

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration, and
Consider Further Development, of California
Renewables Portfolio Standard Program.

Rulemaking 18-07-003

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON PROPOSED DECISION ON GEXA ENERGY CALIFORNIA LLC'S COMPLIANCE
WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD PROGRAM**

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***On behalf of the California Wind
Energy Association***

January 11, 2022

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I. INTRODUCTION AND SUMMARY

Pursuant to the California Public Utilities Commission’s (“Commission”) Rule of Practice and Procedure 14.3, the California Wind Energy Association (“CalWEA”) respectfully submits these comments on the December 22, 2021, *Proposed Decision on Gexa Energy California LLC’s Compliance with the California Renewables Portfolio Standard Program* (“Proposed Decision” or “PD”).

CalWEA opposes the Proposed Decision because it would accept as a “long-term contract” under the Renewables Portfolio Standard (“RPS”) a contract that is not generally financeable and therefore does not meet the intent of the RPS statute, which is to drive new renewable energy development to ensure that the state’s RPS goals will be timely met. Should the Commission make a one-time exception for Gexa Energy, it should make clear that future contracts that contain buyer termination rights less than 10 years into the contract will not be accepted as compliant.

II. ARGUMENTS

A. To Meet the Intent of the RPS, Long-Term Contracts Must Obligate Buyers to Long-Term Procurement

The Proposed Decision would accept as compliant with the RPS statute and Commission policy decision a “long-term contract” that provides the buyer with “the authority to procure” –

rather than an *obligation* to procure – renewable energy credits (“RECs”) over a ten-year period.¹ Such a contract does not meet the purpose of the long-term contracting requirement of the RPS statute,² which is to establish contractual obligations that drive the new renewable energy development that will be necessary to meet the RPS targets.

As the Commission has previously recognized, financing the construction of a new renewable energy facility under reasonable terms requires long-term revenue certainty.³ The statutory requirement that retail sellers enter into a minimum percentage of contracts of at least ten years in length is not for buyers’ benefit, it is to enable sellers to obtain financing and construct their projects.⁴ Thus, the Proposed Decision would turn the statute’s intent on its head by establishing the dangerous principle that as long as the buyer (in this case Gexa) has “the authority to procure” for a period of at least ten years, the intent of the statute is satisfied.

Buyers will generally prefer shorter-term contracts, as evidenced by the Commission’s *2021 RPS Annual Report to the Legislature*, which found that “[h]istorically, most ESPs have only executed the minimum quantity required for long-term contracting” and that “the ESPs collectively need to execute significant amounts of long-term contracts to meet the RPS requirements.”⁵ If buyers are allowed to terminate a contract at any time prior to ten years, they will readily use that opportunity and thereby fail to make the long-term purchasing commitments that provide the necessary certainty for project financing. A foreseeable result of this PD is that buyers will seek to avoid firm ten-year commitments; for example, a buyer could enter into three-year contracts that provide an option to purchase for another seven years. If projects are financeable at all under such contracts, they will come at a significantly higher cost of financing due to the lack of revenue certainty to support major capital investments. As a result, a sufficient

¹ PD at p. 15.

² Cal. Pub. Util. Code §399.13(b).

³ See D.17-06-026 at p. 15. (“[I]n D.06-10-019 and D.07-05-028, the Commission adopted the parties’ consensus that long-term contracts are necessary in order for developers to finance new and repowered RPS-eligible generation.”)

⁴ For discussion on this point, see CalWEA’s April 2, 2020, Comments on Supplemental Filing of Gexa Energy California, LLC, Regarding Requested Waiver of the Renewables Portfolio Standard Procurement Quantity Requirement for Compliance Period 2.

⁵ CPUC, *2021 RPS Annual Report to the Legislature* (November 2021) at p. 35.

supply of renewable energy may not materialize to enable the timely achievement of the state's RPS goals.

The careless approach taken by the PD is very concerning. To avoid undermining a central pillar of the RPS statute, the Commission should find that Gexa's contract – retroactively amended to include a one-sided delivery term of up to ten years – does not meet the legislative intent of the long-term contracting requirement.

B. Any Exception Made for Gexa Should Make Clear that Future Contracts Must Not Include Buyer Termination Rights Prior to 10 Years

The Proposed Decision states that its determination that the deliveries under the Gexa contract will occur over a ten-year period “is limited to this case, and in the future, we shall not accept any long-term contract that fails to demonstrate the required term of at least ten years.”⁶ As the PD's determination is that the buyer can terminate deliveries prior to ten years and need not commit to purchase specific quantities of RPS resources, this “limitation” is of no comfort or consequence.

Should the Commission make a one-time exception for Gexa Energy, it should make very clear that any future contracts *must obligate the buyer to specific quantities of RPS resources for at least ten years* to be accepted as compliant. Long-term RPS contracts will continue to play a central role in the success of California's RPS policy and it is therefore essential that the Commission establish the principle in this decision that purchases that are assured for at least ten years are integral to any long-term contract.

III. CONCLUSION

For the above reasons, CalWEA respectfully urges the Commission to modify the Proposed Decision to find that Gexa's contract does not meet the legislative intent of the statutory RPS long-term contracting requirement or, should the Commission wish to make a one-time exception to this policy, it should clarify that, in the future, it will require all contracts to assure purchases over a term of at least ten years.

⁶ PD at p. 16.

Respectfully submitted,

/s/ Nancy Rader

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***On behalf of the California Wind Energy
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January 11, 2022

VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of “Comments of the California Wind Energy Association on Proposed Decision on Gexa Energy California LLC’s Compliance with the California Renewables Portfolio Standard Program” are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2022, at Berkeley, California.

/s/ Nancy Rader
Nancy Rader
Executive Director
California Wind Energy Association