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**Joint Stakeholder Proposal on Implementation of Long Term
Procurement Requirement**

Additional submitted attachment is included below.



October 20, 2020 | Submitted Electronically

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

RE: Joint Stakeholder Proposal for Implementation of the Long Term Procurement Requirement of the Proposed Amendments to the Renewables Portfolio Standard (RPS) Regulations for Publicly Owned Utilities (POUs) [CEC Docket #16-RPS-03]

Dear Commissioner Douglas and Commission Staff,

The California Municipal Utilities Association (CMUA), Northern California Power Agency (NCPA), Southern California Public Power Authority (SCPPA), and The Utility Reform Network (TURN) (collectively the “Joint Stakeholders”) respectfully submit this proposal for the implementation of the long term procurement requirement as an alternative to the proposed amendments in the *Second 15-Day Language Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (2nd 15-Day Language), issued on August 18, 2020.

This document represents the collective effort of the Joint Stakeholders to develop a comprehensive proposal for implementing the long term procurement requirement. The goal of the Joint Stakeholders was to develop a proposal that both addresses the concerns about the potential for contract structures that are inconsistent with the purpose of the long term procurement requirement, while at the same time not infringing on publicly owned utility (POU) governing board authority or otherwise restricting beneficial contract structures that would help California meet its Renewables Portfolio Standard (RPS) goals in a cost-effective manner. In order to reach agreement on this proposal, the Joint Stakeholders have compromised on various elements. Thus, the Joint Stakeholders urge the California Energy Commission (Commission) to consider this proposal as a complete package that was carefully designed to align divergent views.

This proposal document includes: (1) principles to guide the Commission’s implementation of the long term procurement requirement; (2) a description and proposed regulatory language for each element of the proposal; and (3) a comprehensive redline to the 2nd 15 Day Language that incorporates all of the elements of the Joint Stakeholder Proposal.

I. PRINCIPLES FOR THE IMPLEMENTATION OF THE LONG TERM PROCUREMENT REQUIREMENT

The Commission is directed under Public Utilities Code § 399.30(n) to adopt regulations specifying procedures for the enforcement of the RPS Program (Cal. Pub. Util. Code §§ 399.11-399.33) for POU. The governing boards of the POU retain sole authority over the approval of the contracts executed by the POU in order to comply with the RPS. The following principles provide a framework to guide the implementation of the Commission's review of POU long term RPS contracts.

1. The Commission's regulations implementing the long term procurement requirement of Public Utilities Code § 399.13(b) must be sufficiently clear, such that a POU and contract counterparty can be certain of the regulatory requirements at the time of executing a long term contract.
2. The Commission reviews POU RPS contracts for the purpose of determining if the RPS contract meets the requirements of Public Utilities Code § 399.13(b) as implemented in the Commission's RPS Regulations.
3. As public agencies, nearly all POU long term contracts will be subject to a public review and approval process.
4. It is possible that a contract could meet the duration requirement of Public Utilities Code § 399.13(b) while being structured in a manner that does not qualify as a long-term contract.
5. Contracts that are clearly structured to circumvent the requirements of Public Utilities Code § 399.13(b) should not qualify as long term.
6. The Commission's review must not create regulatory uncertainty as to what contract structures will qualify as long term contracts and, further, the exercise of this discretion should not prevent or otherwise penalize contracting structures that can minimize costs to ratepayers and are linked to the development of new renewable resources.
7. POU must have certainty that contracts deemed to qualify as long-term will not be subject to subsequent review for long-term eligibility, unless subsequent contract amendments directly implicate the requirements of Public Utilities Code § 399.13(b) as implemented in the Commission's RPS Regulations.
8. Public Utilities Code § 399.13(b) does not require procurement from newly-developed resources and a POU can be in full compliance with the RPS requirements even if the POU only procures from existing resources.
9. POU have already executed the large majority of all contracts that will be necessary for compliance with the long term procurement requirement during the 4th Compliance Period and beyond. These contracts were executed prior to the Commission adopting regulations implementing Public Utilities Code § 399.13(b). The Commission's evaluation of contracts executed prior to July 1, 2020 should be limited to the plain language of Public Utilities Code § 399.13(b) and a simple determination based on the duration of the existing contract. Any regulations seeking to more narrowly limit what qualifies as a long term contract should only be applied to contracts executed after July 1, 2020.

II. JOINT STAKEHOLDER PROPOSAL

This Joint Stakeholder Proposal seeks to balance the various objectives described in the principles above in a comprehensive manner. This proposal has three primary components: (A) a simplified standard for assessing whether contracts executed *prior to* July 1, 2020 qualify as long term; (B) a detailed process for determining whether contracts executed *after* July 1, 2020 qualify as long term; and (C) a defined process for Commission review of POU long term contracts.

A. Contracts Executed Prior to July 1, 2020.

Under the Joint Stakeholder Proposal, any new regulatory requirements beyond the duration requirement specified in Sections 3204(d)(2)(A), (B) and (C) will only be applied to contracts executed after July 1, 2020. As described in the principles above, these contracts were executed prior to the adoption of Commission regulations implementing Public Utilities Code § 399.13(b). The POU and counter party only had the relevant statutory language to provide guidance on the allowable contract structures. As further clarification, this treatment would be available for any contract executed prior to July 1, 2020 and there is no requirement that the deliveries commence by any specific date.

This provision would be implemented as Section 3204(d)(2)(E):

(E) ~~Electricity products procured in excess of the quantity that is specified in a long term contract shall be classified as short term.~~ Contracts executed prior to July 1, 2020 shall be classified as long term based on the duration requirements specified in section 3204(d)(2)(A), (B), and (C) and shall not be subject to the additional requirements of section 3204(d)(2)(F).

B. Contracts Executed After July 1, 2020.

1. *Duration Requirement*

For contracts that are executed after July 1, 2020, the Joint Stakeholders support a more detailed process for determining if a contract should be classified as long term. The initial step is still to evaluate the contract on the basis of the duration requirement of Public Utilities Code § 399.13(b) as implemented in Section 3204 (d)(2)(A), (B), and (C). Any contract meeting these requirements qualifies as long term, unless the contract falls into one of the three categories outlined below. The proposed regulatory language to set out this structure is the following

~~(E)~~ Notwithstanding section 3204(d)(2)(A), a long term contract executed on or after July 1, 2020 does not include any of the following:

In addition to setting out this structure, the Joint Stakeholders support including additional clarifications relating to specific scenarios where questions may arise as to the impact on the long term classification. The following sections describe these issues.

i. Multi-PCC Contracts

The duration requirement of Public Utilities Code § 399.13(b) as implemented in Section 3204 (d)(2)(A), (B), and (C) is still met even if a contract with a third party includes the procurement of

different Portfolio Content Categories (PCC) in different years as long as the underlying contracts otherwise meet the requirement of Section 3204 (d)(2)(A)2. For example, a contract with a third party marketer that specifies procurement of PCC1 resources in years 1-7 and PCC2 resources in years 8-10 meets the long term procurement duration requirement as long as the contract satisfies all other applicable requirements. The proposed regulatory language would replace Section 3204(d)(2)(A)3.

~~3. 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. A long-term contract includes a POU's contract or resale agreement with a third-party supplier where, over the contract term, the electricity products provided can change from one portfolio content category to a different portfolio content category or from one portfolio content category to multiple portfolio content categories, as long as the contract satisfies all other applicable requirements of this section.~~

ii. New versus Existing Contracts

There is no requirement that any percentage of a POU's RPS procurement be associated with newly-developed projects or projects that are yet to be developed. A POU can be in full compliance with the RPS procurement requirements and the long term procurement requirement by solely executing contracts with existing facilities. However, the Joint Stakeholders do support limited distinctions between agreements for generation from existing and new resources for some of the justifications for a contract where the quantities delivered deviate substantially over the term of the agreement.

The proposed regulatory language is the following:

(L) The long term procurement requirements described in this section 3204(d)(2) does not require any minimum amount of procurement to be associated with newly-developed eligible renewable energy resources and a POU can be in full compliance with the long term procurement requirement if such POU only procures long term RPS-eligible electricity products from existing eligible renewable energy resources.

iii. Jointly Negotiated Contracts

The 2nd 15-Day Language narrowed the contracts that qualify as “jointly negotiated” for purposes of allowing the applicable POUs to reallocate their relative percentage shares of the output of the generating facility among themselves without the long term procurement term length requirements being reassessed. Specifically, “jointly negotiated” was limited to where there is either a single contract or where a third party or Joint Powers Authority has executed the contract on behalf of multiple POUs.

There is no practical difference between a single contract executed by multiple POUs and a circumstance where multiple POUs 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 POUs. The reasons why POUs may execute multiple versus a single joint contract will generally relate to internal POU policies and preferences of the Seller.

The Commission should modify the relevant statutory language as follows:

Section 3204(d)(2)1. A long-term contract includes a jointly negotiated contract to procure electricity products from one or more RPS-certified facilities, if the procurement duration for each facility is at least 10 continuous years and each POU procures electricity products for at least 10 continuous years. For purposes of this subdivision, a jointly negotiated contract includes the following:

- i. A joint contract executed by at least two POUs with the RPS-certified facility.
- ii. A contract executed by a joint powers agency or third party supplier acting on behalf of at least two POUs with the RPS-certified facility, 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.

iii. Separate contracts executed by two or more POUs with the same RPS-certified facility, where each of the separate contracts expressly identifies the other POU(s) and specifies the ability of the POUs to adjust their relative share of the output of the RPS-certified facility to the other POU(s).

iv. Renewal and Amendments of Federal Contracts

Public Utilities Code § 399.30(k) expressly recognizes POU long-term commitments in federal power contracts the Western Area Power Administration (WAPA) or the federal government as part of the federal Central Valley Project. While the majority of these contracts involve large hydroelectric generation facilities that are not RPS-eligible, some of the energy conveyed under such contracts does come from RPS-eligible small hydro. Under the referenced provisions, the contracts would run from January 1, 2025 to December 31, 2054. The contract extensions recognized in PUC 399.30(k) include provisions that allow for termination or quantity adjustments upon certain actions by WAPA and the Federal Regulatory Energy Commission. Even with these provisions, the contract amendments should be deemed valid. The proposed language is tied directly to the renewal provisions that are reflected in the proposed amendments to section 3204(b)(8) pursuant to PUC section 399.30(k)(3). While the provisions in 3204(b)(8) are intended to address how large hydro associated with the federal contracts is treated, the underlying justification for recognition of the federal contracts is the same when addressing RPS-eligible small-hydro, consistent with the discussion already addressed in the ISOR (pp. 26-28).

The proposed regulatory language to reflect this is the following:

3204(d)(2)(A); new subsection 4. A long-term contract includes a POU's ownership agreement or contract with the Western Area Power Administration or the federal government as part of the federal Central Valley Project, including an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project

[that renews or extends the existing agreement as contemplated under the administration of the agreement in effect on January 1, 2015, or included in the Western Area Power Administration's Power Marketing Plan.](#)

2. Exceptions to General Duration Assessment

For all contracts that have been executed after January 1, 2021, if the contract meets the duration requirement of Public Utilities Code § 399.13(b) as implemented in Section 3204 (d)(2)(A), (B), and (C), the contract qualifies as long term unless the contract falls into one of the three categories that is described below.

i. Substantial Deviation in Quantities

The first category is a contract where there are substantial deviations over the term of the agreement in the quantities that are contracted for either on a MWh basis or a percentage share of the output of the generating facility. In order to implement this element, the subsections below propose a method for calculating a bright-line threshold for determining when annual deliveries under a contract constitutes a substantial deviation. If the variation in annual quantities constitutes a substantial deviation, then the Joint Stakeholder Proposal identifies valid justifications for the deviation. If a contract meets one of those justifications, the contract is still classified as long term.

The proposed regulatory language for the introduction of this substantial deviation element is the following:

[1. A contract where the contracted-for quantity or contracted-for share of the output of an eligible renewable energy resource deviates substantially over the term of the agreement as specified in Section 3204 \(d\)\(2\)\(E\)1.i or ii below, unless the POU demonstrates that the contract meets one of the conditions specified in section 3204\(d\)\(2\)\(E\)1.iii.](#)

a. Substantial Quantity Deviation in a Fixed-MWh Contract

For any contract where the POU has **only** contracted for a specific MWh amount and where the POU has no right to any set percentage or share of the output of a facility, then if there is a substantial deviation in the contracted-for MWh of procurement in any single year as compared to the contract as a whole, the contract only qualifies as long term if it meets one of the specifically identified justifications below. If the POU does not demonstrate that the contract meets one of the justifications, then the contract should be treated as short term.

The Joint Stakeholders have determined that additional analysis is necessary to determine the appropriate percentage to use in the determination of what constitutes a substantial deviation and have included a placeholder in the proposed language below.

The proposed regulatory language for this element is the following:

[i. For purposes of this section 3204 \(d\)\(2\)\(E\)1., a contract where a POU has only contracted for procurement on a MWh basis and where the POU has no right to any minimum share of the output of an eligible renewable energy resource facility, a](#)

substantial deviation in the contracted for quantity shall mean that for any individual year during the contract term, the contracted-for quantity exceeds [X] percent above or below that average annual quantity for the entire contract term. If a POU has contracted for 0 MWh in any of the initial years of a contract term, such years shall be excluded from the calculation of the average annual quantity as long as there are at least ten continuous years remaining in the contract term when contracted-for quantities exceed zero.

b. Substantial Share of Output in an Output-Based Contract

This provision applies to any contract where the POU has rights to a certain share or percentage of the output of the generating facility. This applies even if the contract expresses the expected generation amounts on an energy (MWh) basis. For any output-based contracts, if there is a substantial deviation in that contracted for percentage or share of the output of the facility in any one year of the contract as compared to the contracted for percentage or share over the entire contract as a whole, then the contract only qualifies as long term if it meets one of the specifically identified justifications below. For clarification, this only applies to the contracted for output *specified in the contract* and does not apply to the actual deliveries received during the term of the contract. Actual deliveries will necessarily differ from the expected quantities due to generator performance, weather, forecasting errors, and other factors. An RPS-eligible hydroelectric facility could produce zero generation over multiple years during an extended drought and that performance would have no impact on the long term status of the contract.

As in the previous section, the Joint Stakeholders have determined that additional analysis is necessary to select the appropriate percentage to use in the determination of what constitutes a substantial deviation and have included a placeholder in the proposed language below.

The proposed regulatory language for this element is the following:

ii. For purposes of this section 3204 (d)(2)(E)1., a contract where a POU has contracted for a share of the output of the facility, even where the contract may specify expected quantities of procurement in each year or may otherwise specify minimum or maximum procurement quantities, a substantial deviation in the contracted-for share of the output shall mean that for any individual year during the contract term, the contracted-for percentage share of the output of the facility exceeds [X] percent above or below that average annual percentage share of the output of the facility over the entire contract term. If a POU has contracted for 0 percent of the output of a facility in any of the initial years of a contract term, such years shall be excluded from the calculation of the average annual percentage share of the output of the facility as long as there are at least ten continuous years remaining in the contract term when contracted-for percentage share of the output exceeds zero.

c. Justifications for Substantial Deviations

While a contract may exceed either of the thresholds specified in the prior subsections, the contract can still qualify as long term if it meets one of the specified justifications. With substantial input from individual POUs based on actual contracts that exist or are anticipated, the Joint Stakeholders sought to identify a list of legitimate contract structures that help support the state's RPS goals and can be found to be consistent with the purposes of the long-term procurement requirement.

The proposed regulatory language is the following:

iii. If a POU's contracted-for quantity or contracted-for share of the output of an eligible renewable energy resource deviates substantially over the term of the agreement as specified in Section 3204 (d)(2)(E)1.i or ii above, then the contract shall not qualify as long term unless the POU demonstrates that the substantial deviation is associated with one of the following:

I. At the time of contract execution, the eligible renewable energy resource is already committed to a different entity during that individual year and the POU's commitment supports the development of a new eligible renewable energy resource.

II. At the time of contract execution, the POU had identified a forecasted reduction in retail sales associated with the anticipated loss of specific customer accounts or local industry or the POU had identified a forecasted increase in generation from other eligible renewable energy resources that will achieve commercial operation during the contract term.

III. The substantial deviation during the individual year is associated with expected maintenance, repair, construction, or other modification of the eligible renewable energy resource.

IV. The substantial deviation is associated with anticipated transmission constraints.

V. The substantial deviation is associated with the POU taking over the share or purchases from another buyer at the same eligible renewable energy resource when that other buyer's contract term ends.

VI. The substantial deviation is only associated with the POU procuring increasing quantities or shares of the eligible renewable energy resource over the term of the agreement.

VII. The POU otherwise demonstrates that the substantial deviation supports the financing of the eligible renewable energy resource or is consistent with the intent of the long term procurement requirement.

ii. A Complete Lack of Quantity or Pricing Terms

If a contract contains no pricing or contract terms, such that the contract is merely a commitment for one POU to negotiate procurement (if any) with one seller in each individual year of the contract term without any commitment by the POU to procure any minimum amount, the contract should not be treated as meeting the requirements of Public Utilities Code § 399.13(b). For clarity, this does not in any way limit a POU's ability to exercise contract rights to renegotiate the quantity or pricing terms pursuant to rights specified in the original contract. Further, pricing and quantity terms can be set by formula or external reference and do not need to be stated in a numerical fashion.

The proposed regulatory language for this element is the following:

2. A contract that contains no specified output share or quantities of procurement and/or minimum pricing terms, such that the express intent of the parties to the contract is to individually negotiate the price and quantity terms in each individual year and neither party has an obligation to procure or sell any quantity during any such individual year.

iii. Pre-Planned Termination

If, pursuant to the express terms of a contract, it is clear that the intent of the parties is to terminate the agreement prior to the minimum 10 year duration, and further, that deliveries would not continue for the full 10 year term absent a contract amendment, then such contract should not be treated as meeting the requirements of Public Utilities Code § 399.13(b). For clarity, this element of the proposal recognizes that termination rights are key negotiated terms of a contract and that the Commission's role is not to determine the wisdom or value of a specific termination right. Further, there are a variety of legitimate reasons for including the flexibility to terminate an agreement due to external events or the actions of a party. This provision is meant to address a circumstance where the parties to a contract have included a termination structure that in reality provides no commitment from either party to perform for a full 10 year term.

The proposed regulatory language for this element is the following:

3. A contract that expressly specifies a pre-planned termination date that is less than 10 years from the contract start date, and where neither party is obligated to perform under the contract for a duration of at least 10 continuous years without a contract amendment by the parties. A termination of an agreement for purposes of facilitating the sale of the eligible renewable energy resource to the POU does not meet the criteria of this paragraph 3.

C. Commission Review Process

All RPS contracts that a POU seeks to designate as long term will need Commission review to confirm the long term status of the contract. As set forth in this Joint Stakeholder Proposal, POUs may request that this determination occur sooner through the use of a voluntary review process or simply wait for the review to occur after the submission of contracts as part of the Annual RPS Compliance Report submissions.

1. Voluntary Review Process

A POU may voluntarily submit a contract either before execution or after execution to the Commission's Executive Director for a long term contract qualification review. This process will result in a certification by the Commission's Executive Director (or as delegated by the Executive Director) that the contract qualifies as long term on a much quicker time frame than through the Annual RPS Compliance Report review process.

The Commission's Executive Director will develop, and make available on the Commission's website, a cover sheet for a voluntary review request, which will include a list of the primary contract terms that will be the focus of the review and which can be filled in by the POU along with references to the provisions in the contract that are related to the required element. In addition to this cover sheet, the Executive Director will develop a guidance document that provides descriptions and examples of

contract language that meet the requirements of a long term contract under different contracting structures.

If a contract has not been executed, the Executive Director must issue a determination on the long term qualification within 30 days of the date the contract is submitted for voluntary review, as long as the Cover Sheet has been fully and accurately completed. If the contract has already been executed, then the Executive Director must issue a determination on the long term qualification within 60 calendar days of the date the contract is submitted for voluntary review.

Once the Executive Director has issued a certification, the contract cannot be re-reviewed unless specific, post-approval amendments implicate the duration or “delivery” provisions.

A POU may request that the full Commission reconsider the Executive Director’s determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration would follow the process set out in 20 CCR sections 1231 – 1232.5.

The proposed regulatory language for the voluntary program is the following:

(A) Voluntary Requests for Review of Long Term Contracts

(i) A POU may request the Executive Director of the Commission to review any contract in order to issue a determination on whether the contract qualifies as a long term contract pursuant to the requirements of section 3204 (d)(2).

(ii) The Executive Director shall make publicly available a voluntary review request form that lists the primary contract elements that the Executive Director will review to make the determination on the long term status of the contract. The POU seeking review shall submit an accurate and complete voluntary review request form to the Executive Director. The Executive Director may also make publicly available a guidance document that provides examples of contract terms that qualify as long term under different contract structures.

(iii) If a POU requests that the Executive Director make a determination on whether a previously-executed contract qualifies as a long term contract pursuant to paragraph (A), the Executive Director shall issue the determination within sixty (60) days of submission of the request for review by the POU. If a POU requests that the Executive Director make a determination on whether a contract that has not been executed qualifies as a long term contract pursuant to paragraph (A), the Executive Director shall issue the determination within thirty (30) days of submission of the request for review by the POU. The Executive Director may request additional information from the POU if necessary to determine if the contract meets the requirements of Section 3204 (d)(2).

2. Review Process Through Annual RPS Compliance Reporting Submissions

All POUs have already uploaded their RPS contracts to the Commission through the annual RPS Compliance Reporting Process for prior reporting years and will upload future contracts in subsequent years. This section describes a modified review process that would occur on an annual basis.

i. Contracts Submitted for All Years Prior to 2021

The Commission must provide certification for all contracts that have already been submitted to the Commission or that will be submitted to the Commission by July 1, 2021. The Commission shall issue a draft long term procurement verification report for each POU. The draft shall provide the Commission's draft determination of the long term status of all contracts submitted by the POU. POUs will have the opportunity to comment on the draft report. If the POU approves the Report, then the Report shall be deemed as final. POUs may submit a petition for reconsideration following the process set out in 20 CCR sections 1231 – 1232.5.

ii. Contract Submitted for the 2021 RPS Compliance Report

Contracts that are submitted with the 2021 RPS Compliance Report (due July 1, 2022), shall be evaluated pursuant to the process describe below. Any POU contract that has been submitted to the Executive Director through the voluntary review program and been found to qualify as long term, shall be deemed long term and not subject to a subsequent review process. The Commission shall evaluate all POU contracts submitted with the RPS annual Compliance Report and issue a draft long term procurement verification report for each POU, that provides the Commission's draft determination of the long term status of all contracts submitted by the POU as part of that year's annual RPS Compliance Report. POUs will have the opportunity to comment on the draft report. If the POU approves the Report, then the Report shall be deemed as final. POUs may submit a petition for reconsideration following the process set out in 20 CCR sections 1231 – 1232.5.

The proposed regulatory language for the review process for contracts submitted as part of annual filings is the following:

(B) Annual Determination of Long Term Contract Qualification

(i) By January 1, 2022, Commission staff shall issue a draft report for each POU specifying staff's preliminary determination of the long term status of all contracts submitted as part of the annual reports specified in section 3207 (c) on or before July 1, 2021, as such date may be extended by Commission staff. Each POU may provide supplemental information to support a claim of long term status of any contracts identified in the draft report. Commission staff shall issue a final report for each POU by March 1, 2022. A POU may request the Commission to reconsider staff's determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231 – 1232.5.

(ii) By January 1, of each year after January 1, 2022, Commission staff shall issue a draft report for each POU specifying staff's preliminary determination of the long term status of all contracts submitted with annual report specified in section 3207 (c) that was submitted by July 1 of the prior year, as such submission date may be extended by Commission staff. For any contract that the POU received a determination of long term eligibility by the Executive Director pursuant to section 3207(c)(5)(A), Commission staff's report shall deem such contract as long term and shall not provide further review. Each POU may provide supplemental information to support a claim of long term status of any contracts identified in the draft report. Commission staff shall issue a final report for each POU by March 1. A POU may request the

Commission to reconsider staff's determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231 – 1232.5.

3. Determinations are Final

If a contract is determined to be long term through either the voluntary review process or through the annual report issued by the Commission, the Commission cannot later reevaluate the contract under differing interpretations and change its determination. Contracts may only be reevaluated if there is a major amendment to the contract that directly implicates the requirements of Public Utilities Code § 399.13(b), and such review shall only relate to changes affected by the amendment.

The proposed regulatory language for this principle is the following:

(iii) Any contract that has been determined to qualify as a long term contract in a Commission staff report pursuant to section 3207 (c)(5)(B)i. or ii., shall not be subject to a subsequent review by Commission staff unless the contract has been amended and such subsequent review shall be limited to the scope of the amendment.

III. Proposed Regulatory Language

The following table repeats the proposed language above in a combined format.

Redline to 2 nd 15-Day Language
3204(d)(2) Electricity products will be classified as long-term or short-term based on the contracts, ownership, or ownership agreements through which they are procured. For the purpose of this subdivision, long-term procurement refers to procurement from long-term contracts, ownership, or ownership agreements, subject to the following: (A) A long-term contract is defined as a POU's contract to procure electricity products from an RPS-certified facility for a duration of at least 10 continuous years, and includes contracts as specified in subparagraphs 1. and 2, 3, or 4. 1. A long-term contract includes a jointly negotiated contract to procure electricity products from one or more RPS-certified facilities, if the procurement duration for each facility is at least 10 continuous years and each POU procures electricity products for at least 10 continuous years. For purposes of this subdivision, a jointly negotiated contract includes the following: i. A joint contract executed by at least two POUs with the RPS-certified facility. ii. A contract executed by a joint powers agency or third party supplier acting on behalf of at least two POUs with the RPS-certified facility, 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.

iii. Separate contracts executed by two or more POU's with the same RPS-certified facility, where each of the separate contracts expressly identifies the other POU(s) and specifies the ability of the POU's to adjust their relative share of the output of the RPS-certified facility to the other POU(s).

2. A long-term contract includes a POU's contract or resale agreement with a joint powers agency or third-party supplier if both of the following are satisfied:

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

ii. The RPS-certified facility or facilities supplying the electricity products in the long-term contract are owned by the joint powers agency or 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 joint powers agency or third-party supplier or other party on the POU's behalf, can submit documentation demonstrating this.

~~3. 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. A long-term contract includes a POU's contract or resale agreement with a third-party supplier where, over the contract term, the electricity products provided can change from one portfolio content category to a different portfolio content category or from one portfolio content category to multiple portfolio content categories, as long as the contract satisfies all other applicable requirements of this section..~~

4. A long-term contract includes a POU's ownership agreement or contract between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project, including an extension or renewal of an agreement between a POU and the Western Area Power Administration or the federal government as part of the federal Central Valley Project that renews or extends the existing agreement as contemplated under the administration of the agreement in effect on January 1, 2015, or included in the Western Area Power Administration's Power Marketing Plan.

(B) 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 Paragraph (A).

(C) 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. Except as specified in paragraph (E), ~~T~~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.

1. If electricity products are procured under a long-term contract that has been amended to extend the end date of the contract, the electricity products procured under the amendment shall be classified as long-term, except as provided in paragraph (J).
2. If electricity products are procured under a short-term contract that has been amended to extend the end date of the contract, the duration of the amended contract will be measured from the amendment execution date until the amendment end date. If the amended contract duration is at least 10 continuous years and the amended contract otherwise satisfies the requirements of a long-term contract, procurement from the amended contract shall be classified as long-term as of the month and year of the amendment execution date.
3. If electricity products are procured under a long-term contract that has been amended or terminated early such that the contract duration is no longer at least 10 continuous years, only the electricity products procured prior to the amendment execution date or termination notice may be classified as long-term.

(D) Procurement from an ownership agreement shall be classified as long-term, unless the agreement specifies that the ownership duration is for a period of less than 10 continuous years. Procurement from an ownership agreement that specifies the ownership duration is for a period of fewer than 10 continuous years shall be classified as short-term.

(E) ~~Electricity products procured in excess of the quantity that is specified in a long-term contract shall be classified as short-term.~~ Contracts executed prior to July 1, 2020 shall be classified as long term based on the duration requirements specified in section 3204(d)(2)(A), (B), and (C) and shall not be subject to the additional requirements of section 3204(d)(2)(F).

(F) Notwithstanding section 3204(d)(2)(A), a long term contract executed on or after July 1, 2020 does not include any of the following:

1. A contract where the contracted-for quantity or contracted-for share of the output of an eligible renewable energy resource deviates substantially over the term of the agreement as specified in Section 3204 (d)(2)(E)1.i or ii below, unless the POU demonstrates that the contract meets one of the conditions specified in section 3204(d)(2)(E)1.iii.

i. For purposes of this section 3204 (d)(2)(E)1., a contract where a POU has only contracted for procurement on a MWh basis and where the POU has no right to any minimum share of the output of an eligible renewable energy resource facility, a substantial deviation in the contracted for quantity shall mean that for any individual year during the contract term, the contracted-for quantity exceeds [X] percent above or below that average annual quantity for the entire contract term. If a POU has contracted for 0 MWh in any of the initial years of a contract term, such years shall be excluded from the calculation of the average annual quantity as long as there are at least ten

continuous years remaining in the contract term when contracted-for quantities exceed zero.

ii. For purposes of this section 3204 (d)(2)(E)1., a contract where a POU has contracted for a share of the output of the facility, even where the contract may specify expected quantities of procurement in each year or may otherwise specify minimum or maximum procurement quantities, a substantial deviation in the contracted-for share of the output shall mean that for any individual year during the contract term, the contracted-for percentage share of the output of the facility exceeds [X] percent above or below that average annual percentage share of the output of the facility over the entire contract term. If a POU has contracted for 0 percent of the output of a facility in any of the initial years of a contract term, such years shall be excluded from the calculation of the average annual percentage share of the output of the facility as long as there are at least ten continuous years remaining in the contract term when contracted-for percentage share of the output exceeds zero.

iii. If a POU's contracted-for quantity or contracted-for share of the output of an eligible renewable energy resource deviates substantially over the term of the agreement as specified in Section 3204 (d)(2)(E)1.i or ii above, then the contract shall not qualify as long term unless the POU demonstrates that the substantial deviation is associated with one of the following:

I. At the time of contract execution, the eligible renewable energy resource is already committed to a different entity during that individual year and the POU's commitment supports the development of a new eligible renewable energy resource.

II. At the time of contract execution, the POU had identified a forecasted reduction in retail sales associated with the anticipated loss of specific customer accounts or local industry or the POU had identified a forecasted increase in generation from other eligible renewable energy resources that will achieve commercial operation during the contract term.

III. The substantial deviation during the individual year is associated with expected maintenance, repair, construction, or other modification of the eligible renewable energy resource.

IV. The substantial deviation is associated with anticipated transmission constraints.

V. The substantial deviation is associated with the POU taking over the share or purchases from another buyer at the same eligible renewable energy resource when that other buyer's contract term ends.

VI. The substantial deviation is only associated with the POU procuring increasing quantities or shares of the eligible renewable energy resource over the term of the agreement.

VII. The POU otherwise demonstrates that the substantial deviation supports the financing of the eligible renewable energy resource or is consistent with the intent of the long term procurement requirement.

2. A contract that contains no specified output share or quantities of procurement and/or minimum pricing terms, such that the express intent of the parties to the contract is to individually negotiate the price and quantity terms in each individual year and neither party has an obligation to procure or sell any quantity during any such individual year.

3. A contract that expressly specifies a pre-planned termination date that is less than 10 years from the contract start date, and where neither party is obligated to perform under the contract for a duration of at least 10 continuous years without a contract amendment by the parties. A termination of an agreement for purposes of facilitating the sale of the eligible renewable energy resource to the POU does not meet the criteria of this paragraph 4.

...

(~~J~~K)3.(iii) Notwithstanding section 3204 (d)(2)(J)3.i-ii., replacement energy procured from another RPS-certified facility, as allowed by the original long-term contract, shall be considered part of the original long-term contract if the POU can submit information demonstrating that the need for replacement energy occurred because the RPS-certified facility specified in the original long-term contract did not~~was unable to~~ perform as the contract required.

(L) The long term procurement requirements described in this section 3204(d)(2) do not require any minimum amount of procurement to be associated with newly-developed eligible renewable energy resources and a POU can be in full compliance with the long term procurement requirement if such POU only procures long term RPS-eligible electricity products from existing eligible renewable energy resources.

3207(c)(2)(H) ~~An explanation-~~ description of any modifications to long-term contracts, ownership, or ownership agreements from which a POU intends to claim long-term procurement, including, but 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. ~~The POU's explanation shall include documentation supporting the modifications.~~

3207(c)(5) Review of long-term contracts

(A) Voluntary Requests for Review of Long Term Contracts

(i) A POU may request the Executive Director of the Commission to review any contract in order to issue a determination on whether the contract qualifies as a long term contract pursuant to the requirements of section 3204 (d)(2).

(ii) The Executive Director shall make publicly available a voluntary review request form that lists the primary contract elements that the Executive Director will review to make the determination on the long term status of the contract. The POU seeking review shall submit an accurate and complete voluntary review request form to the Executive Director. The Executive Director may also make publicly available a guidance document that provides examples of contract terms that qualify as long term under different contract structures.

(iii) If a POU requests that the Executive Director make a determination on whether a previously-executed contract qualifies as a long term contract pursuant to paragraph (A), the Executive Director shall issue the determination within sixty (60) days of submission by the POU. If a POU requests that the Executive Director make a determination on whether a contract that has not been executed qualifies as a long term contract pursuant to paragraph (A), the Executive Director shall issue the determination within thirty (30) days of submission by the POU. The Executive Director may request additional information from the POU if necessary to determine if the contract meets the requirements of Section 3204 (d)(2).

(B) Annual Determination of Long Term Contract Qualification

(i) By January 1, 2022, Commission staff shall issue a draft report for each POU specifying staff's preliminary determination of the long term status of all contracts submitted as part of the annual reports specified in section 3207 (c) on or before July 1, 2021, as such date may be extended by Commission staff. Each POU may provide supplemental information to support a claim of long term status of any contracts identified in the draft report. Commission staff shall issue a final report for each POU by March 1, 2022. A POU may request the Commission to reconsider staff's determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231 – 1232.5.

(ii) By January 1, of each year after January 1, 2022, Commission staff shall issue a draft report for each POU specifying staff's preliminary determination of the long term status of all contracts submitted with annual report specified in section 3207 (c) that was submitted by July 1 of the prior year, as such submission date may be extended by Commission staff. For any contract that the POU received a determination of long term eligibility by the Executive Director pursuant to section 3207(c)(5)(A), Commission staff's report shall deem such contract as long term and shall not provide further review. Each POU may provide supplemental information to

support a claim of long term status of any contracts identified in the draft report. Commission staff shall issue a final report for each POU by March 1. A POU may request the Commission to reconsider staff's determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231 – 1232.5.

(iii) Any contract that has been determined to qualify as a long term contract in a Commission staff report pursuant to section 3207 (c)(5)(B)i. or ii., shall not be subject to a subsequent review by Commission staff unless the contract has been amended and such subsequent review shall be limited to the scope of the amendment.

~~Following the submittal of annual reports specified in section 3207 (c), Commission staff shall review each contract identified as long-term with the supporting information submitted in the annual report to determine if the contract provides a long-term procurement commitment as required by section 3204 (d)(2)(A). The review will consider, but is not limited to, the following:~~

~~1. Consistency of quantities and deliveries specified in the contract. The POU may be required to explain contract provisions specifying procurement quantities that vary over the term of the contract and provide additional justification demonstrating that the contract provides a long-term procurement commitment consistent with the purposes of the long-term procurement requirement.~~

~~2. Completeness and specificity of procurement terms. The POU may be required to provide additional explanation for any quantity, term or delivery provisions that are not clearly defined or are subject to renegotiation prior to the end of the contract term.~~

~~3. Identification of RPS-certified facilities supplying electricity products in the contract.~~

~~4. Anticipated portfolio content category classification or designation as meeting the criteria of section 3202 (a)(2) for electricity products procured through the contract.~~

~~(B) Commission staff may request additional information and documentation as needed to complete its review.~~

~~(C) Upon completion of its review, Commission staff shall notify the POU of its determination whether the contract meets the definition of a long-term contract based on the submitted information.~~

~~(D) A contract that Commission staff determines is not consistent with the definition of a long-term contract shall be classified as a short-term contract for purposes of assessing a POU's compliance with the long-term procurement requirement.~~

~~(E) A POU may request the Commission to reconsider staff's determination that its contract does not meet the definition of a long-term contract by filing a petition for reconsideration to the Commission within 30 calendar days of issuance of the determination. The petition for reconsideration shall be filed and processed in a manner consistent with a request for investigation pursuant to sections 1231—1232.5.~~

~~(F) A POU's procurement claims for electricity products procured through a contract that is determined to meet the definition of a long-term contract shall be subject to verification by the Commission.~~

IV. CONCLUSION

The Joint Stakeholders appreciate the opportunity to provide this proposal to the Commission. Thank you for the time and attention to these comments.