



# California Wind Energy Association

---

October 1, 2019

California Energy Commission  
Docket No. 16-RPS-03  
Docket Office  
1516 Ninth Street  
Sacramento CA 95814

*Submitted Electronically via CEC website to Docket 16-RPS-03*

**Re: Amendments to Regulations Specifying Enforcement Procedures for the  
Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

CalWEA appreciates the opportunity to participate in the Commission's pre-rulemaking activities leading toward implementation of the long-term (greater than 10-year) procurement requirement (LTR) required by SB 350 (2015).<sup>1</sup> These comments respond to the questions raised in the August 2019 Staff Paper (as revised September 6<sup>th</sup>), *Implementation Proposal for RPS Long-Term Procurement Requirement* and in the September 10, 2019, workshop presentation.

At the outset, CalWEA is generally very supportive of the Staff Paper's proposals regarding long-term contracting issues, although we make a few suggestions for further harmonizing the rules with legislative intent. With regard to various proposals made at the workshop for greater flexibility, we caution that flexibility should be granted only where it does not contradict the letter of the law or undermine its purpose. Moreover, it is important to recognize that considerable flexibility is already built into the RPS program, including the three product content categories, the three-year compliance periods, banking provisions and several special exemptions that have been made to accommodate the special circumstances of numerous publicly owned utilities.

---

<sup>1</sup> Specifically, Public Utilities Code (PUC) section 399.30 (d)(1), providing that "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."

## Implementation of the long-term procurement requirement

CalWEA strongly supports the “Dependent Compliance” option, which would establish LTR compliance as a precondition for POU compliance with the procurement target and the portfolio balance requirement (PBR). Under this option, LTR compliance is required prior to assessing compliance with the procurement target and PBR such that no LTR deficits are permitted, and this and other RPS procurement requirements must be satisfied in order for a POU to bank excess procurement.

The proposed “Independent Compliance” option is inconsistent with the plain language of SB 350, which requires that “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 resource.”<sup>2</sup> The purpose of this plain statutory language is to promote the financing and development of new renewable resources and major capital improvements of existing renewable energy facilities that are necessary to support continued operations. Major capital investments in new and existing renewable energy facilities will be necessary for the state to achieve its RPS goals and SB 100 goals. The Dependent Compliance option is consistent with the statute and is also aligned with the CPUC’s LTR compliance rules, as noted in the Staff Paper (at p. 8).

## Characterization of long-term procurement

CalWEA generally supports the Staff Proposal regarding what constitutes a 10-year contract, which largely parallel the CPUC rules. However, because the Commission has some statutory leeway in this area, we propose two changes, which are more consistent with the intent of the statute, which is to promote long-term capital investments.

First, we propose that when a contract with a term of at least 10 years is amended to extend the term by any length, the added length of the contract should be considered “long-term” only when the amendment is made **at least 10 years prior to the end of the amended delivery term**. Otherwise, the additional time is too short to support the major capital investments that could be made under a 10-year term. The reasoning is the same as Staff put forward for its proposed rule (Staff Paper at p. 12) that would disallow a short-term contract that is subsequently extended through a short-term amendment: the extended term, enabled with short lead time “does not provide the same level of long-term planning stability, even if the combined terms amount to ten years.”

Examples of CalWEA’s proposed change:

- Contract A begins August 1, 2021 and ends July 31, 2036. In August 2034, the contract is amended to extend the term by four years, to end July 31, 2040. The

---

<sup>2</sup> Cal. Pub. Util. Code § 399.13(b). Emphasis added.

additional four years do not count as being produced under a long-term contract because only six years remain under the contract at the time of the amendment.

- Contract B begins August 1, 2021 and ends July 31, 2036. In August 2027, the contract is amended so that the contract is extended by one year, to July 31, 2037. The additional year counts as being produced under a long-term contract because 10 years remain under the contract at the time of the amendment.

Second, in response to workshop question #4 with regard to contract modifications, we note that modifications are often necessary for various reasons. Therefore, similar to our proposed change with regard to extended contracts, above, we propose that **amending a contract should not trigger any change to the long-term status of the contract unless the contract capacity is increased. If an amendment allows for additional capacity, the output associated with the additional capacity should count as under a long-term contract only if at least 10 years remain under the amended delivery term at the time of the amendment.**

With regard to workshop questions #3 and #5:

(#3) Should procurement from short-term assignments of contracts that were initially long-term in nature be allowed to count as long-term procurement when determining compliance with the LTR? Explain.

(#5) 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? Explain.

We agree with staff's interpretation of "its contracts" in PUC section 399.13 (b) that the 10-year contracting requirement applies to the POU's own procurement commitment. Therefore, in answer to question #3 above, no, the short-term assignment of an original long-term contract should not be considered long-term procurement by the entity contracting on a short-term basis. With regard to question #5, a POU's assignment of its long-term contract should not nullify the long-term nature of its own contract. However, the POU should, of course, get RPS and LTR credit only for the deliveries not assigned to other LSEs.

Regarding the two options presented on the treatment of PCC 0 procurement (procurement from contracts executed prior to June 1, 2010), CalWEA supports Option 1, which is consistent with CPUC rules (all PCC 0 contracts should count as long-term).

With regard to workshop question #7:

What market impacts, if any, could occur if the requirements for long-term procurement under the LTR differ for POUs and retail sellers? Explain.

---

Parity of rules for all LSEs is desirable as a matter of fairness. However, if the Commission believes that certain rules would better fulfill statutory requirements – as with our recommendations above – it should adopt them. CalWEA does not foresee significant market impacts if the requirements for long-term procurement under the LTR differ for POU and retail sellers. Developers will respond to the conditions established in specific resource solicitations.

### **Early compliance process**

CalWEA has no comment at this time on the proposed early compliance process.

Sincerely,

/s/

Nancy Rader  
Executive Director  
Email: [nrader@calwea.org](mailto:nrader@calwea.org)

---