenter noted, a small POU may have a single customer that accounts for a substantial portion of its retail sales - if the customer leaves, the utilities will face risk of absorbing the financial impacts of a stranded long-term contract.

RESPONSE: In response to stakeholder comments on this topic, the CEC revised the proposed regulations for section 3204 (d)(2)(C)1. The updated justification, including a statement of the purpose and necessity for this subdivision, is in the Update of the Initial Statement of Reasons section for Section 3204 (d)(2)(C)1.

COMMENT NO. 20F8, 20E2: The commenter contended that the requirement for reasonably consistent procurement quantities should not apply to contracts that show increasing quantities of a renewable resource.

RESPONSE: No change to the regulations. This scenario is addressed in Section 3204 (d)(2)(C)1.iv.VI. If the POU demonstrates that the variation in contracted-for quantities in excess of the limit specified in Section 3204 (d)(2)(C)1.i. or ii. is due to procuring increasing quantities from the resource, the requirement for reasonably consistent procurement quantities does not apply.

COMMENT NO. 11G2, 17G6: The commenters expressed support for the proposed application of the reasonable consistency standard only to IRP-filing POU – it provides balance to ensure no subversion of long-term contract requirements while not inhibiting normal contract structures.

COMMENT NO. 11G3: The commenter expressed support for the proposed application of the reasonable consistency standard only to IRP-filing POU – smaller POU have less bargaining power, and additional of complex requirements likely to disproportionately affect them through increased costs. Additionally, the commenter noted, smaller POU are also likely to have a single large customer that requires special contract structure to address risk of customers leaving service territory, and counterparties may be less likely to negotiate if there is greater regulatory uncertainty, but other long-term contract provisions provide sufficient protection.

COMMENT NO. 11G5: The commenter expressed support for the proposed application of the reasonable consistency standard only to IRP-filing POU – contracting limitations in section 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 LTR objectives.

COMMENT NO. 11G4: The commenter expressed support for the proposed application of the reasonable consistency standard only to IRP-filing POU's – small POU's are more likely to only have 2-3 contracts, and it is unlikely to be advantageous to enter into heavily frontloaded contracts because they would have to continue doing so each year, adding significant administrative cost at little value.

COMMENT NO. 17G4: The commenter expressed support for the proposed application of the reasonable consistency standard only to IRP-filing POU's – when joint contracts or procurement through a JPA is not available to a small POU, contract terms may vary, including fluctuations and significant variations in delivery quantities over the term of the agreement depending on the specific needs of the POU's load - this is especially important due to commercial and industrial load that can disproportionately comprise part of smaller POU's total retail load.

COMMENT NO. 17G3: The commenters expressed support for the proposed application of the reasonable consistency standard only to IRP-filing POU's – a distinction is needed where the CEC intends to apply long-term contract conditions that go beyond just the statutorily mandated 10-year requirement.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 14G1: The commenter expressed their support for the proposed list of conditions that allow a contract to satisfy the reasonably consistent quantity provision while not strictly meeting the quantity variation threshold – the conditions specified in section 3204 (d)(2)(C)1.iv reduces ambiguity and accounts for actual contract scenarios seen in the real world.

COMMENT NO. 11G6: The commenter expressed their support for the proposed list of conditions that allow a contract to satisfy the reasonably consistent quantity provision while not strictly meeting the quantity variation threshold – it provides necessary regulatory certainty for parties to understand the requirements to qualify as long-term, even if the threshold percent is exceeded, at the time of contract negotiations.

RESPONSE: The CEC appreciates these statements of support.

SECTION 3204 (d)(2)(C)1.ii.

COMMENT NO. 28F2, 28E4: The commenter contended that PCC 3 contracts should not be subject to different threshold for reasonably consistent quantities – there's no valid legal or policy justification, and comparing compliance period quantities would allow especially "lumpy" procurement with massive annual deviations/de minimis quantities in a given year.

RESPONSE: No change to the regulations. PCC 3 procurement is different because there is no delivery of power. "Lumpiness" should not matter for PCC 3 because transactions often occur in batches involving only RECs, separate from the generated electricity, and staff sees no reasonable basis to restrict this.

SECTION 3204 (d)(2)(C)1.iv.

COMMENT NO. 28F3, 28E6: The commenter requested that the CEC revise the regulatory language to clarify that greater variation does not require both a specific justification and an independent demonstration of consistency with LTR.

COMMENT NO. 11F5, 20F6, 5E2 17F4: The commenters requested that the CEC revise the regulatory language to clarify that greater variation does not require both a specific justification and an independent demonstration of consistency with LTR – doing otherwise would add significant regulatory uncertainty and would discourage contracts that would otherwise support new project development and financial viability of existing projects. Further, the commenter noted, any reference to market stability should be deleted, as different technology types may have different effects on market conditions.

COMMENT NO. 14F5: The commenter requested that the CEC revert to the joint stakeholder language on justifications or revise language to remove additional requirement for long-term contract to support long-term planning or market stability and clarify that a contract that fulfills reasonably consistent provision will count as long-term – the additional requirement to demonstrate that the contract supports long-term planning and market stability, development of new or existing facilities, etc. adds an ambiguous layer to this provision and adds to uncertainty that a contract will meet this requirement.

RESPONSE: In response to stakeholder comments on this topic, the CEC removed references that may have implied a requirement to make an independent demonstration of consistency with the purposes of the LTR. That language was added with intent of showing nexus between the LTR goals and the seven justifications contained within Section 3204 (d)(2)(C)1.iv., rather than to establish an additional requirement. The seven justifications are themselves sufficient indicia that a long-term contract with greater than the allowed annual variation is consistent with the purposes of the LTR.

COMMENT NO. 14F4: The commenter expressed supports for the enumerated list of conditions that allow a contract to satisfy the reasonably consistent quantity provision while not strictly meeting the quantity variation threshold – the list of conditions account for contract structures align with the intent of the LTR and still represent a financial commitment towards procuring long-term renewable energy. Further, the commenter noted, it also ensures certainty that POU investments won't be devalued.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3204 (d)(2)(C)1.v.

COMMENT NO. 14G2: The commenter expressed support for the provision which a contracted-for quantity of zero during any year of the initial 10-year term of a long-term contract may qualify as long-term if the contract meets one of the specified conditions and has at least 10 total years with nonzero contracted-for procurement quantities.

RESPONSE: The CEC appreciates these statements of support.

3204 (d)(2)(C)2.ii.

COMMENT NO. 17G8: The commenter contended that references to supporting long-term planning, market stability, and investments in RPS resources, should be stricken from justifications for early termination provisions.

RESPONSE: No change to the regulations. The proposed language is intended to provide guidance to POUs on how they may argue a contract should be classified as long-term but does not require that showing to be made. Furthermore, this provision is intended to provide flexibility to POUs in recognition of the possibility that the list in Section 3204 (d)(2)(C)2.i. is not exhaustive of every situation where a contract containing early termination provisions may be otherwise consistent with the LTR.

COMMENT NO. 5E6: The commenter expressed that they have no significant concerns with the proposed language on early termination but will further review the language and provide any changes in written comments.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 28E7: The commenter expressed that the proposed language appears to provide reasonable guardrails to prevent abuse of early termination provisions, while allowing use of provisions that the commenter understands to be used in legitimate real-world circumstances.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3204 (d)(2)(C)3.

COMMENT NO. 11F10, 20F14 , 5E7: The commenters recommended that this provision should be modified due to a reading that could be interpreted as prohibiting a contract from having a zero quantity within the first 10 years of the contract term – change "or" to "and". The commenter noted further that zero contracted-for

procurement quantities should be dealt with through the reasonable consistency quantity provision in 3204 (d)(2)(C)1.

COMMENT NO. 28E8: The commenter said that the proposed language, with possible modification for zero quantity in one year, provides reasonable guardrails to ensure a contract represents an enforceable procurement obligation on the buyer – a “shell” agreement with no defined pricing or quantity terms should not count as long-term. The commenter noted further that a contract with a specific, legitimate reason for zero quantity in one year should still be considered enforceable obligation, but this shouldn't become a loophole for other problematic contracts.

RESPONSE: In response to stakeholder comments, the CEC revised the word “and” to “or” consistent with the revision recommended by the commenters.

COMMENT NO. 20F9, 22F6: The commenter requested clarification that other forms of pricing are inclusive, such as index pricing – some POUs negotiate contracts using market price or an index, which should be acceptable.

RESPONSE: No change to the regulations. The form of pricing terms is not restricted by the regulation, as long as some minimum pricing terms are present, so index pricing would still satisfy the criteria.

SECTION 3204 (d)(2)(D)

COMMENT NO. 20D7: The commenter requested clarification of the definition of a short-term contract because it is unclear how a POU can be assured whether their long-term procurement is LTR compliant, given that the initial annual compliance filing requires POUs to categorize procurement into non-binding classifications and the CEC's verification process is years in duration.

RESPONSE: No change to the regulations. The proposed regulations sufficiently cover what constitutes a long-term contract; what constitutes a short-term contract can be deduced from this. Additionally, the proposed annual reporting process and voluntary early review process added to Section 3207 will provide POUs with more timely feedback on whether their contracts qualify as long-term.

SECTION 3204 (d)(2)(E)

COMMENT NO. 5A6: The commenter expressed support for allowing extensions of short-term contracts to count as long-term when the time from amendment execution date to new end date provides a long-term commitment.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 14A4: The commenter requested removal of the word “commitment” from the definition of long-term contract.

RESPONSE: In response to the stakeholder comment, the proposed regulations were revised to limit using “commitment” in the definition of a long-term contract.

COMMENT NO. 5A15: The commenter requested clarification of the meaning of the word “commitment” and what amendments alter such a commitment; the language is unclear.

RESPONSE: In response to the stakeholder comment, the proposed regulations were revised to clarify the intent of amendments that alter the 10-year procurement commitment. The intent was to address amendments that shorten the duration of the contract (e.g. in year 2 of a 10-year contract, reducing the term to 5 years). The proposed regulations were also revised to limit use of “commitment”.

COMMENT NO. 25A8: The commenter argued that subsequent failure of project or need to replace resource or contract during outage should not impact the long-term “commitment” of the contract – these scenarios should not be precluded.

RESPONSE: No changes to the regulations. The commenter’s scenario would effectively allow POUs to use short-term procurement to count as long-term and is not supported by statute. If a POU cannot make up anticipated generation through prudent management of portfolio risks, the delay of timely compliance measure may be adopted and applied, consistent with Section 3206.

SECTION 3204 (d)(2)(G)

COMMENT NO. 13C10: The commenter argued that classifying additional quantity as short-term should apply only when contract provides no right (including optional right) for POU to procure above the amount in the contract – most contracts will provide a process where the buyer is authorized to receive all electricity/RECs above expected amounts, including sometimes at a reduced price, and treating these RECs as short-term could have significant negative consequences on the economic value of the contracts that POUs have already executed by essentially eliminating a key negotiated term.

COMMENT NO. 13C11: The commenter argued that delivery in excess of annual generation that is estimated based on capacity and expected capacity factor should not be classified as short-term – some contracts may identify expected annual generation based on the capacity of the project and expected capacity factor, which are not

intended to represent maximum annual deliveries but just estimates for benchmarking purposes and annual deliveries may vary based on actual conditions.

COMMENT NO. 14C5: The commenter argued that classifying additional generation as short-term should apply only for contracts that specify maximum generation amount that cannot be exceeded, not contracts that specify guaranteed amount for planning purposes – estimated generation in existing contracts/agreements may not be reliable method of determining additional generation, and commitments in legacy contracts should not be devalued solely because generation exceeded expectations.

COMMENT NO. 14D2: The commenter requested that the FSOR should clarify that classifying additional generation as short term should only apply to contracts that specify a “not-to-exceed” generation amount or regulations should be revised – 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 to secure financing, but production of energy beyond those specified quantities is still accepted, paid for, and delivered to customers at an agreed-upon rate.

COMMENT NO. 14C6, 11F12: The commenters argued that classifying additional generation as short-term should apply only for contracts that specify maximum generation amount that cannot be exceeded, not contracts that specify guaranteed amount for planning purposes – renewable generation can't be precisely predicted due to variable nature of resources, and there may be scenarios resulting in overgeneration due to high wind year or heavy precipitation year. Further, the commenters, noted, generation forecasts specified in contracts allow the developer to plan for expected revenue and buyer to secure financing to hedge against future fluctuations of renewable energy prices but should not be relied upon for determining additional generation amounts.

COMMENT NO. 20C9, 20D12: The commenter argued that contracts that allow for the opportunity for additional generation should be deemed LTR compliant – many long-term contracts allow for additional/substitute/replacement energy in order to make up for shortfalls in previous years or compliance periods. PWP has some contracts that have been delivering prior to 2010; a strict interpretation to additional energy poses a disproportionate rate impact to early actors.

COMMENT NO. 5E9, 14E1, 29E4: The commenters requested that additional energy should not be restricted from counting as long-term because it may unnecessarily discourage additional energy from variable renewable resources.

COMMENT NO. 28E11: The commenter argued that additional quantity could be considered as long-term if it is limited to resources identified in the contract – for example, if a project produces a little more than expected and POU has option to

purchase, makes sense to consider part of long-term contract. The commenter noted, however, if in year 5, the seller has generation from another resource that is offered to a POU, that should not be considered long-term.

COMMENT NO. 28F7: The commenter urged the CEC to consider clarifying that additional quantities are to be treated as a new agreement for the increased quantities or allocation.

COMMENT NO. 14A11: The commenter urged the CEC to consider clarifying that additional quantities are to be treated as a new agreement for the increased quantities or allocation – the long-term or short-term status of "reclassified" RECs (that exceed anticipated generation in a contract) should be based on the short-term or long-term classification of the original contract.

RESPONSE: In response to stakeholder comments, section 3204 (d)(2)(G) was added to address additional quantity that is procured in excess of a POU's procurement obligation under a long-term contract. The provision differentiates 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. Optional procurement will be treated as a new agreement for the additional quantities while additional quantities from the same RPS-certified facility or facilities and where the long-term contract identifies the potential for the POU to procure the additional quantities will be treated as part of the long-term contract.

COMMENT NO. 14F6: The commenter urged removal of "obligated to procure" as it relates to additional energy, or alternatively modify the language to apply only to contracts executed on or after July 1, 2020 – the majority of LA's existing contracts require LA to take delivery of all generated energy regardless of annual estimated generation, but don't explicitly contemplate the criteria in proposed language.

COMMENT NO. 20F10, 20E4: The commenters urged modification of "obligated to procure" to whether the POU has the option to take this procurement, as it applies to additional energy – negotiated terms in contract for additional quantity, often at a lower price, allow POU and developer to take advantage of additional generation produced, and may help POUs when retail loads increase or intermittent resources do not perform as expected.

COMMENT NO. 11F11: The commenters urged modification of "obligated to procure" to "that are not authorized under the contract" – optional procurement from a long-term contract allows POUs to cost-effectively manage its portfolio. Further, the commenter noted that treatment of this procurement as short-term would also be administratively burdensome to track long and short-term RECs from the same RPS meter.

RESPONSE: No change to the regulations. "Obligated to procure" ensures that the additional energy is still part of the original long-term procurement obligation to the RPS-certified facility or facilities and is not considered optional procurement or excess procurement that is offered to a POU in a given year where procurement exceeds that which was identified in the agreement.

COMMENT NO. 14G3: The commenter expressed support for the proposed treatment of additional quantity.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 14G4: The commenter expressed support for the exclusion of additional energy from the annual average calculation for "reasonably consistent procurement quantities".

RESPONSE: The CEC appreciates this statement of support.

SECTION 3204 (d)(2)(I)

COMMENT NO. 22C3, 13C3, 20C1: The commenters expressed support for the changes clarifying PCC 3 contracts can count as long-term – the first proposed 15-day language's changes to the LTR preserve the integrity of the RPS program, advance California's climate change goals, and shield ratepayers from the burden of paying for higher cost, higher risk new/repowered renewables in CA.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3204 (d)(2)(L)

COMMENT NO. 20D11: The commenter requested a clarification that defined contract terms such as "substitution" and "replacement" has the same meaning as "excess".

RESPONSE: No change to the regulations. As used in the regulations, "substitution" and "replacement" refer to energy from a resource other than the resource under the original long-term contract. "Excess" or "additional" refers to generation in excess of the procurement quantity specified in the contract, whether for the original resource under long-term contract or substitute/replacement generation.

COMMENT NO. 22A7: The commenter recommended that substitute resources should not have to be specifically identified in the original contract or ownership agreement to be considered part of contract for LTR – requiring that a substitute resource is specifically designated as a substitute resource is redundant, would burden ratepayers

with the cost of being out of compliance from the onset, and may require that the commenter break their contract with their developer and seek out new ones.

COMMENT NO. 20A10: The commenter recommended that substitute resources should not have to be specifically identified in the original contract or ownership agreement to be considered part of contract for LTR – requiring that substitute resources be specifically identified does not account for worst case scenarios like facility failures, facility ownership changes, or extended transmission outages. Further, the commenter noted, the facility name may change, modification of contracts may not be possible, and it may result in disproportionate ratepayer impacts due to increased third-party LTR-compliant resource costs.

COMMENT NO. 5A18: The commenter requested that a third-party's substitute resources' underlying contract or ownership agreement should not have to be long-term – this requirement is problematic because some POU contracts provide the developer with the ability to obtain replacement RECs/energy under certain circumstances, such as a long-term outage due to maintenance.

COMMENT NO. 13A10: The commenter requested that the 10-year duration requirements should not apply to substitutions in long-term contracts – if the CEC retains 10+ year duration requirement for underlying contracts, the CEC should clarify that the restriction does not apply to a substitution clause in renewable PPAs.

COMMENT NO. 19A3: The commenter recommended that adding RPS-certified facilities, with at least 10 years of contract delivery remaining, should not be precluded from being added after contract execution date – flexibility to add facilities after execution date will benefit both the POU and retail sellers because the POU gets price certainty and the seller can remediate unforeseen events and continue to meet contract obligations. The commenter noted further that such an allowance is in substance identical to the seller and POU having contracted for the additional facilities independently and is consistent with the intent of the long-term contracting requirement.

COMMENT NO. 19C1: The commenter requested clarification on whether resources substituted in long-term contracts must have originally been subject to a long-term contract or must have at least 10 years remaining on contract when added.

COMMENT NO. 5A21, 13A8, 14A8: The commenters requested that the ability to substitute a replacement resource under certain conditions, not the substitute resource itself, should meet the requirements of "specified" in original contract or ownership agreement – having flexible substitute contract provisions provide buyers with greater certainty and predictability of the expected output from a contract, provide the seller with options to avoid being in breach of contract or paying liquidated damages. Further, the commenters noted, a strict interpretation may negatively affect developer's liability

and financial security, may result in increased contract prices to cover the developer's risk, and may also lead to a shortfall in the LTR for the POUs if less renewable energy and RECs are received.

RESPONSE: In response to stakeholder comments, the proposed regulations were revised to allow resources to be added or substituted if they are owned by the seller or under a long-term contract (or long-term extension of that contract). Additionally, the original long-term contract or ownership agreement must specify the ability to add or substitute eligible renewable energy resources.

COMMENT NO. 13C5, 14C8, 20C2, 20D8: The commenters expressed support for the change that long-term contracts must specify ability to substitute resources, rather than identify the resource.

COMMENT NO. 22C1: The commenter expressed support for the changes to treatment of resource substitutions in long-term contracts – the changes preserve contractual flexibility for developers and POUs. The first proposed 15-day language's changes to the LTR preserve the integrity of the RPS program, advance California's climate change goals, and shield ratepayers from the burden of paying for higher cost, higher risk new/repowered renewables in CA.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 5A22, 13A9: The commenter requested a clarification that short-term make-up/replacement energy should be considered part of original contract for LTR because make-up/replacement clauses support the overall purpose of the RPS program and provide significant value to the buyer and seller in the certain circumstances e.g. if the output of a facility falls below a specified guaranteed production quantity or if there's an unexpected outage for necessary maintenance.

COMMENT NO. 13C6: The commenter contended that the requirement that substitute generation come from resources be owned or under long-term contract should apply only to full substitution of a generating facility for contract remainder, not for temporary replacements to mitigate a generation shortfall.

COMMENT NO. 13C7: The commenter contended that the requirement that substitute generation come from resources be owned or under long-term contract should apply only to full substitution of a generating facility for contract remainder, not for temporary replacements to mitigate a generation shortfall – many renewable energy projects are owned by special purpose entities that will by their nature not own or have contracts with any other facilities, so would not be able to use contract option to mitigate penalties to make up a temporary shortfall in a single year.

COMMENT NO. 13C8: The commenter contended that the requirement that substitute generation come from resources be owned or under long-term contract should apply only to full substitution of a generating facility for contract remainder, not for temporary replacements to mitigate a generation shortfall – it would lead to an absurd result if all substitutions are treated as new agreements. For example, the commenter explained, if in year 12 of a 20 year contract, the seller provides a limited number of replacement RECs to address an individual shortfall, this action would sever the contract such that the remaining 8 years of original contract term no longer qualifies as long term.

COMMENT NO. 14C9: The commenter contended that the requirement that substitute generation come from resources be owned or under long-term contract should apply only to full substitution of a generating facility for contract remainder, not for temporary replacements to mitigate a generation shortfall – the purpose of substitute renewable energy is a mechanism for developer to avoid paying liquidated damages and make up a shortfall for a specific period of time, not related to full replacement of an RPS resource. The commenter noted further that developers may only own one RPS facility and may not have a long-term contract with substitute resource, which would negatively affect ability to guarantee generation and could force payment of liquidated damages.

COMMENT NO. 20C7, 20D9: The commenter contended that the requirement that substitute generation come from resources be owned or under long-term contract should apply only to full substitution of a generating facility for contract remainder, not for temporary replacements to mitigate a generation shortfall – the purpose of substitute renewable energy is important to maintain RPS compliance. Further, the commenter noted, this requirement is not statutorily required and some of their contracts were negotiated prior to any RPS regulations (pre-2010), and all contracts were negotiated prior to these LTR requirements.

COMMENT NO. 14D3: The commenter requested clarification of the type of information acceptable to show that facility could not produce as required by the contract

COMMENT NO. 12D13: The commenter argued that the definition of replacement energy is too narrow and should apply when facility "did not" perform as required. Further, the commenter noted, a POU may not have access to any information that demonstrates that the facility was not capable of producing more. The POU may only know that the replacement product is being provided and may not know whether the resource could have potentially met its obligation through a different curtailment strategy or more limited maintenance activities.

COMMENT NO. 26D8: The commenter expressed general support for the additional clarification in this provision but requests a slight language revision to specify that the facility "did not perform" as the contract required.

RESPONSE: In response to stakeholder comments, the CEC revised the expressed terms to allow replacement energy, in limited circumstances, to count as part of the long-term contract, regardless of whether the replacement energy is sourced through its own long-term contract. This treatment provides the developer options in the event of facility underperformance and benefits the POU by allowing some flexible contract provisions for guaranteed output, even as the rest of the long-term provisions are restricted. Limiting the conditions for use, coupled with CEC review and evaluation of long-term contracts, would provide for the ability to limit potential abuse. Replacement energy was also defined in response to stakeholder comments (see response to Comment No. 11F13, 22F7, 22E2).

COMMENT NO. 11F3, 14F7: The commenters expressed support for the proposed modification to replacement energy regarding the need for replacement energy because the facility "did not" perform as required – demonstration that the facility "did not perform" as required provides clarity over "was unable to perform" as required. Many existing contracts contain a replacement energy provision which further ensures reliability and planning stability. It also aligns with information that the POU is likely to have access to.

COMMENT NO. 28D3: The commenter expressed support for the provision which allows short-term substitutions of another renewable resource if facility could not produce as required by contract.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 11F13, 22F7, 22E2: The commenters requested that the CEC define replacement energy and substitute energy to improve clarity.

RESPONSE: In response to comments, the CEC revised the proposed regulations by adding a definition for replacement energy. However, the definition has been limited to apply to situations in which the facility output was not resold to other buyers and in which nonperformance was not anticipated.

COMMENT NO. 28F6, 28E10: The commenter expressed support for the proposed modification to replacement energy regarding the need for replacement energy because the facility "did not" perform as required – the change should be understood to encompass situations where the RPS-certified facility in the contract did not perform, nonperformance was not anticipated by the buyer, and the output from the RPS certified facility was not resold to another buyer, and should not permit sellers to substitute replacement energy in order to resell the facility output to another entity.

COMMENT NO. 14G5: The commenter expressed support for the proposed treatment of replacement energy because it accounts for actual contract provisions which provide remedy in the event an RPS facility did not perform as required under the contract.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 14A5: The commenter expressed support for the clarification of "efficiency improvements".

COMMENT NO. 13C4: The commenter expressed support for the clarification that an expansion of an existing facility will be considered part of original long-term contract – the provision is consistent with the overall purpose and intent of RPS by increasing amount of renewable generation at likely reduced cost and lower risk of failure. Further, the commenter noted, expanding existing projects generally presents a more efficient use of resources and should be encouraged.

COMMENT NO. 14C7: The commenter expressed support for the clarification that an efficiency improvements or expansions of an existing facility will be considered part of original long-term contract – it encourages upgrades and improvements to existing resources. Further, the commenter noted, efficiency improvements will help preserve long-term commitment of contract and provide flexibility for developer to resolve unforeseen equipment limitations or degradations over resource's lifespan, and disincentivizing efficiency improvements and expansions would remove interest in efficiency gains, maximizing use of beneficial weather pattern, or future renewable growth.

COMMENT NO. 20C3: The commenter expressed support for the clarification that an expansion of an existing facility will be considered part of original long-term contract but requests additional language that treats energy storage as an efficiency improvement – energy storage guidance/clearance is needed to expressly treats energy storage additions as an efficiency improvement because many existing and new renewable energy resource projects are developing plans for installation of energy storage on-site.

RESPONSE: The CEC appreciates these statements of support. In response to Comment No. 20C3, the regulatory language is sufficiently clear and energy storage is addressed in the ISOR.

COMMENT NO. 14A6: The commenter recommended that any increase in expected quantities, allocation of generation due to contractual changes, or new capacity additions should inherit LTR status.

COMMENT NO. 5A19: The commenter recommended that all expansions of an existing project should be treated as part of the underlying agreement without needing

to be "specified", or "specified" should be broadly interpreted – expansion of an existing project can provide significant efficiencies and cost savings due to existing base contract and financial relationship, and infrastructure and permitting is already in place. Further, the commenter noted, regulations would apply to existing contracts that were drafted without the benefit of this regulatory language.

COMMENT NO. 13A11: The commenter recommended that all expansions of an existing project should be treated as part of the underlying agreement without needing to be "specified" – treatment of all expansions of existing project as part of original contract or ownership agreement is consistent with the purpose of the RPS, and provides significant efficiencies and cost savings.

COMMENT NO. 5A20, 13A12: The commenter recommended that all expansions of an existing project should be treated as part of the underlying agreement without needing to be "specified" – dividing long and short term RECs up from a project that subsequently expands, but is served by only one meter, is administratively complex and burdensome.

COMMENT NO. 14A7: The commenter recommended that all expansions of an existing project should be treated as part of the underlying agreement without needing to be "specified" – restrictions on expansions' qualification as long-term may result in loss of cost savings for a project, and may lead to complex metering - i.e. identifying long-term RECs and short-term RECs associated with a single meter.

RESPONSE: In response to stakeholder comments, the CEC revised the proposed regulations to allow expansions of existing facilities to count as part of the long-term contract, similar to treatment of efficiency improvements. Additionally, "specified" has been removed in response to the stakeholder comments.

COMMENT NO. 5A17, 5B3, 13A7: The commenters requested clarification, using an example in the regulations, that "jointly negotiated" contracts doesn't require that each PPAs cross-references the other PPAs – previously executed joint contracts between POU's or a JPA on behalf of POU's may have been jointly negotiated, but each individual PPA may stand on its own without cross-referencing the other PPAs.

COMMENT NO. 12D12: The commenter contended that the definition of jointly negotiated contracts must include POU's that execute separate contracts – there is functionally no difference between a single contract executed by multiple POU's and a circumstance where multiple POU's issue a joint solicitation, execute nearly identical but separate contracts, and those separate contracts expressly authorize the reallocation of the output of the facility to the other named POU's. POU's may execute multiple versus a single joint contract will generally relate to internal POU policies and preferences of the Seller.

RESPONSE: In response to stakeholder comments, the CEC revised the proposed regulations to treat a jointly negotiated long-term contract's electricity products reallocated among the identified joint parties as part of the original long-term contract or ownership agreement.

COMMENT NO. 5A16, 14C10: The commenters expressed support for treating reallocations of jointly negotiated long-term contracts among parties as long-term because it provides vital flexibility for small POU.

COMMENT NO. 14D4: The commenters expressed support for treating reallocations of jointly negotiated long-term contracts among parties as long-term because joint power authorities provide operational efficiencies, cost savings through collective procurement, and financing of eligible renewable resource projects to their POU members.

COMMENT NO. 28D2: The commenter expressed support for the reasonable accommodation to allow multiple POU's entering into jointly negotiated contracts to count the procurement as long-term.

COMMENT NO. 11F2, 14F3, 5E4, 28E2: The commenters expressed support for the revisions to jointly negotiated contracts – it allows for more flexibility and does not unnecessarily limit contract structures available to POU's and developers.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 5A7, 14A9, 10A1: The commenters expressed support for assignments of long-term contract from retail seller or POU to a second POU.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 20C8, 20D10: The commenter recommended that assignment of long-term contract by the POU's counterparty should not change long-term contract status – some POU contracts stipulate a third-party supplier's ability to assign the contract to another counterparty. The commenter noted further that contracts that are assigned but met the intent and LTR parameters should not be penalized and deemed short-term because the original counterparty assigned the contract.

RESPONSE: No change to the regulations. Such an arrangement fits within the proposed LTR requirements if the POU's contract with its counterparty is long-term and the generation procured through the contract assignment continues to come from long-term contracts.

COMMENT NO. 10A3: The commenter requested the addition of "third-party" to assignments of long-term contract from retail seller or POU to a second POU.

RESPONSE: No change to the regulations. Assignment could count as long-term if it is on a long-term basis; short-term assignments would open the LTR to the possible risk of strategic circumvention of the requirements of these regulations.

COMMENT NO. 28A9, 6A9, 28C2: The commenters contended that short-term assignments of a retail seller's or POU's long-term contract to another POU should not count as long-term – under a plain reading of the statute, this provision does not allow for the transfer, sale, or assignment of long-term contract credit amongst retail sellers or POUs through short-term transactions.

COMMENT NO. 14C11: The commenter requested that assignments of retail seller's long-term contract to POU should count as long-term regardless of remaining term – as POUs and retail sellers work toward same RPS targets, this would provide larger pool of entities to obtain contract, especially when POU or retail seller is in financial distress or is over-resourced, and would lower contract risks for developer. Restricting contract assignments may lead to lack of collaboration between major CA renewable energy market participants.

COMMENT NO. 14C12: The commenter requested that the wording of "assignments" should be clarified to avoid misunderstanding – the current language may be interpreted to indicate that assigning POU still has responsibility for duration of the contract, when in fact the assignee assumes all contract terms and the assigning POU removes its commitment entirely.

RESPONSE: In response to stakeholder comments, the CEC revised the proposed regulations to also allow retail sellers to assign long-term contracts, in addition to POUs, but the duration of the POU or retail seller's assignment shall be at least 10 years. These revisions make treatment of POUs and retail sellers more even while ensuring that any assignment represents a long-term procurement obligation and helps support the core objectives of the LTR. Additionally, reference to the first POU's commitment when describing assignments of long-term contracts has been removed.

COMMENT NO. 10A4: The commenter requested that the proposed regulations expressly allow sleeving arrangements in assignments of long-term contract from retail seller or POU to a second POU.

RESPONSE: No change to the regulations. CEC staff believes the language is clear, unambiguous, and adequate, despite the comment. However, a clarification related to sleeving arrangements is appropriate for the avoidance of

doubt, and has been made in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3202 (a)(2)(B).

SECTION 3204: GENERAL COMMENTS

COMMENT NO. 28G1: The commenter expressed support for the proposed long-term contract requirements.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 22F9, 22E4: The commenter requested that the CEC clarify that a change in resource ownership or ownership contract does not affect LTR status – the proposed regulations don't contemplate a scenario in which the owner of the resource sells either the resource or the contract after delivery start and whether the contract would still maintain its LTR eligibility.

RESPONSE: No change to the regulations. In the scenario described, it is unclear whether the commenter's contract with the original third-party would change, and if the original third-party would continue to procure from the resource and sell to the commenter. The regulations cannot explicitly identify every hypothetical scenario, and Section 3207 provides for a voluntary early review process for contracts where LTR eligibility may be in doubt.

COMMENT NO. 14A2: The commenter expressed support for the majority of modifications in section 3204, particularly the flexible treatment of contract amendments.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 17G5: The commenter contended that the additional requirements for long-term contracts, beyond 10-year duration, are beyond statutory mandate but acceptable to address stakeholder concerns.

RESPONSE: No change to the regulations. Establishing basic definitions and requirements for long-term contracts to serve as guardrails against circumvention of the statutory requirements and purposes is necessary to ensure that those contracts are actually long-term. It is the CEC's role to interpret and make specific the statute by defining long-term contracts and short-term contracts for purposes of POU compliance with the LTR.

SECTION 3206 (a)(1)(F)

COMMENT NO. 5A8: The commenter expressed support for allowing banked PCC 2 through compliance period 5.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3206 (a)(2)

COMMENT NO. 5A23, 20A15: The commenters requested clarification on how to show "no increase in GHGs" due to a Public Safety Power Shutoff event in IOU territory.

RESPONSE: No change to the regulations. The proposed regulations leave this to the discretion of the POU's governing board. Although a POU's analyses should be included as part of its determination and submitted to the CEC if this optional compliance measure is used, CEC staff will defer to the POU's reasonable methods of making this determination.

COMMENT NO. 20A14: The commenter recommended that the proposed regulations should provide a narrow exemption to "no increase in GHGs" requirement if a POU has an import limitation or tie constraint or in cases where reliability needs to be maintained – import limitations and CAISO reliability requirements may force the POU to rely on an internal natural gas power plant and subsequent increase in GHGs in the event of unanticipated curtailment.

RESPONSE: No change to the regulations. The requirement that the POU demonstrate "unanticipated curtailment of eligible renewable energy resources if the waiver would not result in an increase in greenhouse gas emissions" to qualify for this optional compliance mechanism is statutorily mandated by Public Utilities Code section 399.15 (b)(5)(C) and no exceptions are provided.

COMMENT NO. 5A24: The commenter recommended that "best and most recent forecast" should mean information approved by POU governing board.

RESPONSE: No changes recommended to the regulations. As currently written, this is left to discretion of POU's governing board, but the analysis supporting the POU's determination should be included as part of the POU's finding. Action by governing board is not required for POU to determine what forecast to use.

COMMENT NO. 20A16: The commenter recommended that data sources for "best and most recent forecast" should be broad and include many sources such as the IRP, the integrated energy policy report, POU budgets and annual retail sales forecasts, etc. Further, the commenter contended, the IRP data is already several years old, there is limited vehicle penetration data available on a timely basis, and there is a limited history in forecasting energy growth due to transportation electrification, and without sufficient data sets and history to analyze the impact of transportation electrification, it may be difficult to procure renewable resources on a timely basis to meet additional energy

needs, therefore necessitating the need for a broad set of data sources for demonstrating unanticipated transportation electrification.

RESPONSE: No changes recommended to the regulations. The proposed regulations allow the data source to be forecasts developed or approved by a POU, as well as several identified examples of forecasts described in section 3206 (a)(2)(A)4.i. including but not limited to information filed with the State Air Resources Board, the Commission, or another state agency.

SECTION 3206 (a)(3)

COMMENT NO. 20D15: The commenter recommended that POUs should be able to exercise optional compliance measures once the CEC determines potential compliance violations or before, i.e. starting as early as January 1, 2021 – many POUs have secured renewable resources for RPS compliance with the intent that 65% of procured contracts would meet the LTR. The commenter noted further that knowing whether these are LTR compliant now, without the long CEC lag time, is important for POUs currently negotiating renewable contracts in order to prevent disproportionate rate impacts or stranded investments.

RESPONSE: No change to the regulations. POUs must adopt rules for optional compliance measures prior to or within a given compliance period (See Section 3206 (b)), and the rules apply on a compliance period basis rather than year-to-year (unless the POU's adopted rules indicate otherwise). Nothing in the current regulations prevent a POU from adopting, for example, a cost limitation now that establishes a limit on procurement expenditures for compliance period 4 or other future compliance periods.

SECTION 3207 (c)(2)(F)

COMMENT NO. 25A2: The commenter recommended that the reporting requirement for underlying long-term contracts should be removed – a POU's contract with a third-party will likely not provide POU access to the third-party's underlying contracts, and there may be multiple counterparties between the third-party and developer.

COMMENT NO. 13C9: The commenter recommended that POUs should be able to participate when third parties submit documents on their behalf, at least to extent that POU can respond and provide own supporting documentation if available – affected POUs would potentially lack the ability to review contracts that are necessary to demonstrate its own compliance and could potentially lead to a finding of noncompliance for the POU.

COMMENT NO. 14C13: The commenter recommended that POUs should be able to participate when third-parties submit documents on their behalf, at least to extent that

POU can respond and provide own supporting documentation if available – third parties are not under direct jurisdiction of CEC, and false assumptions or incorrect information provided to CEC staff that is binding on the POU could lead to noncompliance determination for POUs. Further, the commenter noted, POUs should be involved in process to verify third-party contracts with respect to any PCC and long-term/short-term classification.

COMMENT NO. 19A2: The commenter recommended that the proposed regulations be revised to allow underlying contracts to be submitted to CEC directly and confidentially – permitting third parties to submit documentation directly and on a confidential basis will help alleviate problems associated with confidentiality provisions in third-party underlying contracts, allowing the CEC to receive the documentation and facilitating production of such documentation by third parties.

COMMENT NO. 14D5: The commenter recommended that the regulations clarify that third-party suppliers should provide information to the Commission staff if and only if the POU is unable to provide documentation to demonstrate compliance with long-term contract requirements – the compliance obligation is the POU’s responsibility; the role of third-party suppliers is to complete transactions with no requisite obligation to comply with the Commission’s long-term contract requirements. Further, the commenter noted, amending contracts to require third parties to comply with CEC verification process could affect long-term status and increase cost.

RESPONSE: In response to stakeholder comments on this topic, the CEC revised the reporting requirements in the proposed regulations by adding section 3207 (c)(2)(F)1. and 2. in the third proposed 15-day language. The CEC agrees that it could be burdensome to evaluate all underlying contracts for compliance with the LTR requirements, especially if existing long-term contracts designate this information confidential, meaning the POU cannot report on or attest to the substance or duration of the underlying contracts. In response, the proposed regulations have been revised so that information regarding the underlying contract duration or ownership of RPS-certified facilities in pre-July 1, 2020 contracts may be attested to by the third-party supplier of the underlying contract on the POU’s behalf. For contracts not executed prior to July 1, 2020, the POU may attest to the underlying contract, but attestation by third parties regarding the contract duration will not be accepted. In both cases, providing this documentation to the CEC is only required upon request from CEC staff. Additional discussion about the CEC’s revisions to proposed regulations in response to these comments can be found in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3207 (c)(2)(F)1.-2.

COMMENT NO. 19G1: The commenter requested that the FSOR clarify that an attestation by a third-party supplier or any documentation submitted directly to the CEC need only be provided by the third-party supplier one time (rather than annually),

provided it remains valid for compliance period covered by the submission. Or, the commenter noted, the CEC could also consider allowing submissions one time per facility – section 3207 (c) requires annual attestation from POU or authorized agent for each annual report, but unclear whether this also applies to direct third-party - requiring it only once would avoid unnecessary efforts/expenses for both POU and third-party each year when the same documentation or attestation may cover all years of the contract.

RESPONSE: No change to the regulations. However, POUs may reference information contained in annual compliance reports, instead of resubmitting each year, as provided in section 3207 (c). Information submitted in a prior compliance report may now include third-party submissions.

COMMENT NO. 14G6: The commenter expressed support for the proposed option of having a third-party submit contract documentation without such documentation being binding to the POU.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 14G7: The commenter expressed support for the proposed option for POUs to alternatively submit an attestation with the understanding that the documentation be available to the CEC upon request.

RESPONSE: The CEC appreciates this statement of support.

SECTION 3207 (c)(2)(G)

COMMENT NO. 20D14: The commenter recommended that the CEC rely on a POUs IRP, RPS Procurement Plan, RPS Enforcement Program, RPS contracts, or agenda/staff reports, or other resource planning methods to verify RPS compliance - cost, transmission rights, proximity to a BA and past performance are very important in order to comply with the various RPS compliance requirements.

RESPONSE: No change to the regulations. A POU may submit this information in support of its procurement claims, but as the nature of documentation may vary depending on the scenario, the regulations should not be overly prescriptive in what counts as acceptable documentation.

SECTION 3207 (c)(5)

COMMENT NO. 5A26, 17A14: The commenter requested that the CEC provide guidance on how to amend annual reports – some POUs may have submitted annual reports based on new or different interpretation of statutory requirements.

RESPONSE: No change to the regulations. These regulations create a clear formal process for the submission of reports by POU's and the review of those reports by the CEC. For informal support on case-specific questions, such as correcting errors in submitted annual reports, a POU may contact CEC staff, who can provide assistance on individual basis once these regulations have taken effect.

COMMENT NO. 5A9: The commenter expressed support for the compliance report deadline – the deadline of 90 days from receipt of draft verification results is reasonable and that this will provide adequate time for POU's to complete compliance reports.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 14D9: The commenter recommended that the regulations should change the date to notify CEC of existing long-term contracts to July 1, 2021 – it is unclear whether April 2021 date refers to annual deadline or one-time requirement, but notification should be aligned with annual compliance reporting deadline.

RESPONSE: In response to comment, the one-time reporting deadline in section 3207 (c)(5)(B)1.i. for contracts that the POU wishes to claim as long-term was changed to July 1, 2021, or within 30 days of the effective date of the regulations, whichever is later. The verification of these claims now also aligns with the verification of procurement claims for Compliance Period 3.

COMMENT NO. 12D1: The commenter contended that the proposed contract review process in the second proposed 15-day language must be removed for these reasons: implementation of LTR has been substantially delayed and it is too late to introduce major new proposals; POU's have not had regulatory certainty for what contracts may qualify as long-term, unlike retail sellers, because the CPUC implemented the LTR in 2017; based on lead time to secure contract that delivers by 2021, a POU needed to start negotiations in 2017-2018 time period; the regulations will punish the POU's that took the necessary steps to faithfully meet the requirements and purpose of the RPS Program.

COMMENT NO. 12D2: The commenter contended that the proposed contract review process in the second proposed 15-day language must be removed for these reasons: there is no demonstrated need for any of the proposed limitations on long-term contracting included in the second proposed 15-day language; as public agencies subject to oversight of governing board, with input from elected officials on boards and local community, risk of POU engagement in deceptive or "sham" contracting is low; concerns over "sham" contracts based on IOU contracting practices should not be a driver for regulations applicable to POU's.

COMMENT NO. 26D7: The commenter contended that the proposed contract review process in the second proposed 15-day language must be reconsidered because the CEC does not have ex post facto contract oversight authority – Public Utilities Code section 399.13(b) does not provide the CEC with any separate or additional authority to define the terms and conditions of a long-term contract. Further, the commenter noted, POU's local governing boards are best situated to make decisions regarding procurement and contract design and are authorized by Public Utilities Code section 399.30 to do so.

COMMENT NO. 12D3, 26D2: The commenters contended that the proposed contract review process in the second proposed 15-day language must be removed for these reasons: asserting an approval role over POU contracting by requiring the POU to justify any term that Commission staff deems relevant goes beyond the CEC's statutory authority and infringes on the role of the POU governing boards.

COMMENT NO. 17D5: The commenter contended that the proposed compliance reporting requirements requires duplicative and unnecessary contract and compliance reviews - the proposed regulations include no less than seven separate references to the ability to collect supporting information. The commenter noted further that any proposed regulations that seek anything other than information on the duration of the agreement to determine LTR eligibility must be rejected.

RESPONSE: The contract review provisions added in the second proposed 15-day language and described in the above comments are substantial but sufficiently related modifications that were added to provide better guidance to POUs on documenting compliance with the LTR, provide information on staff's review earlier in the compliance period, and provide a clear appeals process for POUs to appeal staff determinations in the event of a disagreement. To the extent that commenters state that this addition was not sufficiently related to the 45-day express terms because it was added too late or is too big of a change for 15-day language, CEC staff disagrees with this position. The Notice of Proposed Action clearly identifies "the reporting requirements and reporting process" as a topic of these regulations, and establishing reporting requirements to document compliance with the LTR has been a central part of the rulemaking since the publication of 45-day language.

Nevertheless, in response to stakeholder comments on this topic, the CEC revised the proposed regulations in the third proposed 15-day language by adding a voluntary early review of long-term contracts for POUs and modifying the annual and compliance period review of long-term contract classification. These revisions provide pathways for POUs to attain a high degree of certainty that its long-term contracts will be verified as such by the CEC, while reducing duplicative or unnecessary reviews. More detail about the purpose and necessity

for these changes is addressed in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3207 (c)(5)(A) – section 3207(c)(5)(C).

COMMENT NO. 26D5: The commenter contended that the proposed contract review process in the second proposed 15-day language must be reconsidered because the duration of a contract is unrelated to capital spending and market stability, and "major capital investments" made at existing facilities are irrelevant to a particular contract's status as short- or long-term.

COMMENT NO. 26D6: The commenter contended that the proposed contract review process in the second proposed 15-day language must be reconsidered – with respect to the proposed requirement that a contract support "long-term planning and market stability", long-term planning does not identify specific contracts that POUs should be acquiring. Further, the commenter noted, no single contract can result in overall "market stability", and if the proposed provision is broadly interpreted, some resources could be interpreted to mean that some resources would never qualify as long-term unless repowered or purchased -- this could remove otherwise viable resource options from consideration.

RESPONSE: In response to comments, the CEC revised the proposed regulations by removing reference to the objectives of the LTR.

COMMENT NO. 12D5, 26D4: The commenters contended that the proposed CEC staff review process in the second proposed 15-day language is impermissibly vague and delegates rulemaking function to staff – it is impossible for a POU to reasonably predict what that actual long-term procurement requirements are.

COMMENT NO. 26D3: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language is impermissibly vague and delegates rulemaking function to staff – this uncertainty could interfere with efficient procurement of renewable power and would introduce unnecessary risk that would likely result in increased compliance costs and capital reduction available to address the current climate crisis.

COMMENT NO. 12D4: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language is impermissibly vague and delegates rulemaking function to staff – in the case of regulations that require the construction of major infrastructure projects, where millions of dollars and years of work are being committed, it is even more essential that the regulations not be vague or subject to after-the-fact changes in interpretation.

RESPONSE: The addition, in the second proposed 15-day language, of a review process for long-term contracts was a substantial but sufficiently related modification intended to provide better guidance to POUs, provide information on

staff's review earlier in the compliance period, and provide a clear appeals process for POU's to appeal staff's determination. However, in response to comments on this topic, the CEC revised the proposed regulations by adding a voluntary early review of long-term contracts for POU's and modified the annual and compliance period review of long-term contract classification. More detail about the purpose and necessity for these changes is addressed in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3207(c)(5)(A) – section 3207(c)(5)(C).

COMMENT NO. 17D10: The requirement in the second proposed 15-day language to provide explanation for various contract terms in unlawful, vague, ambiguous, and should be stricken - specific terms and conditions associated with the procurement quantities or delivery terms does not need to be reviewed in order to determine whether the contracts are for a duration of 10 years or more. Likewise, the commenter noted, the CEC doesn't have the authority to make a determination based on looking at the parties' intent, or make a policy determination that the POU's long-term contracts demonstrate, e.g. that it supports major capital investments in existing eligible renewable energy resources.

COMMENT NO. 17D9: The requirement in the second proposed 15-day language to provide explanation for various contract terms in unlawful, vague, ambiguous, and should be stricken – there was no discussion of any specific delivery quantities or pricing provisions in the ISOR, and no clearly defined statutory mandate regarding "consistency of quantities and deliveries specified in the contract". Further, the commenter noted, a POU would be forced to make a demonstration upon which there's no objective standard to be applied, and the review process would be arbitrary and capricious, and based on the subjective determination of the reviewer.

COMMENT NO. 17D8: The requirement in the second proposed 15-day language to provide explanation for various contract terms in unlawful, vague, ambiguous, and should be stricken – if the legislature had concerns over "sham" contracts, they would've included a reference to more than just the duration of the agreement.

COMMENT NO. 8D5: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language should be narrowly focuses on the contract duration – reliance on staff discretion and disclosure of irrelevant and extraneous information that, if publicly disclosed, could put one of the contract parties at a competitive disadvantage, should not be required.

RESPONSE: The addition, in the second proposed 15-day language, of a review process for long-term contracts was a substantial but sufficiently related modification intended to provide better guidance to POU's, provide information on staff's review earlier in the compliance period, and provide a clear appeals process for POU's to appeal staff's determination. However, in response to

comments, the CEC revised the proposed regulations by adding a voluntary early review of long-term contracts for POU and modified the annual and compliance period review of long-term contract classification. More detail about the purpose and necessity for these changes is addressed in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3207 (c)(5)(A) – section 3207(c)(5)(C).

COMMENT NO. 5D1, 17D1: The commenters requested that the CEC reconsider the proposed second proposed 15-day language – the newly proposed provision in section 3207 that allows CEC staff to determine whether each contract meets the LTR significantly expands the CEC's authority, improperly encroaches on local decision-making, and does nothing to help promote the development of renewables in POU communities. Further, the commenter noted, the changes also raise potential legal questions given the ambiguity and scope of information sought, creates extraordinary new reporting burdens, increases compliance reporting costs, and may compromise POU's ability to comply with the RPS program.

COMMENT NO. 11D1, 18D1, 1D1, 3D1, 21D1, 7D1, 27D1, 30D1, 15D1, 20D17, 4D1, 9D1, 26D1: The commenters requested that the CEC reconsider the proposed second proposed 15-day language – the newly proposed provision in section 3207 that allows CEC staff to determine whether each contract meets the LTR significantly expands the CEC's authority beyond that which was envisioned by the Legislature, improperly encroaches on local decision-making, creates regulatory uncertainty and undermines local decision-making that informs our resource procurement planning, which may lead to added compliance costs and ultimately higher cost of electric service.

RESPONSE: In response to stakeholder comments on this topic in the second proposed 15-day language, the proposed language in section 3207 was removed. CEC staff held a subsequent workshop to engage stakeholders further on the LTR topic and ultimately issued third proposed 15-day language prior to adoption. Among other modifications, the long-term procurement provisions have since been improved by better defining the contract provision requirements for a long-term contract, and the reporting requirements and process has been updated. The updated reporting requirements and process in section 3207 garnered widespread stakeholder support.

COMMENT NO. 12D6: The commenter contended that the lack of timing constraint on proposed review process in the second proposed 15-day language could force a POU into noncompliance – it is likely that determination would occur after contract had been executed and began delivering electricity products, and POU may have no opportunity to mitigate noncompliance through amendments or alternate procurement because compliance period may have ended.

COMMENT NO. 12D7: The commenter recommended that CEC staff should be required to issue its determination of a contract's long-term commitment no later than 60 days after a POU's annual report submission – in the second proposed 15-day language there is currently no time limit for staff's review of information in support of a long-term commitment. Further, the commenter noted, if staff concludes a proposed commitment does not qualify as long-term, the POU will need to procure an alternative qualifying commitment and the contracting parties will need to adjust their contract or commercial arrangements.

COMMENT NO. 17D12: The commenter recommended that CEC staff should be required to issue its determination of a contract's long-term commitment no later than 30 days after a POU's annual report submission - the proposed review process in the second proposed 15-day language would otherwise create considerable uncertainty with regards to contracts already approved and contracts under development and should be stricken. Further, the commenter noted, without a clearly articulated timeline for a CEC determination, POUs are at jeopardy of noncompliance and considerable penalties if the CEC makes an untimely ineligible determination.

RESPONSE: The addition, in the second proposed 15-day language, of a review process for long-term contracts was a substantial but sufficiently related modification intended to provide better guidance to POUs, provide information on staff's review earlier in the compliance period, and provide a clear appeals process for POUs to appeal staff's determination. However, in response to comments, the CEC revised the proposed regulations by adding a voluntary early review of long-term contracts for POUs and modified the annual and compliance period review of long-term contract classification. More detail about the purpose and necessity for these changes is addressed in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3207 (c)(5)(A) – section 3207(c)(5)(C).

To provide POUs with improved guidance on the status of their long-term contracts, the proposed regulations specify that the CEC shall, to the extent possible, issue a determination within 90 days of submission of a complete request for voluntary early review and within 365 days of the annual submittal of complete information and supporting documentation. However, for the voluntary early review, failure to meet the 90-day deadline does not constitute a determination that the contract qualifies as long-term. These windows were chosen because it balances consideration of CEC staff resources and program constraints with POU requests seeking improved alignment with existing POU approval processes. Nevertheless, CEC staff will try to complete its review earlier when resources permit.

COMMENT NO. 11F9, 17F6: The commenters requested that the CEC change 180 days for early review to 60 days and remove "to the extent possible" – 60 days will

allow a POU's contract that has been fully negotiated but not executed by governing board to have a CEC determination by the time of the public meeting.

COMMENT NO. 28F5: The commenter requested that the CEC change 180 days for early review to 60 days and remove "to the extent possible" – a shorter timeline is needed to reflect commercial realities and ensure that POU contract execution is not substantially delayed due to the failure of CEC to perform prompt review. Additionally, the commenter recommended, the CEC should consider process that prioritizes contracts that do not require enhanced scrutiny because they are not materially different from other non-grandfathered long-term contracts.

COMMENT NO. 14F10: The commenter requested that the CEC change 180 days for early review to 60 days and remove "to the extent possible" – this review timeline aligns with many POU's approval processes.

COMMENT NO. 5E8, 20E3, 27E1, 28E9, 17E3, 29E3: The commenter contended that the 180-day review period is too long to be useful and may inhibit innovative contracts. CEC should consider processes to further shift burden onto POU.

RESPONSE: In response to stakeholder comments, the proposed regulations were modified such that the CEC shall issue a determination within 90 days of submission of a complete request for voluntary early review. However, failure to meet the 90-day deadline does not constitute a determination that the contract qualifies as long-term. The 90-day window was chosen because it balances consideration of CEC staff resources and program constraints with POU requests for improved alignment with existing POU approval processes. Nevertheless, CEC staff will try to complete its review earlier when resources permit.

COMMENT NO. 11G7, 14G9: The commenters expressed support for the proposed 90-day timeline for voluntary early review. The commenters appreciate the willingness of CEC to set more aggressive timeline and urge staff to work with POU's if there are collaborative solutions that could further speed up review without an undue burden on staff.

COMMENT NO. 17G7: The commenter noted that the expedited review period is necessary and FSOR should clarify that review will be undertaken as expeditiously as possible. The CEC appreciates that CEC shortened review process, but failure to provide timely review could jeopardize contract negotiations or adversely impact POU's ability to reach most favorable terms for ratepayers. Further, the commenter noted, long-term contracts represent significant investments of public funds and comprise a significant portion of a POU's procurement portfolio, and some risk averse POU's will require additional assurances.

RESPONSE: The CEC appreciates these statements of support. The 90-day window was chosen because it balances consideration of CEC staff resources and program constraints with POU requests for improved alignment with existing POU approval processes. Nevertheless, CEC staff will try to complete its review earlier when resources permit.

COMMENT NO. 14F11: The commenter recommends allowing fully executed contracts ~~or~~ and agreements that have been fully negotiated but not approved by the POU governing board to qualify for voluntary early review.

RESPONSE: In response to comment, the proposed regulations made the proposed change from "or" to "and" as described in the comment in order to clarify that both of these options are acceptable submittals for voluntary early review if they meet the other requirements of that section.

COMMENT NO. 14F8, 28F4, 11F8, 20F12, 17F5: The commenters expressed support for the inclusion of a voluntary early review process – it provides further certainty for POU's that have completed negotiations and need regulatory assurance to their governing bodies that these contracts meet the LTR. Further, the commenter noted, it also provides for identification of short-term contracts that a POU may have otherwise relied on as long-term contracts, and provides flexibility in addressing unique needs of POU's e.g. knowing that a POU's large customer will leave in x years and building in a reduction in contract quantities in that future year.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 17D6: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language violates the Administrative Procedure Act (APA) and recommended it be stricken – the proposed regulations is in conflict with the statute, does not carry out the provisions of the statute, and therefore does not meet the standard in Government Code 11342.2. Additionally, the commenter noted, the proposed regulations do not provide for "clarity" for those directly affected persons to easily understand the regulations. Further, the commenter noted, the CEC unlawfully imposes additional conditions without any defined guidance or standards, and this lack of "clarity" could subject different POU's to different standards, depending on the reviewing staff.

COMMENT NO. 17D11: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language violates the APA and recommended it be stricken – if the CEC were to approve the scope of long-term contract review now and direct a future rulemaking to fully define and address the specific provision at issue, it would result in underground regulations, since any long-term contract review conducted between the effective regulation date and the completion of the regulations would constitute such a claim.

COMMENT NO. 12D10: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language violates the APA – under the review process, CEC staff is delegated the authority to develop specific requirements for the limitations on how much a POU’s share of the quantity output of a facility can vary throughout the contract term. Therefore, the commenter noted, any such standards adopted by Commission staff are of a nature that they should be applied generally and would not be appropriate for differing treatment in different contexts - the requirements that will be created by CEC staff through this process are clearly regulations subject to the requirements of the APA. For example, the commenter noted, Commission staff could not determine that an 80 percent reduction in year 8 disqualifies one contract but would be allowable for a different contract.

COMMENT NO. 12D11: The commenter contended that the proposed CEC staff review process in the second proposed 15-day language violates the APA – the key purpose of APA is to provide the entities that are subject to a regulation with adequate notice of the law’s requirements so that they can conform their conduct. Under proposed review process, the commenter contended, a POU will have no notice of what the requirements are to qualify as a long-term contract, and it will be impossible for a POU to conform its contracts to these standards.

RESPONSE: The addition, in the second proposed 15-day language, of a review process for long-term contracts was a substantial but sufficiently related modification intended to provide better guidance to POUs, provide information on staff’s review earlier in the compliance period, and provide a clear appeal process for POUs to appeal staff’s determination. However, in response to comments, the CEC revised the proposed regulations by adding a voluntary early review of long-term contracts for POUs and modified the annual and compliance period review of long-term contract classification. More detail about the purpose and necessity for these changes is addressed in Section III of the FSOR, in the Update of the Initial Statement of Reasons for section 3207 (c)(5)(A) – section 3207(c)(5)(C).

COMMENT NO. 17D13: The commenter contended that the CEC must confirm that once an agreement is deemed long-term, that amendments or modifications to pricing or delivery provisions do not alter the long-term eligibility – absent a contract amendment or modification that impacts provisions in section 3204 (d) that change the duration of the agreement, the long-term eligibility of the contract should not be subject to further CEC review. Also, the commenter noted, the CEC should also affirm that pre-June 2010 contracts are deemed to be long-term agreements.

RESPONSE: No change to the regulations. Under the Section 3207(c)(2)(H) of the proposed regulations, a description and supporting documentation is required of any modifications to contracts, ownership, or ownership agreements previously reviewed and evaluated by the CEC from which the POU intends to

continue claiming long-term procurement. This is necessary to ensure all long-term procurement is sourced from contracts that meet the LTR. If the POU believes the amendment or modification is minor or does not alter the long-term eligibility of the contract, the POU may state that in its submission under this section. In terms of "pre-June 2010" contracts or ownership agreements that meet the criteria of section 3202 (a)(3), these electricity products shall not be deemed long-term as requested by the comment. Electricity products from contracts or ownership agreements meeting the criteria of 3202 (a)(3) are not provided the same statutorily mandated treatment as electricity products meeting the criteria of section 3202 (a)(2). Electricity products meeting the criteria of section 3202 (a)(2) count in full towards the RPS procurement requirements including the LTR in accordance with Public Utilities Code section 399.16 (d). "Pre-June 2010" contracts or ownership agreements do not count in full towards the RPS procurement requirements including the LTR. Therefore, "pre-June 2010" electricity products must be classified as long-term or short-term in accordance with section 3204 (d) and will be included in the calculation of the LTR.

COMMENT NO. 14D6: The commenter recommended that POUs should only be required to explain contract provisions only for long-term contracts with consistent and defined deliveries – the change ensures the provision will be appropriately applied to relevant legacy long-term contracts.

RESPONSE: No change to the regulations in response to comment. Consistent and defined deliveries under the proposed reasonably consistent contracted-for quantities and minimum pricing or quantity provisions are necessary to understand the long-term procurement commitment; a contract without these terms may need additional information to demonstrate the procurement commitment.

COMMENT NO. 14D7: The commenter recommended that POUs should not have to explain varying contract provisions for contracts with marginal variation – the change assists the compliance review of long-term contracts by Commission staff.

RESPONSE: No change to the regulations. Under the proposed regulations, a contract should not trigger enhanced scrutiny if there is "marginal" variation, subject to the specific facts and circumstances, as long as the contract meets the LTR and is within the specified guardrails for long-term contracts in Section 3204 (d)(2)(C). Only contracts that exceed the thresholds for consistent procurement quantities, do not contain minimum pricing/quantity terms, or include prohibited unilateral, no-cost early termination provisions are required to be accompanied by an explanation or justification of why they should still be treated as long-term contracts.

COMMENT NO. 14D8: The commenter requested that the FSOR should clarify what "additional explanation" and "additional information" mean – clarification is needed to ensure compliance with new requirements.

RESPONSE: No change to the regulations. Individual contract documents would be evaluated on a case by case basis and be dependent on exactly which requirement may need additional documentation to verify compliance, so clarifying exactly the types of additional information and explanation needed would likely not be useful.

COMMENT NO. 28D5: The commenter expressed support for the CEC staff review process in the second proposed 15-day language – the annual review process ensures that any unusual contract structures can be reviewed for consistency with the criteria enumerated in section 3204(d)(2)(A)3. Further, the commenter noted, the annual review process may also allow POUs to cure any contract defects in a timely manner and reduce risk of noncompliance.

COMMENT NO 28D6: The commenter expressed support for the CEC staff review process in the second proposed 15-day language – the proposed staff review process is intended to minimize uncertainty by providing timely determinations that will ensure POUs can count on these agreements for LTR compliance. Further, the commenter noted, the proposed staff review process will also protect against potential wave of "sham" long-term contracts that are functionally structured as short-term agreements and fail to satisfy the core purpose of the LTR - this approach is entirely appropriate and responds to the specific concerns raised by the commenter over the past year.

RESPONSE: The CEC appreciates these statements of support.

COMMENT NO. 14D10: The commenter recommended that the CEC should provide guidance or checklist as part of FSOR, annual reporting checklist, verification methodology report, or other documents – an informal and non-binding guidance or checklist can provide POUs a roadmap or blueprint on what provisions should be added in long-term contracts, and used as references prior to committing to future long-term agreements.

COMMENT NO. 14F9: The commenter recommended the addition of a minimum criteria "checklist" and template or guide containing preapproved long-term contract clauses – the addition of these tools and guidelines may address a recurring concern shared among the Joint Stakeholders and the commenter which is the need for expedited review and determination by CEC staff.

COMMENT NO. 20F13: The commenter offered to assist with developing a template for voluntary early review and other items – this will help facilitate a timely review.

RESPONSE: In response to comments, the CEC revised the proposed regulations to specify in Section 3207 (c)(5)(A)3. that the Executive Director may establish a voluntary review request form to facilitate the contract review process.

COMMENT NO. 14G8: The commenter recommended that the FSOR should clarify the criteria that contracts must meet to qualify for voluntary early review – it is unclear what is meant by the phrase "which on their face require additional information or justification to establish that the contracts meet the requirements of section 3204 (d)(2)(C)" as written in section 3207 (C)(5)(A)1.i.

RESPONSE: No change to the regulations in response to the comment. The early review process is available for contracts for which additional information to satisfy the LTR, such as those with greater than 33 percent variation or include no-cost, early termination provisions other than the provisions specifically identified as being acceptable in the regulations.

Contracts that, for example, exceed the reasonable variation threshold do not "on their face" qualify as long-term contracts within the definitions contained within Section 3204 of these regulations. As such, these contracts require additional information or justifications be submitted by the POU to the CEC. One of the avenues to submit this information is through the voluntarily early review process, specified in Section 3207 (C)(5)(A).

The intent of the quoted language is to specify that the voluntary early review process is reserved for contracts that *actually* require additional information or justifications, not contracts that clearly meet the requirements of having reasonably consistent contracted-for quantities, no zero-cost early termination clauses, and defined output share or quantities of procurement and minimum pricing terms, as set forth in sections 3204 (d)(2)(C)1.i.-iii., 3204 (d)(2)(C)2., and 3204 (d)(2)(C)3. respectively.

COMMENT NO. 14G10: The commenter recommended that the CEC consider publishing guidance documents, including a long-term contract language checklist and long-term contract reporting template.

RESPONSE: No change to the regulations in response to the comment. The CEC posts guidelines for annual reporting and can consider updates to facilitate reporting.

SECTION 3207 (d)(5)(A)4.i.

COMMENT NO. 28A15, 6A15: The commenters recommended that a POU's cost limitations rule assumptions should be consistent with IRP assumptions – the

regulations should account for SB 350 elements that are relevant to the development of a cost limitation by POU governing boards by ensuring a consistent approach to development of IRP and RPS cost limitations.

RESPONSE: In response to comments, the CEC revised the proposed regulations to require IRP-filing POUs to address any differences between cost limitation assumptions and IRP assumptions when reporting on cost limitation in section 3207 (d)(5)(A)4.i.

SECTION 1240 (h)

COMMENT NO. 17A15: The commenter express support for the clarification that a Notice of Violation, if issued, will be sent to POU in addition to CARB.

RESPONSE: The CEC appreciates this statement of support.

MISCELLANEOUS COMMENTS

COMMENT NO. 29C7, 29A16, 29A17, 29D8 (submitted outside of noticed comment period), 29F2, 29E1: The commenter argued that “electricity product” needs to be defined, as it may be of wide interest to the public.

COMMENT NO. 29D6 (submitted outside of noticed comment period): The commenter argued that “electricity product” needs to be defined, otherwise the paying end-use customer won’t be able to determine a product’s value.

COMMENT NO. 29D7 (submitted outside of noticed comment period): The commenter argued that “electricity product” needs to be defined, otherwise a lack of definition leads to uncertainty in long-term planning and market stability.

COMMENT NO. 29A3, 29A19, 29C6, 29D4, 29G6, 29D2: The commenter requested justification for a definition of “electricity product” if it differs from product liability law, specifically Fong v. PG&E.

COMMENT NO. 29C10: The commenter argued that electricity is not a product before it is metered as a retail sale, per Fong v. PG&E.

COMMENT NO. 29D10 (submitted outside of noticed comment period): The commenter asserted that the CEC does not have the authority to use the word “products” in defining the subject of long-term contracts or authority to define “electricity product” in a manner that is inconsistent with Fong v. PG&E.

COMMENT NO. 29G2, 29H4: The commenter contended that the third proposed 15-day language does not reference what law conveys authority to the CEC to define

"electricity product" in the regulations notwithstanding any other law, and requested justification if it differs from product liability law.

RESPONSE: No change to the regulations. The CEC's existing regulations define electricity products for purposes of the RPS, and the definition is consistent with how the term "electricity product" is used in the RPS code sections that establish the portfolio balance requirement and the POU RPS requirements. The Fong v. PG&E case does not deal with the definition for purposes of the RPS. It deals with the definition for the limited purpose of determining when electricity becomes a "product" for purposes of strict liability in tort for defective products. This case is not relevant to the RPS, and these comments are not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the procedures followed in adopting these regulations. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 29A4, 29D1: The commenter argued that the proposed regulations needs to address whether the REC tracking system is operational and able to prevent double counting.

COMMENT NO. 29B2: The commenter requested clarification about what happens when RECs are retired in systems other than WREGIS and how the CEC ensures there is no double counting.

COMMENT NO. 29D9 (submitted outside of noticed comment period): The commenter contended that the CEC must adopt regulations that protect the public in situations where the environmental attributes of an electricity product are sold separately from the electricity; these attributes should not be doubled counted.

COMMENT NO. 29A7, 29A8, 29D3: The commenter requested clarification as to how the CEC ensures there is no double counting in the event that the voltage at the point of generation differs from the voltage at the point of delivery to the final end-use customer.

COMMENT NO. 29G3, 29H2: The commenter requested clarification as to what point is the electricity that enters the stream of commerce a marketable form of "product" for retail sale to retail end; this information is necessary to ensure the regulations only count procured products for compliance with California's RPS (no double counting pursuant to Public Utilities Code section 399.21).

RESPONSE: No change to the regulations. These generalized requests are not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).) Furthermore, the requirements in the CEC's regulations and the RPS Eligibility Guidebook, and the CEC's verification of those requirements, prevent double

counting. RECs used for RPS compliance must be retired in WREGIS, a regional tracking system developed in part to prevent RECs from being used in more than one mandatory or voluntary program. By design, claims tracked and reported through WREGIS and submitted for California's RPS program cannot be double counted in other programs that require the use of WREGIS, and CEC verification activities ensure a REC is not claimed for programs not tracked in WREGIS.

COMMENTS NO. 5A27, 14A10, 14C3: The commenters argued that "total" in "total retail sales" should be removed because "retail sales" is a defined term that matches its usage in context while "total retail sales" is not defined.

RESPONSE: In response to comments, the CEC revised the proposed regulations to use only "retail sales" because it is the defined term and matches the usage in context.

COMMENT NO. 29C4: The commenter argued that use of the word "total" in Public Utilities Code section 399.30 (a)(1) and (c)(4) connects the time period total for each compliance period with the quantity of kilowatt-hours – removal of "total" changes the meaning of what is to be calculated.

RESPONSE: No change to the regulations. Removal of "total" does not change the meaning of what is calculated with regards to RPS procurement plans in Public Utilities Code section 399.30 (a)(1) or Public Utilities Code section 399.30 (c)(4).

COMMENT NO. 29C5: The commenter suggested that the CEC may have overlooked calling out the specified percentage of total kilowatt-hours sold to retail customers per compliance period as the rationale behind removal of the word "total" from retail sales.

RESPONSE: No change to the regulations. The RPS procurement target obligation, as set forth in Public Utilities Code section 399.30 (c)(1)–(2), is a quantity corresponding to percentage of retail sales in a given year. Because retail sales vary annually, a specified RPS percentage for each compliance period cannot be calculated until after retail sales for each year of the compliance period are determined.

COMMENT NO. 29C12: The commenter requested that the CEC table any agenda item for adopting the RPS POU regulations related to Public Utilities Code section 399.30 (c)(4) until the RPS Online System is updated to allow customers of voluntary green pricing or shared renewable generation programs – customers wishing to monetize their voluntary green pricing or shared renewable generation program RECs have no way of controlling their participation in the RPS program via the RPS Online System.

RESPONSE: No change to the regulations. This request is not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).) Furthermore, customers of voluntary green pricing programs are not load-serving entities and are not obligated under the RPS. The RPS online system does not set rules for or control participation in the RPS.

COMMENT NO. 29A6: The commenter requested clarification as to whether decisional law applies to the NOPA's Informative Digest and noted they found no reference to any existing decisional law related directly to the proposed action in the NOPA.

RESPONSE: No change to the regulations. These comments are not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).) The legal case that, based on other requests by this commenter, CEC staff believes the commenter is alluding to is *Fong v. PG&E* (1988) 199 Cal.App.3d 30. This case deals with the definition of electricity product for the limited purpose of determining when electricity becomes a "product" for purposes of strict liability in tort for defective products. The case does not deal with the definition for purposes of the RPS, nor is it relevant to the RPS program or this rulemaking. The CEC's existing regulations define electricity products for purposes of the RPS, and the definition is consistent with how the term "electricity product" is used in the RPS code sections that establish the portfolio balance requirement and the POU RPS requirements.

COMMENT NO. 29A12, 29A13, 29A20: The commenter requested the CEC respond to inquiries made by the commenter in the docket for this proceeding to ensure it becomes part of the proceeding record.

COMMENT NO. 29A10: The commenter requested responses from his previously docketed inquiries in CEC docket 16-RPS-03, TN 233458, 233447, and 233387 and his comments in the recording of Lead Commissioner Workshop/Hearing on Modifications to RPS Enforcement Regulations for POUs held on June 8, 2020.

COMMENT NO. 29A14: The commenter noted that the law does not require him to only use telephone for regulatory inquiries related to the proposed action and questioned the CEC's email system has failed or that perhaps the CEC has no writings to fulfill his inquiries.

COMMENT NO. 29A15: The commenter requested the CEC respond to inquiries made by the commenter in the docket for this proceeding to ensure it becomes part of the proceeding record – the commenter asserts CEC's lack of written response to his inquiries affirms the CEC's failure to be thoughtful when it comes to decisional law and RPS.

RESPONSE: No change to the regulations. These comments are not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).) Furthermore, relevant comments by all parties are required to be addressed in this FSOR, not upon the requester’s request in the CEC’s docket for the rulemaking proceeding.

COMMENT NO. 14C4: The commenter contended that flexibility is essential due to vast constraints POU consider when entering into contracts. Constraints, according to the commenter, include minimizing impact to ratepayers, obtaining public input in an open and transparent process, and multiple layers of approval to ensure checks and balances.

RESPONSE: No change to the regulations. This is a general statement, not a comment directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 5A1, 13A1: The commenter advocated for maximum flexibility for POU in the implementation of regulations – the regulations should be practical and not overly technical, ensure POU governing boards have full discretion to set cost limitations. Additionally, the commenter urges that the CEC ensure the following goals are met: support POU’s ability to provide safe, reliable, and economic service to their communities, ensure a reasonable implementation that can feasibly be complied with, maximize public, environmental benefits and economic growth, protect vulnerable communities from disproportionate impacts and ensure flexibility for these groups, and avoid implementation that causes stranded costs.

COMMENT NO. 17A2: The commenter advocated for a commonsense and reasonable interpretation of the statute that are consistent with the Legislature’s purpose – the CEC should remain cognizant of the stated intent and purpose of the various provisions and ensure that the implementation of the regulatory provisions is done in a commonsense and reasonable manner.

RESPONSE: No change to the regulations. These are general statements, not comments directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 20D16: The commenter requested that the CEC reconsider the proposed second proposed 15-day language – the newly proposed provisions diminish the POU governing boards’ local decision making while broadening the CEC’s authority. Additionally, the commenter noted, the provisions severely impact early action of POU and may lead to disproportionate rate impacts.

COMMENT NO. 17D15: The commenter requested that the CEC reconsider the proposed second proposed 15-day language – long-term contracts review should be limited to the statutory mandate that the contracts be for 10 years or more. Further, the commenter noted, the second proposed 15-day language was not meaningfully discussed through a stakeholder process to determine whether review of anything other than the duration of an agreement, e.g. delivery and pricing provisions of the agreement, is appropriate. The regulations need to identify these provisions and define the parameters that would be deemed "acceptable".

COMMENT NO. 17D3: The commenter requested that the CEC reconsider the proposed second proposed 15-day language – the CEC's role in enforcement of the RPS program is not to supplant its own judgment for that of the POU's, but rather to enforce clearly defined and articulated rules authorized by statute. Also, the commenter noted, the proposed second proposed 15-day language would enable the CEC staff to arbitrarily impose additional contract provisions on POU's, which undermines regulatory certainty and does nothing to advance the underlying objectives of the RPS program.

COMMENT NO. 17D4: The commenter requested that the CEC reconsider the proposed second proposed 15-day language – the proposed modifications would add extensive, often times onerous reporting and data production requirements that warrant careful stakeholder review and consideration through a transparent public rulemaking process. The commenter noted also that is not possible under the schedule proposed by the CEC for adoption of the proposed regulations.

RESPONSE: In response to comments, the CEC held a subsequent workshop to engage stakeholders further on the LTR topic and ultimately issued third proposed 15-day language reflecting stakeholder concerns and feedback prior to adoption of these regulations by the CEC. Among other modifications in the adopted regulations, the long-term procurement provisions have since been improved by better defining the contract provision requirements for a long-term contract and the reporting and verification requirements and process.

COMMENT NO. 14F1: The commenter expressed support for the Joint Stakeholder Proposal by SCPPA, CMUA, NCPA, and TURN and CMUA's subsequent comments.

RESPONSE: No change to the regulations. The CEC acknowledges this statement of support.

COMMENT NO. 20F1, 22F4: The commenters expressed support for the Joint POU comments related to the November 5, 2020 LTR Workshop

RESPONSE: No change to the regulations. The CEC acknowledges this statement of support.

COMMENT NO. 22F2, 22E3: The commenter expressed support for the inclusion of "compliance period" in the definition of continuous as it relates to contract duration because it preserves POU flexibility to obtain contracts that may result in savings to customers.

RESPONSE: The CEC appreciates this statement of support.

COMMENT NO. 22F5: The commenter expressed their support for NCPA's comments on the LTR Key Topics Guide.

RESPONSE: The CEC acknowledges this statement of support.

COMMENT NO. 20G1: The commenter expressed support for the CEC's proposed third proposed 15-day language and expressed support for CMUA's comments.

COMMENT NO. 11G1, 28G4: The commenters expressed support for the adoption of the third proposed 15-day language.

COMMENT NO. 17H1: The commenter expressed support for the adoption of the CEC's third proposed 15-day language of the enforcement regulations – the proposed regulations balance the need for the CEC to evaluate whether a contract meets the LTR under the statute while preserving flexibility for POUs, especially for the smaller ones.

COMMENT NO. 23H1: The commenter expressed support for the adoption of the CEC's third proposed 15-day language of the enforcement regulations.

COMMENT NO. 28H1: The commenter expressed support for the adoption of the CEC's third proposed 15-day language of the enforcement regulations – the proposed regulations faithfully implement the intent of the underlying statutory provisions, provide appropriate flexibility for market participants and LSEs, and prevent loopholes that would otherwise undermine the achievement of core program objectives.

COMMENT NO. 5H1: The commenter expressed support for the adoption of the CEC's third proposed 15-day language of the enforcement regulations but requests minor clarifications in the FSOR as described in Joint POU comments on third proposed 15-day language.

RESPONSE: The CEC appreciates these statements of support. In response to Comment No. 5H1, the requested clarifications have been made in the FSOR's Response to Public Comments Received section for Comment No. 11G8 and 11G9, pages 73 and 78, respectively.

COMMENT NO. 31G1: The commenter requested that they continue to receive updates on the project – the commenter concluded that the project is within their

aboriginal territories, have a cultural interest and authority in the proposed project, and would like to receive further updates on the project.

RESPONSE: No change to the regulations. These comments refer to the CEQA Negative Declaration for this rulemaking, not to a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

IRRELEVANT COMMENTS/COMMENTS SUBMITTED OUTSIDE OF NOTICED COMMENT PERIOD

COMMENT NO. 29A2, 29B4, 29D5: The commenter requested that the CEC post the presentation prior to the meeting.

RESPONSE: No change to the regulations. This comment is not specifically directed at the agency's proposed action or the procedures followed in proposing or adopting the action. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 29A18: The commenter asked whether the RPS guidelines used in tandem with the regulations will be amended.

RESPONSE: No change to the regulations. This comment is not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 29C11: The commenter asserted that a REC does not track product procurement.

RESPONSE: No change to the regulations. This comment is not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 29D11 (submitted outside of noticed comment period): The commenter asserted that the rules for the use of reserve subaccounts and for tracking WREGIS Certificates outside of WREGIS are required for regulations to be complete. Otherwise, the commenter noted, the lack of regulations around this may provide an opportunity for double or multiple counting of the same renewable energy.

COMMENT NO. 29F1, 29E2: The commenter noted that the use of the WREGIS reserve subaccount will simplify the process of ensuring no double counting.

RESPONSE: No change to the regulations. This comment is not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 29F3: The commenter asserted that Voluntary Renewable Energy for CARB is not allowed to be counted towards the RPS – the RPS enforcement regulations and guidelines, existing and proposed, are not consistent with statute and regulations requiring the prevention of double counting.

RESPONSE: No change to the regulations. This comment is not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 34E1: The commenter inquired whether there is a mechanism in which rooftop or distributed resources can count towards the RPS of POUs under the POU in which the system resides.

RESPONSE: No change to the regulations. This comment is not directed at a specific adoption, amendment, or repeal proposed in this rulemaking or the rulemaking procedures. (Gov. Code, § 11346.9 (a)(3).)

COMMENT NO. 25G3: The commenter requested that the CEC ignore and disregard the intentionally sensational, misleading, and incendiary comments submitted by TURN on 12/16/2020 – TURN seeks to divert the CEC's attention away from language of the relevant statute, Public Utilities Code section 399.13 (b) and fails to mention that the commenter's interpretation of the relevant statute relies upon and is consistent with the statutory language. The commenter noted they are an upstanding market participant; a recent 12/11/2020 CPUC ALJ proposed decision in proceeding R.18-07-003 acknowledging that the commenter is on course to meet its long-term RPS procurement obligations for the 2021-2024 compliance period. The commenter also noted they devote considerable resources to complying with all applicable statutes and regulations all while minimizing customer costs.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 25G4: The commenter requested that the CEC base the regulations on what the statute provides, not what TURN wishes the statute to provide – the CEC cannot adopt regulations that are not based on the language of the statute.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 29G5: The commenter recommended that the CEC issue a regulatory advisory notice that warns businesses in California that they may not make product claims of renewable energy that is excluded from retail sales pursuant to 399.30 (c)(4) – Public Utilities Code section 399.30 (c)(4) prohibits the sale or transfer of RECs and

monetization of RECs. The commenter also noted that it is also prohibited pursuant to 399.21 (a)(2) as a form of double counting – businesses now affected by the newly-adopted RPS regulations should be advised of the prohibition against making such claims.

COMMENT NO. 29G7: The commenter noted that Public Utilities Code section 399.30 (c)(4) prohibits the sale or transfer of RECs and monetization of RECs – making marketing claims and certifying renewable energy credits for businesses is a way to monetize renewable energy credits. Therefore, the commenter contended, firms such as the Center for Resource Solutions and firms such as Steelcase, a furniture manufacturer that uses a sustainability metric to grade suppliers' performance, with one of the best practices being supplier purchasing of RECs, should be sent a regulatory notice to advise them of the prohibition against monetization of RECs through marketing claims.

RESPONSE: No change to the regulations. These comments were submitted outside any noticed comment period.

COMMENT NO. 29G8: The commenter requested that the CEC clarify how they will prevent unbundled RECs claimed on the Power Content Label from being counted towards the RPS.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I6: The commenter recommended clarifying that separate contracts executed by two or more POU(s) with the same RPS certified facility, where each separate contract expressly identifies the other POU(s) and specifies the ability to reallocate output share to the other POU(s), is permissible.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I4: The commenter recommended clarifying that multi-PCC contracts are permitted so long as the underlying contracts otherwise meet the LTR requirements.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I7: The commenter recommended clarifying in the proposed regulations the treatment of extensions of POU-WAPA contracts – the contracts under this provision would run from 1/1/25 to 12/31/54 and are directly tied to renewal

provisions reflected in the proposed amendments to section 3204 (b)(8) pursuant to Public Utilities Code section 399.30(k)(3).

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I2: The commenter proposed that contracts executed prior to July 1, 2020 only be subject to duration requirements and that there is no requirements that deliveries commence by any specific date – the POU and counterparty only had the relevant statutory language to provide guidance on allowable contract structures.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I3: The commenter proposed that contracts executed post July 1, 2020 that meet the duration requirement qualify as long-term unless the contract falls into one of the categories below: substantial quantity deviations, complete lack of quantity or pricing terms, pre-planned termination – additional clarification relating to specific scenarios were questions may arise as to the impact on the long-term classification would be needed.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I8: The commenter recommended that substantial deviations in contract quantities for either MWh basis or percentage of output share shall not qualify as long-term unless one of the seven valid, specified justifications is identified – the seven specified justifications for substantial deviations represent existing or anticipated scenarios seen by POUs in the real world while still supporting the state's RPS goals and can be consistent with the purposes of the LTR.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I9: The commenter recommended that a contract that contains no pricing or contract terms shall not qualify as long-term – such that the contract is merely a commitment for one POU to negotiate procurement (if any) with one seller in each individual year without a commitment to procure any minimum amount. But, the commenter noted, this should not limit a POU's ability to renegotiate quantity or pricing terms pursuant to rights specified in the original contract.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I10: The commenter recommended that if the intent of the parties is to terminate the agreement prior to the minimum ten year duration, and deliveries would not continue for the full ten year term absent a contract amendment, then such contract should not qualify as long-term – although termination rights are key negotiated terms of a contract and the CEC's role is not to determine the wisdom or value of a specific termination right. The commenter also noted there may be legitimate reasons for terminating an agreement due to external events or actions of a party.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I15: The commenter recommended clarifying that there is no requirements that any percentage of a POU's RPS procurement be associated with newly-developed projects and that a POU can be in full compliance with the RPS procurement requirements by solely executing contracts with existing facilities.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I11: The commenter recommended that a POU may voluntarily submit a contract for early review either before execution or after execution to the CEC Executive Director. The commenter requests additionally that the CEC make available on the CEC website a cover sheet for the voluntary review request as well as a guidance document. Further, the commenter requests that a determination be made within 30 days of the date the contract is submitted; if the contract has already been executed then the CEC has 60 days to issue a determination. The commenter also requested that once a certification is issued, the contract cannot be re-reviewed unless post-approval amendments implicate the duration or "delivery" provisions. Finally, the commenter requested that a POU has 30 days to file a petition for reconsideration.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I13: The commenter recommended that if a contract is determined to be long-term either through the voluntary early review process or through the annual reporting process, the CEC cannot later reevaluate the contract and change its determination – contract(s) shall not be reevaluated unless there is a major amendment to the contract that implicates the requirements of Public Utilities Code section 399.13 (b).

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I12: The commenter recommended that contracts submitted for all years prior to 2021 must be provided determination of the long-term status of all contracts submitted by the POU – the POU should be able to comment on the draft verification report, and should be able to submit a petition for reconsideration.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I14: The commenter recommended that contracts submitted with the 2021 RPS Compliance Report (due July 1, 2022) shall be evaluated and issued a draft report by 1/1/2022, and issued a final report by March 1, 2022 – this provides the CEC with 6 months to issue draft report and 8 months to issue final report.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.

COMMENT NO. 32I11: The commenter recommended that their nine principles described in their comments should guide the CEC's implementation of the review of POU long-term contracts – the POU's governing boards should retain sole authority of approval of contracts executed by POU's in order to comply with the RPS.

RESPONSE: No change to the regulations. This comment was submitted outside any noticed comment period.