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**MID Comments Regarding the Lead Commissioner Pre-Rulemaking
Workshop on RPS Regulations for POUs**

Additional submitted attachment is included below.

October 1, 2019

California Energy Commission
Docket Unit, MS-4
Re: Docket No.16-RPS-03
1516 Ninth Street
Sacramento, CA 95814-5512

Dear Commissioner Douglas and Commission Staff,

Thank you for the opportunity to provide comments on the *Implementation Proposal For Renewables Portfolio Standard Long-Term Procurement Requirement for Publicly Owned Utilities* (California Energy Commission (CEC) Staff Paper) and the materials presented at the September 10, 2019, Lead Commissioner Pre-rulemaking Workshop (September 10th Workshop) on Renewables Portfolio Standard Regulations for Publicly Owned Utilities (Post 2020 POU RPS Regs). The Modesto Irrigation District (MID) supports the ability to participate in a process and inquiry as a matter of setting the requirements for POU for compliance with the State's RPS during the post 2020 timeframe. In addition, MID supports the comments submitted by the California Municipal Utilities Association (CMUA) and the Modesto-Santa Clara-Redding Public Power Agency (MSR) in this proceeding. In response to the Pre-Rulemaking CEC Staff Paper and workshop questions MID has included in this letter some guiding principles in addition to a few recommendations for the CEC's consideration in the development of the Post 2020 POU Regs.

Treatment of Portfolio Content Category 0 (PCC0) Contracts

In order to provide meaningful comments in this pre-rulemaking process, MID begins its comments by providing some background on how its contracts that are categorized as PCC0 were procured and how they are currently treated within MID's Board adopted RPS Procurement Plan. Prior to Governor Brown's signing of Senate Bill X1-2¹ (SBX1-2), MID proactively executed several renewable energy contracts with the intention of meeting the potential targets that were discussed in the California Air Resources Board original "Climate Change Scoping Plan"² which proposed to require that 33% of the state's energy come from renewable energy resources by 2020 in order to reduce statewide greenhouse gas emissions to 1990 levels. As the State moved to propose the new targets, MID took proactive early action. As is often the case, early adopters of the renewable energy resources that were available in the nascent stages of the State RPS Program paid a price premium compared to more recent renewable energy prices. Along with other utilities, MID lobbied through CMUA that the early action that it had taken should not be diluted as part of the new POU RPS requirements that were introduced in SBX1-2.

¹ Senate Bill X1-2 (Simitan, Chapter 1, Statutes of 2011, First Extraordinary Session) amended pertinent provisions in Public Resources Code Sections 25740 through 25751 and amended and/or added Public Utilities Code Sections 399.11 through 399.31, April, 2011.

² Climate Change Scoping Plan, A framework for Change, December 2008, Prepared by CARB pursuant to 2006 Assembly Bill 32 (The California Global Warming Solutions Act of 2006).

As such, SBX1-2 included the specific provision that allowed for any contract or ownership agreement that was executed prior to June 1, 2010, to count in full towards the utility's renewable energy procurement under the State RPS Program if specific conditions were met³. The outstanding significant contracts that MID negotiated prior to June 1, 2010 with a term between 20-25 years duration include the following projects:

Location	Capacity
California	
High Winds Project	50 MW (31% share of the project)
McHenry Solar Farm	25 MW (full output)
Oregon	
Star Point Wind Project	98.7 MW (full output)
Washington (procured through MSR)	
Big Horn I	25 MW (12.5% share of the project)
Big Horn II	33 MW (65% share of the project)

These PCCO contracts constitute approximately 99 percent of MID's current renewable energy within MID's RPS today, but within five years, they will contribute closer to 50 percent or less, and within ten years they will contribute less than 20 percent to the MID RPS as MID follows the path toward a 60 percent RPS target by 2030 and adds new long-term (LT) renewable energy resource commitments.

During the September 10th Workshop staff presented two options for the potential treatment of PCCO contracts with regards to the proposed LTR. In general, MID's position is that these contracts were already determined and continue to "count in full." More explicitly, MID recommends that the treatment of these pre-existing LT commitments should count 100 percent towards the LTR. There are two main reasons for this recommendation. By not counting the PCCO contracts as part of the LTR there is potential to create unintended adverse consequences - namely administrative confusion and the potential for utilities to have to unnecessarily procure additional renewable energy resources to fill in a non-existent unmet need created by not giving the POUs the ability to count the PCCO contracts in full for use as part of the LTR. These two potential unintended consequences result in real costs to POUs and their customers.

Administratively, the CEC RPS staff has always been willing to work with MID as we have navigated through both the annual and compliance period verification filings- the program can be said to have reached a point of stability since its implementation. MID wishes to acknowledge CEC staff's efforts because we value the learning process that has resulted on both sides as a new REC tracking system and a new online registration and compliance filing system has been successfully implemented over the last several years. However, MID cautions that adding further complexity by not allowing the PCCO contracts to count towards the LTR alongside the Portfolio Balance Requirement (PBR) that is already in place could lead to confusion and administrative inefficiencies, requiring additional staff time from both CEC staff as well as the POU staff to ensure proper implementation of this additional LTR layer. Additionally,

³ California Public Utility Code, section 399.30 (c)(3) and section 399.16 (d). The specific qualifying conditions are as follows:

- (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
- (2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
- (3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

POUs could find themselves unnecessarily over-procuring resources just to avoid potential non-compliance situations, resulting in additional unnecessary costs.

Lastly, not allowing the PCCO contracts to count towards the LTR could hinder local governing boards from taking a measured approach to procurement, leading to additional unintended impacts. A rigid approach could hinder the ability for the local board to effectively use the optional compliance mechanism already at their disposition through the statute - in this case the cost limitation⁴. Combining the potential administrative confusion with the inability to count the PCCO LT contracts could lead to a situation where over-procurement of LT commitments in order to avoid a situation of non-compliance occur. This effectively nullifies the optional compliance mechanism. As a final note, local governing boards have adopted policies for LT contracting in which the PCCO contracts have already been counted. MID's board has adopted general resource procurement policies that govern the mix of LT and short-term resources that can be procured. An inflexible approach that does not allow for the existing PCCO contracts to count in the LTR could result in the unintended consequence of forcing additional renewable resource procurement to meet the minimum LTR thresholds, potentially conflicting with existing board-adopted procurement policies.

MID does not believe that the spirit of the law is to punish POUs that have taken prudent and proactive action to incorporate renewable energy resources. MID recommends that the treatment of PCCO contracts, as described in Option 1 on the topic of "Characterization of Long-Term Procurement" continue to count in full and be included as part of the LTR calculation without any limitation.

Modifications and Assignments

The discussion questions in the Staff Paper also make an inquiry as to the modifications and assignment provisions of LT contracts. The "Characterization of Long-Term Procurement" section includes the following two specific questions in the inquiry:

- *Should contract modifications that do not explicitly change the stated duration of the contract, such as changes to procurement quantities, changes in price, or assignment of certain rights or obligations under the contract, affect the contract's duration for purpose of determining the long-term nature of the procurement?*
- *Under what circumstances should a POU's assignment of its rights and obligations under a long-term contract serve to nullify the long-term nature of the contract?*

Though both questions in the inquiry can be asked under two distinct scenarios where the original utility remains as the off-taker of the output from the original LT contract or commitment- whether a contract has been categorized as a PCCO contract (executed prior to June 1, 2010) or when a contract has been executed post June 1, 2010 and has not been categorized as a PCCO contract- MID recommends that the treatment be the same under the two scenarios. Under the scenario where the contracts are categorized as PCCO contracts, the terms and conditions of these contracts were negotiated to strike a balance of benefits and burdens between the parties consistent with the statewide policy of increasing the use of renewable energy resources, but prior to the applicability of the existing RPS program mandates to POUs. Amendments and modifications to PCCO contracts in the above scenario (namely increase in nameplate capacity or expected generation, or the substitution of a different renewable resource) that may place limitations on the way in which these resources are utilized for RPS compliance are explicitly recognized in the statute; any other amendments or modifications to such contracts should not impact their eligibility to meet the RPS mandates, including the LTR. MID believes that other beneficial modifications or amendments that encourage and support project financing in a way that is

⁴ California Public Utility Code, section 399.30 (d)(2)(B).

beneficial for both the project owner and for the POU should not have any impact on the duration for purposes of determining its LT status. MID believes that this helps to encourage the sustainability of renewable energy projects and maximizes the benefits to the ratepayers who ultimately pay for these resources. In addition, there may be instances where the POU would want to exercise its ability to assign certain rights or obligations under the existing terms of the PCCO contract in order to pass-through financial cost savings to its ratepayers. Such instances could include project refinancing, direct price changes to the cost of energy, or assignment of specific obligations that could reduce operation and maintenance costs. The same can be said for the benefits of this flexibility for LT commitments that are not classified as PCCO contracts. The possibility of changing the duration or the LT designation of the PCCO contracts or non-PCCO LT commitments would result in the wasteful procurement of additional LT commitments to meet the LTR. In the case of early action this would be punitive to ratepayers- in the case of the post-June 1, 2010 LT commitments, this could also be punitive to ratepayers and also has the potential to create uncertainty and discourage the implementation of cost-saving solutions that could benefit POU customers. As these scenarios specifically call out modifications that do not shorten the duration of the existing LT agreement, there is no sound public policy or legal reason why any other modifications should work to nullify the LT status of the agreement.

Furthermore, MID urges the Commission to ensure that the PCCO designation of existing resources not be impacted by any contract modifications or amendments that do not specifically implicate any of the three statutory conditions (increase the nameplate capacity, or expected quantities of annual generation, or substitute a different renewable energy resource). Any such changes would have the potential to complicate accounting and create an administrative burden at the LTR and the RPS PBR levels. Eroding MID's ability to count the resources above as PCCO could have a disastrous impact on MID's renewable energy procurement strategy and ratepayer-funded investments, as some of the LT commitments listed above would otherwise be categorized as PCC2 products which would be limited for compliance use in the PBR while simultaneously reducing their economic value significantly. Such a deviation from honoring this categorization could result in the unnecessary and wasteful procurement of additional renewable energy resource LT commitments at an additional cost to ratepayers in order to protect against potential non-compliance with the RPS requirements. MID believes this should be recognized clearly.

Long-Term Procurement Requirement Options

The CEC Staff Paper presents two options for the implementation of the LTR. MID's preference is the "Independent Option" (LTR Option 1), with reservation for additional considerations, because it offers the least administrative burden compared with the implementation of the "Dependent Option" (LTR Option 2). LTR Option 1 works with the existing RPS construct and presents less of a potential for conflict with existing procurement policies adopted by POU governing boards. While LTR Option 2 has the intention of encouraging new renewable energy resource LT commitments, it also has the potential to result in over-procurement in order to maintain the required balance of LT and short-term contracts. MID cautions against setting restrictions or a rigid approach that potentially erodes the ability of POUs to rely on optional compliance mechanisms included in statute. A one size fits all approach lacks the flexibility for consideration of various factors that could impact the timely delivery of the output from renewable energy resources to the electric grid. MID supports the CMUA comments with respect to issues identified with the implementation of LTR Option 1 and recommends that the CEC adopt a more flexible evaluation process when determining POU compliance with the LTR.

Conclusion

MID appreciates the opportunity to provide comments in this process and the CEC's consideration for comments from POUs. We look forward to the continued dialogue and opportunity to work with CEC

Staff to craft the Post 2020 POU Regs. If you should have any questions, please feel free to contact me at (209) 526-7490.

Sincerely,
Modesto Irrigation District



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