

DOCKETED

Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	234559
Document Title:	Pasadena Water and Power Comments Second 15-day Modifications to RPS Amendments
Description:	N/A
Filer:	System
Organization:	Pasadena Water and Power
Submitter Role:	Public
Submission Date:	9/2/2020 3:15:50 PM
Docketed Date:	9/2/2020

*Comment Received From: Pasadena Water and Power
Submitted On: 9/2/2020
Docket Number: 16-RPS-03*

Pasadena Water and Power Second 15-day comment letter

Additional submitted attachment is included below.



PASADENA Water & Power

September 2, 2020

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

DOCKET# 16-RPS-03

Submission Type: efile

RE: Comments from the City of Pasadena, Water and Power Department ("PWP") on Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard ("RPS") for Local Publicly Owned Electric Utilities ("POUs")

PWP appreciates the opportunity to comment on the *Amendments to the Regulations Specifying Enforcement Procedures for the RPS for Local POU's* ("RPS Amendments") dated August 18, 2020.

PWP, through its revised 2018 RPS Procurement Plan and the 2018 Power Integrated Resource Plan ("IRP") has long been an advocate of reliable renewable energy. In fact, PWP's voluntary RPS target of 40% RPS by 2020 is higher than the state mandate of 33% RPS by 2020. PWP intends to comply with the Senate Bill ("SB") 100 RPS mandate of 60% RPS by 2030 and we look forward to working with the California Energy Commission ("CEC") to develop Enforcement Procedures that provide the most flexibility for POU's, while limiting the potential for stranded investment and disproportionate rate impacts to ratepayers.

This letter focuses on major concerns with the second 15-day modifications to the RPS Amendments.

COMMENTS TO RPS AMENDMENTS

PWP urges the CEC to implement modifications to the RPS regulations that apply to future procurement contracts and are not retroactive. The second 15-day RPS Amendments can potentially render a POU's *existing* long-term portfolio ineligible to meet the Long-Term Requirement ("LTR"), which may lead to significant disproportionate rate impacts. PWP looks forward to working with the CEC to discuss these issues with the goal of implementing pragmatic and flexible solutions to the State's regulatory needs, which will allow RPS resources to be counted towards the RPS requirements, as intended.

Major Concerns/Clarification needed

PWP has major concerns with the second 15-day RPS Amendments, and has provided proposed language that may help to clarify the intent or provide more context around the concerns.

Grandfathering Existing Contracts that were executed prior to LTR implementation:

PWP appreciates the CEC's Initial Statement of Reasons response on our request to grandfather LTR contracts if they were executed before January 1, 2021. However, we respectfully disagree with the CEC's assertion that grandfathering of contracts is unnecessary given the potential to delay compliance and taking advantage of some optional compliance measures. PWP's intent is to comply with all of the CEC RPS requirements and to limit PWP's use of "opt out" measures. However, there is a realistic concern that due to the CEC's narrow interpretation, and the application of retroactive restrictions 10 years into RPS rulemaking, that existing contracts procured with the intent to comply with the LTR, might not count as LTR.

PWP secures resources that are best fit, least cost, in order to protect ratepayers from any disproportionate rate impacts and to limit stranded investment cost. PWP has done its best to comply with the LTR statute, as regulations have not been available until now. We are concerned that we may be penalized for early action and may be required to procure additional long-term resources even though we are fully resourced. It is critical that the CEC does not punish early action of POUs, prior to the development of regulatory guidance. This is a major concern for PWP.

Similar to the PCC0 accounting methodology, PWP recommends that those contracts executed before these RPS Amendments, shall be grandfathered, as PWP already met the requirement per the LTR statute as laid out in SB 350. PWP invested in long-term renewable contracts early on and procured these contracts at higher costs than renewables that are available today. In some cases, POUs did not need the energy and only procured resources with the intent to comply with the RPS rules. As new laws are passed and regulations developed, they should be developed in a way that does not impact past contracts. The only way to ensure this is to grandfather resources procured, before any regulations were implemented. PWP recommends that the CEC work closely with impacted POUs to resolve any outstanding issues and concerns. PWP recommends adding language to these regulations, which support grandfathering of contracts.

PWP proposes the following language, "on a case by case basis, the Executive Director may determine that a contract be grandfathered for LTR if it was secured before January 1, 2020, and if POUs can demonstrate any of the following:

- 1. Disproportionate rate impacts or*
- 2. The Contract was signed with the intent to meet regulations in place at the time the contract was executed or*
- 3. Other circumstances as approved by the Executive Director*

In the June 8, 2020 workshop, the CEC asserted that if contracts do not count towards the LTR, they can still count towards compliance as part of the short term contract designation. This would not work for PWP as we have short-term contracts that fill the gap (meaning that 35% of our RPS contracts are short-term). If we are unable to count such resources towards the LTR, they become stranded assets and lose a significant portion of their value. We respectfully request the CEC's

reconsideration on this issue to work out a mutually beneficial solution. It is our hope and request that the CEC work with POU's that have unique circumstances to understand how contracts were negotiated and priced. It is prudent that the CEC does not execute these regulations in a limited manner, which causes a disproportionate rate impacts to POU's that took early action.

Long Term Procurement Requirement:

"A long-term contract includes a POU's contract or resale agreement with a third-party supplier, including a retail seller, if both of the following are satisfied:

The POU's contract or resale agreement with the third-party supplier has a duration of at least 10 continuous years.

The RPS-certified facility or facilities supplying the electricity products in the long-term contract are owned by the third-party supplier or are subject to a long-term contract with a remaining duration of at least 10 continuous years, and the POU, or the third-party supplier or other party on the POU's behalf, can submit documentation demonstrating this."

PWP is unclear how the CEC interprets the word "remaining". For example, if an owner of a facility is the same for the first 9 years of an agreement and then decides to sell the facility on year 10, the buyer of the energy from said facility should not have to engage in another 10-year contract with that facility in order to have the contract count toward LTR for the last year of the contract term. PWP believes that duration should be contingent on the eligible RPS facility supplying the energy, not the owner. Further, the word "remaining" in connection with the contract term, suggests that a POU's procurement must be 10 years, each compliance year, and is such that anything less than 10 years remaining would be considered short-term.

PWP is considerate of the CEC's intention of requiring third-party suppliers to have a long-term vested interest in renewable energy investment and maintaining long-term energy needs for California's SB-100 mandate as well as achieving stability to the market place by providing options to POU's for procurement purposes. However, PWP's existing executed long-term contracts do not stipulate buyer access to underlying contracts to demonstrate that underlying contracts meet the LTR, as these contracts are proprietary to the third-party supplier.

In response to the following language:

A POU may be required to provide additional information to the Commission, as provided in section 3207 (c)(5), to demonstrate that a long-term contract represents a long-term procurement commitment with an RPS-certified facility consistent with Public Utilities Code section 399.13 (b), including information that demonstrates how the 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.

PWP seeks clarification, if a POU meets the requirements in 3204(d)(2)(A)(3), then what else is needed to demonstrate a major capital investment in existing renewable energy resources or long-term planning/market stability? Since Part b requires confidential financial statements/reports which may contain sensitive information, it would be impossible to supply these confidential documents, for the reason that the seller (or third-party supplier) would not be contractually

required to provide them. PWP urges the CEC to further review this language as it will place unnecessary burdens on both buyers and sellers of renewable energy, and has the potential impact of POU LTR non-compliance.

Disqualifying previously contracted resources would be a financial misstep and heavily detrimental to POUs, like PWP, that have procured contracts from third-party suppliers with full and good-faith intention to meet the LTR. The proposed language does not provide guidance on which resources the CEC will request information from. For example, a contract signed in 2009 was new at the time, but is no longer new and it would be difficult to prove that the resource supports the financing and development of new eligible renewable energy resources.

PWP would like clarification on whether or not the CEC is looking for “new” contracts for LTR compliance. As stated in previous comments and workshops, PWP secures resources that are least cost, best fit and this includes investing in existing and new renewable resources. The CEC’s narrow interpretation places a great emphasis on “new” contracts and this would be inconsistent with the method that POUs undertake to secure renewable resources. It would be unfair to discriminate against existing contracts, as this would lead to severe disproportionate impacts for PWP (and maybe others).

SB 350, PUC 399.13b states, “A retail seller may enter into a combination of long and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” Nowhere in this language does it mention investment in new renewable resources or documentation approving how the LTR should be applied. PUC 399.13b is clear in that in order to comply with the LTR, contracts need to be 10 years or longer in duration. All of PWP’s renewable contracts for LTR compliance are 10 years or longer in duration, meeting the intent of 399.13b. Adding in additional requirements on how the LTR will be measured can potentially devalue current and future contracts, leading to disproportionate rate impacts.

PWP is recommending that acceptable supporting documentation include an attestation, under penalty of perjury, signed by an authorized agent of the third-party supplier. This is necessary to ensure that POUs, who took early action, do not endure compliance shortfalls when underlying contracts are unavailable due to the constraints in existing executed contracts.

PWP Proposed Language:

“Acceptable documentation includes, but not limited to, an attestation signed by an authorized agent of the third-party supplier, affirming that the underlying contracts support a POU’s long-term procurements are LTR compliant.”

“Third-party supplier underlying contracts should remain confidential under Title 20, California Code of Regulations, Section 2505, if the third party supplier has submitted a Non-Disclosure Agreement to the Energy Commission that has been approved by the Executive Director, or his or her designee.”

Short-term Contracts:

“A short-term contract is defined as a contract to procure electricity products for a duration of fewer than 10 continuous years or a contract that does not meet the criteria of, except as provided in Paragraph (A).”

PWP seeks clarification regarding short-term contract definitions, since the CEC's verification process is years in duration. The initial annual compliance filing requires POUs to categorize procurement into non-binding classifications, but it is unclear as to how POUs can be assured whether their long-term procurement is LTR compliant. This is a major concern.

Substitution of Resources:

“Amendments or modifications that substitute a different renewable energy resource or fuel shall be treated as new agreements for procurement of generation associated with the substitute resource or fuel unless the following conditions are satisfied:

- i. The original long-term contract or ownership agreement specifies the ability to add or substitute resources.*
- ii. Any resources added to or substituted 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 duration of at least 10 continuous years.”*

It is PWP's interpretation that substitutions are permissible, as long as the contract specifies the ability to substitute the resource in the original contract. PWP is considerate of the importance of identifying substitute resources in original contracts and appreciates the ability to amend and add resources if needed. The RPS Amendments which require that third-party supplier underlying long-term contracts be long term as well are not statutorily required.

PWP encourages the CEC to consider alternatives to this narrow interpretation of this language. Some of PWP's contracts were developed before any RPS regulations (before 2010) and all of PWP's contracts were negotiated before this new regulations on LTR. The ability to substitute resources is important to maintain RPS compliance. It was never contemplated that a substitution resource would also need to comply with the LTR. Often the generation from a substitution resource is minimal, but there are rare circumstances where the generation can exceed expectations.

Additionally, some POU contracts stipulate a third-party supplier's ability to assign the contract to another counterparty. PWP would like to clarify that contracts that are assigned but met the LTR intent should not be penalized, and deemed short-term because the original counterparty assigned the contract.

In conclusion, PWP seeks clarification regarding demonstrating a project's inability to perform. Since replacement energy hinges on operational constraints/issues, what exact documentation is the CEC requesting?

Excess Energy:

The proposed Amendment states:

“Electricity products procured in excess of the quantity that is specified in a long-term contract shall be classified as short-term.”

PWP would like to clarify that defined contract terms include various terminology that would have the same meaning as “excess”. Such terms include “substitution” or “replacement”. Although the terminology may be different, we’d like to clarify that these defined terms, are used interchangeably with the “excess” meaning provided in the RPS Amendments.

In addition, PWP recommends the following language for this section,

“If contracts allow for the opportunity for excess procurement and the excess procurement comes from the same PCC, it shall be deemed LTR compliant.”

Many long-term renewable contracts allow for excess/substitute/replacement energy, in order to make up for shortfalls in previous years or compliance periods. For PWP, some of these contracts have been delivering renewable energy prior to 2010, before any RPS regulations. Implementing a strict interpretation of how excess quantities cannot count towards LTR poses a disproportionate rate impact to those early action POUs that have secured renewable contracts that allow for excess energy delivery.

Long-term “Continuous” Procurement:

Proposed Amendment states:

“The duration of a contract shall be measured from the contract start date until the contract end date, except as specified in paragraphs 1.-3. The duration shall be deemed continuous if the contract specifies nonzero procurement quantities on an annual or compliance period basis, or a combination of both, for the contract term. The contract start date may occur before, on, or after January 1, 2021.”

A single contract may have procurement of multiple products (PCC1, PCC2, and/or PCC3) 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.

PWP would like clarification that if one product (PCC) under a single contract specifies delivery on an annual or compliance period basis with specific nonzero quantities, then the contract will be deemed LTR compliant for that product.

The CEC should rely on a POUs IRP, or RPS Procurement Plan, or RPS Enforcement Program, or RPS contracts, or agenda/staff reports, or other resource planning methods to verify the intent of the LTR and meeting various RPS requirements. For PWP, costs, transmission rights, proximity to a balancing authority and past performance (if it is an existing contracts or with an experienced developer) are very important in order to comply with the various RPS compliance requirements, including LTR.

Since there is a severe lag in determining RPS compliance, versus when energy is procured, PWP recommends flexibility surrounding the optional compliance measures. POU's should be allowed to exercise optional compliance measures, once the CEC determines potential compliance violations or before. For example, if a POU invested heavily in a renewable resource that cannot provide any of the CEC supplemental data for LTR compliance, the POU shall be allowed to use optional compliance measures for the LTR, starting as early as January 1, 2021. Many POU's, like PWP, have secured renewable resources for RPS compliance, with the intent that 65% of procured contracts would count towards LTR. With the CEC's narrow interpretation on LTR, PWP cannot wait years for the determination of LTR compliance. PWP recommends that the CEC meet with interested POU's to work through how to determine if a contract meets the LTR or not. This is particularly important for those POU's that are currently negotiating renewable contracts, in order to limit disproportional rate impacts or stranded investment in renewable resources.

Conclusion

PWP has major concerns with the second 15-day RPS Amendments. These concerns are based on the broadening of the CEC's authority while diminishing a local POU's governing board decision-making. When new regulation is implemented retroactively, 10 years into an RPS rulemaking, the unintended consequences can be detrimental. Retroactive implementation not only impacts a POU's ability to comply with new regulations, but also breeds significant financial burdens on POU's, and stifles the growth of new renewable investments. Retroactive regulations severely impact early action of POU's, forcing them to use an "opt-out" measure which may not be politically feasible or leading to severe disproportionate impacts to ratepayers (where the contract costs severely outweighs the contract value).

PWP appreciates your review of our comments on the Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities dated August 18, 2020.

Should you have any questions, please contact me.

Respectfully Submitted,

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