



Regulatory Advisory

September 21, 2022

Classification of Contracts with Both Short-Term and Long-Term Underlying Resources Under the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

The California Energy Commission (CEC) adopted [changes to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities](#) (RPS POU Regulations) in December 2020, which took effect on July 12, 2021.

Two of the additions to the RPS POU Regulations, sections 3204 (d)(2)(B) and 3204 (d)(2)(L)3., have elicited questions from POU regarding the CEC's classification of contracts or resale agreements with a JPA or third-party supplier that include both short-term and long-term underlying resources. This advisory is intended to provide clarification to POU of how staff will apply these two sections. Specifically, the advisory describes two different types of POU contracts or resale agreements, with a duration of at least 10 continuous years, between the POU and either a JPA or third-party supplier:

1. Those that, as of the contract start date, are associated with a mix of underlying long- and short-term resources with RPS-certified facilities; and
2. Those that have been amended after the contract start date to add or substitute underlying resources that cause the contract to have a mix of underlying long- and short-term resources with RPS-certified facilities.

These two categories are discussed in sequence below.

1. **Contracts with a mix of underlying long- and short-term resources as of the start date (RPS POU Regulations section 3204 (d)(2)(B))**

Section 3204 (d)(2)(B) provides a list of examples of permissible long-term contract structures. A plain reading of the clause—and specifically the use of “a long-term contract includes the following contract structures”—shows that the list of contracts is non-exhaustive.¹ Accordingly, a POU's contract with a JPA or third-party seller that, as of the contract start date, is associated with a mix of long- and short-term resources with RPS-certified facilities **can** count as long-term for the portion of the procurement from the RPS-certified facilities that is consistent with section 3204 (d)(B)(2).

Unlike contracts that contain only underlying long-term resources as described in section 3204 (d)(2)(B)2., which can be accompanied by a [Joint Powers Agency or Third-Party Supplier Contract – POU Attestation Form](#) during annual RPS reporting, procurement from contracts that are associated with a mix of long- and short-term resources with RPS-certified facilities require added staff resources for verification because they will need to be manually reviewed. POU should not complete the **Joint Powers Agency or Third-Party Supplier Contract – POU Attestation Form** for procurement contracts

¹ The list in section 3204(d)(2)(B) reflects contracts identified by stakeholders that the CEC sought to expressly codify as long-term but was not intended to preclude other types of contracts.

with a mix of long- and short-term resources. Instead, CEC staff intends to develop additional guidance on identifying and reporting any newly reported contracts in next year's annual reporting instructions, which are anticipated to be released in May 2023. POUs should expect these instructions to state that it will be their responsibility to indicate which contracts are associated with a mix of long- and short-term resources with RPS-certified facilities and to provide proof of the JPA or third-party seller's ownership of, or long-term underlying procurement contracts with, the underlying RPS-certified facilities with which POU has entered a long-term procurement commitment.

POUs with this contract structure will be allowed to count the procurement from the underlying long-term resources with RPS-certified facilities towards the LTR if they can document the long-term classification of the underlying procurement arrangement between the JPA or third-party seller and the facility or facilities. However, nothing in this guidance should be construed to allow procurement from the underlying short-term resources with RPS-certified to count towards the LTR.

2. Contracts amended after the start date to add or substitute a mix of underlying long- and short-term underlying resources (RPS POU Regulations section 3204 (d)(2)(L)3.)

CEC staff interprets section 3204 (d)(2)(L)3. to prohibit a POU from treating procurement as part of the POU's original long-term contract if it is associated with an amendment occurring after the contract start date that adds or substitutes underlying resources to the contract and thereby causes the contract to have a mix of underlying long- and short-term resources with RPS-certified facilities. Consistent with the plain regulatory language of section 3204 (d)(2)(L)3., for an amendment or modification to be treated as part of the original long-term contract, "**any**" resources added or substituted into the long-term contract must be owned by the seller or subject to a long-term contract. If the amendment or modification adds or substitutes a mix of resources subject to short- and long-term contracts that were not part of the original contract, then all procurement from the added resources will be evaluated by CEC staff as a new contract, subject to review under section 3204 (d)(2)(A)-(C), and the duration of the POU's procurement commitment will be evaluated from the date of the amendment or modification.

POUs that have reported amendments or modifications to long-term contracts, which add a mix of resources subject to short- and long-term contracts, should expect to be contacted by CEC staff during the upcoming outreach to POUs regarding CEC staff's determination on the long-term classifications. Please note that section 3204 (d)(2)(L)3. only governs CEC staff's evaluation and treatment of the amendment or modification; it does not obligate POUs to modify their contracts.

NEXT STEPS AND FURTHER GUIDANCE

CEC staff will contact POUs with previously reported contracts, as well as POUs with amendments or modifications that fit into the two categories discussed in this advisory, during the outreach to POUs regarding CEC staff's determination on the long-term classifications. Outreach to POUs is currently underway. CEC staff also intends to provide additional guidance to POUs on identifying and reporting any newly reported contracts, amendments, or modifications in next year's annual reporting instructions. The annual reporting instructions for 2022 are anticipated to be released in May 2023. Please note that, during annual reporting, it will be the responsibility of the POU or reporting entity to indicate which contract(s), amendment(s), or modification(s) are within the categories discussed in this guidance so that CEC staff may efficiently review and manually verify these contracts. Failure to do so could result in contract determination delays or claims ineligibility.

For more information or if you have questions, please [email](mailto:rpstrack@energy.ca.gov) rpstrack@energy.ca.gov.