

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

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewable Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**COMMENTS OF BP WIND ENERGY NORTH AMERICA INC.
ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE
RENEWABLE PORTFOLIO STANDARD PROGRAM**

Seth D. Hilton
STOEL RIVES LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Email: sdhilton@stoel.com

Attorneys for BP Wind Energy North
America Inc.

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BP Wind Energy North America Inc. (“BP Wind”) submits the following comments in response to Administrative Law Judge Anne Simon’s July 12, 2011 Ruling regarding portfolio content categories for the Renewable Portfolio Standard program.

I. INTRODUCTION

BP Wind is a wholly owned subsidiary of BP p.l.c., one of the world’s leading energy companies. BP Wind is a principal owner and operator of wind powered facilities, with interests in ten operating wind farms. Through a subsidiary, BP Wind currently owns and operates the Edom Hills wind farm located in Riverside County, California. BP Wind also operates and has an ownership interest in a 125 MW wind facility located in Bonneville County, Idaho, the entire output of which is sold to Southern California Edison Company under a 20-year power purchase agreement.

BP Wind also has two wind projects under development that could help California achieve its RPS goals and benefit California’s consumers. These projects are located within the Western Electricity Coordinating Council (“WECC”) region but are not within a California balancing authority area. These projects have several options for delivering energy to California.

One project currently plans to enter into a dynamic scheduling or pseudo tie arrangement with the California Independent System Operator (“CAISO”). The other project has two delivery options. Under the first option, energy would be scheduled and delivered on a real-time basis to the CAISO via firm transmission, together with an ancillary services arrangement to allow the project to meet its import schedule. While not dynamic, this option would result in the delivery of real-time energy from the renewable project. Under the second option, a firming and shaping arrangement would be put in place so as to allow the project to deliver firmed and shaped energy to the CAISO balancing authority area.

II. GUIDING PRINCIPLES

When defining the various portfolio content categories, the Commission needs to provide timely clarity to both utilities and developers so that the parties can move forward with transactions in an environment of regulatory certainty. BP Wind appreciates the emphasis in ALJ Simon’s Ruling on the need for clear, easily applied categories. Such clarity will allow BP Wind to determine the appropriate delivery options for its wind projects and to understand how the Commission intends to apply the portfolio content categories to the various specific delivery options that BP Wind may consider.

SB 2 (1x) itself expressly sets forth several goals of the legislation in an amended Section 399.11, including implementing the 33% RPS in a manner that contributes to the safe and reliable operation of the electricity grid, and provides stable retail rates. A geographically diverse mix of generation, including the full and fair participation of projects from outside of California, should assist California in meeting these ambitious goals.

First, as a number of parties have noted previously in connection with the Energy Division’s April 23, 2010 Workshop in R.08-08-009, active participation of out-of-state

resources in California’s efforts to achieve a 33% RPS should lower costs, mitigate price volatility, and benefit California customers.

Second, a geographically diverse supply of renewable generation “can help mitigate operational challenges posed by the intermittency of wind and solar generation,”¹ a point that the CAISO and others repeatedly emphasized in Rulemaking 08-08-009, the predecessor to this proceeding. The greater the geographic diversity of intermittent resources, the greater the diversity of weather conditions, which reduces the aggregate variability of output of wind and solar resources. With these benefits to the consumer in mind, BP Wind urges the Commission to give careful consideration to how out-of-state generation can participate fully and fairly in California’s RPS efforts.

III. RESPONSE TO QUESTIONS

Below BP Wind answers several of the specific questions set forth in ALJ Simon’s Ruling. In some cases, where suitable, a single response is provided for multiple questions.

A. Response to Questions 1, 2, & 8.

Section 399.16(b)(1) is ambiguous in that it frequently uses the term “product” or “products” when it appears that the intent is to refer to generation facilities, not the product of those facilities. For example, Section 399.16(b)(1) refers to “electricity products that... have a first point of interconnection with a California balancing authority...”, or “electricity products that... have an agreement to dynamically transfer electricity...” Questions 1, 2, and 8 provide language that does not appear to fully address the ambiguity. BP Wind suggests that the language of the statute should be read as follows:

¹ CAISO Response to Petitions for Modification of D.10-03-021 in R.08-08-009.

Procurement transactions with eligible renewable energy resources
that meet either of the following criteria:

(A) Have a first point of interconnection with a California balancing authority, have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or that schedule and deliver electricity into a California balancing authority without substituting electricity from another source....

(B) Have an agreement to dynamically transfer electricity to a California balancing authority.

B. Response To Question 2.

See Section III.A, *supra*.

C. Response to Question 4.

The language of Section 399.16(b)(A) referenced in this question -- “... scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source” -- should be interpreted to include any energy that is scheduled and delivered real-time into a California balancing authority area on a firm basis. For example, a Washington wind facility could obtain firm transmission to the CAISO system. The project could then schedule and deliver its output to the CAISO in real-time via firm transmission, even without a dynamic scheduling or pseudo-tie arrangement with the CAISO. The source of the generation scheduled and delivered to the CAISO in real-time would be the eligible renewable energy resource.

D. Response to Question 5.

In Decision 10-03-021, the Commission authorized the use of Tradable Renewable Energy Credits (“TRECs”) for RPS compliance. The Decision distinguished between “bundled” (energy plus renewable energy credits) transactions and TREC (or REC-only) transactions, imposing a cap on the amount of TRECs that could be used for RPS compliance. D.10-03-021,

however, left open the question of whether energy delivered to California via firm transmission, or through a firming and shaping arrangement, would qualify as a bundled transaction, or as a TREC transaction subject to the cap. The Decision instructed the Director of the Energy Division, in Ordering Paragraph #26, to take appropriate steps to obtain information that would enable a definitive determination of how to classify transactions for RPS procurement that included firm transmission arrangements but not dynamic transfers to a California balancing authority area.

In compliance with this directive, the Energy Division conducted a workshop in April 2010 and solicited pre- and post-workshop comments on how to classify such arrangements. This work by the Energy Division is helpful in understanding the nature and variety of firm transmission transactions. However, that work was directed toward determining whether a transaction was a “bundled” or a TREC transaction, as those categories were defined in D.10-03-021. This proceeding, in contrast, must address the precise statutory language set forth in SB 2 (1x), which defines transactions into three “portfolio content categories,” not into “bundled” or TREC transactions. Due to the need to interpret the specific statutory language, the Energy Division’s work, while helpful, is not directly applicable to this proceeding.

E. Response to Question 6.

The California Energy Commission (“CEC”) and WREGIS currently use NERC E-Tags to verify whether the RPS delivery requirements (since eliminated by SBx1-2) are met. E-Tags may also be used to show, track and verify that energy was scheduled into California without substituting energy from another source.

F. Response to Question 7.

For intermittent resources scheduling energy into California, as with intermittent resources located within California, the resource may generate more or less than its schedule over a given time period. Thus, the metered output of the eligible renewable energy resource could be more or less than the import schedule into the California balancing authority area.

For example, a wind project could submit an hourly import schedule along a firm transmission pathway to the CAISO balancing authority area. The project's generation in real time would deviate from the submitted schedule at least part of the time due to the intermittent nature of wind generation. The project would typically contract with a third party to provide balancing authority services. That third party would provide ancillary services real time to maintain a consistent import schedule into the CAISO.

The phrase "but only the fraction of the schedule actually generated by the eligible renewable energy resources shall count toward this portfolio category" can be interpreted as excluding energy provided as ancillary services from an alternate energy source under an assumption that the ancillary services provided would be provided from a facility that would not be an eligible renewable energy resource, which would mean that such energy should not count toward a utility's RPS compliance obligation.

For compliance purposes, the portion of the energy supplied by ancillary services could be excluded simply by comparing the metered output of the eligible renewable energy resource to its import schedule. In the event that the metered output of the resource was less than the schedule, only the metered output, not the full schedule, would count for compliance purposes. BP Wind suggests that, in comparing the scheduled and the metered output, the Commission set a reasonable time period over which the lesser of the metered output or the scheduled imports

would count for California RPS compliance purposes. In implementing the delivery requirements previously applicable to out-of-state eligible renewable energy resources, the CEC concluded that it would compare “the amount of RPS-eligible electricity generated by the RPS-eligible facility per calendar year with the amount of electricity delivered into California for the same calendar year and the lesser of the two amounts” would be counted as RPS-eligible. *See Renewable Portfolio Standard Eligibility Guidebook* (4th ed.) at 39. A similar comparison over a reasonable period of time could determine the amount of electricity eligible under the first portfolio content category.

G. Response to Question 8.

Please see Section III.A, *supra.*

H. Response to Question 11.

The phrase “or any fraction of the electricity generated” should be interpreted to mean “any portion of the electricity generated by an eligible renewable energy resource that does not meet the requirements of the first or second portfolio content categories.” The following example should illustrate how this might work in practice. A wind facility in the Pacific Northwest obtains firm transmission to the CAISO. It schedules and delivers its output to the CAISO in real time. Real-time ancillary services are provided from another source to allow the wind facility to maintain its hourly import schedule into the CAISO. However, SB 2(1x) requires that only the fraction of the schedule actually generated by the eligible renewable energy resource count toward the first portfolio content category.

BP Wind has proposed (in response to Question 7 above) that, in order to determine what portion of the schedule counts towards the first portfolio content category, the Commission might compare, over a reasonable period of time, the import schedules to the metered output of

the eligible renewable energy resource. Using that methodology, if the metered output of the eligible renewable energy resource is in excess of the total import schedules over the period of time utilized, then the generation in excess of the scheduled imports would not count towards the first portfolio content category. However, that generation would have RECs associated with it that could be sold by the eligible renewable energy resource. The eligible renewable energy resource should be permitted to sell those RECs, albeit through a transaction that would count toward the third portfolio content category, not the first, as a “fraction of the electricity generated” by an eligible renewable energy resource that does not fit within the first or second portfolio content categories.

I. Response to Questions 12 and 13

Section 399.16(b) of the Public Utilities Code contemplates the procurement of a balanced portfolio of eligible renewable energy resources including “firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.” However, SB 2 (1x) does not define “firmed” or “shaped”. Question 12 therefore asks for a definition or description of the term “firmed,” while Question 13 seeks a definition or description of the term “shaped.”

The “firming” and “shaping” features of a firming and shaping transaction are commingled and do not readily lend themselves to separate definitions. As discussed below, the Commission should consider addressing “firmed and shaped” as a single concept, with an associated definition for firm electricity.

The structure of a firming and shaping transaction depends on a number of factors, including the location of the generator, the purchasing utility, and the firming and shaping party. However, a basic transaction to firm and shape intermittent energy for delivery to CAISO can be

described as follows: the eligible renewable generator would enter into a firming and shaping agreement with a third party who would agree to purchase all of the electricity delivered by the intermittent facility as and when generated.² The generator would retain the RECs associated with the electricity. The intermittent energy would be measured across an agreed-upon measuring period, which might in some agreements distinguish between energy generated off peak and energy generated on peak. During an agreed-upon re-delivery period, the firming and shaping party would sell and schedule the energy to the seller at a California balancing authority area as a firmed and shaped flat block product that eliminates variability (e.g., as firm energy in 25 MW blocks). The seller would cause the shaped and firmed electricity and the RECs generated by the eligible renewable generator to be delivered to the purchasing utility.

For example, assume a wind facility delivers 6,000 MWh intermittently during the course of a measuring period. The shaping and firming party would accept the electricity generated during this period and commit to schedule it into the CAISO during a later re-delivery period, with the 6,000 MWh to be scheduled in flat blocks. In this example, the firming and shaping party could be a party with load (for example, a utility) that would physically absorb the intermittent energy into its system and thereafter re-deliver it during the re-delivery period. Alternatively, and much more likely in the current market, it could be a company with a trading desk willing to buy seller's intermittent energy as delivered to the facility's interconnection point, sell it into the market, and then later acquire electricity and schedule it into the CAISO as a flat and firm product. The measurement period, re-delivery period, shape of re-delivered

² The purchasing utility may choose to enter into the firming and shaping transaction directly with the third party, rather than requiring the seller to do so. In either case, the services provided by the firming and shaping party are substantially the same. However, the definitions adopted by the Commission should be sufficiently flexible to accommodate different transaction structures.

product, point or points of re-delivery and fee to be paid to the firming and shaping party for the service, among other matters, are not standardized and are subject to negotiation among the utility, the seller and the shaping and firming party.

The energy scheduled and delivered to the CAISO in such a transaction is “firm” in the sense that the obligation to deliver it is not unit contingent and can only be excused in very unusual cases of uncontrollable force. It is “shaped” in the sense that it is converted from a variable, intermittent resource with pre-schedule and intra-hour variability into a blocked flat and firm energy product scheduled and delivered to CAISO. However, a third party would not ordinarily provide shaping without firming, or firming without shaping, so BP Wind suggests that the Commission consider developing definitions that address “firmed and shaped” as a single concept. In addition, the definitions should explain how RECs will be used to cause electricity to qualify as “firmed and shaped.” With this in mind, BP Wind proposes that a product that satisfies the following definitions would be counted toward the second portfolio content category for firmed and shaped electricity:

“Firm Electricity” means non-interruptible electricity that a party contractually guarantees to schedule and deliver except to the extent scheduling and delivery is prevented by an uncontrollable force.”

“Firmed and Shaped Electricity” means electricity that is generated by an eligible renewable energy resource and delivered to a party who takes delivery of the electricity as it is generated and later schedules such electricity to a California balancing authority as Firm Electricity in flat blocks. Variations between the quantity of electricity generated and the quantity scheduled for re-delivery as flat blocks will be periodically reconciled. Firmed and Shaped Electricity shall be deemed to comply with the portfolio content category set forth in Section 399.16(b)(2) to the extent that the RECs for the electricity generated by the eligible renewable energy resource are also delivered to the purchasing load serving entity, either at the eligible renewable resource’s point of interconnection or when firm energy is scheduled to the California balancing authority.

J. Response to Question 14

“Incremental electricity” should be defined as any transaction which results in additional energy being scheduled into a California balancing authority area. Determination of whether the energy is incremental should be based upon the structure of the transaction, and should not depend on the characteristics of the electricity ultimately delivered into a California balancing authority area. To ensure that the transaction resulted in the delivery of incremental energy, the Commission could simply require that the firming and shaping agreement for the importation of energy into California expressly identify the associated new power purchase agreement with the utility, thus ensuring that pre-existing arrangements for the importation of energy would not be paired with new RPS transactions. The utility could certify to the Commission, with certificates from the shaping and firming party and the seller if needed, that the firming and shaping agreement is tied to the new power purchase agreement.

K. Response to Questions 21 and 22

As an initial matter, under the previous iteration of the RPS, the CEC was tasked with determining whether delivery had occurred for purposes of RPS compliance. In BP Wind’s view, it makes sense for a single agency to be tasked with determining the portfolio content category of a transaction, to the extent that the CEC and the Commission adopt identical definitions of the three categories. Regardless of the entity doing the evaluation, historically it has been sufficient for the utility seeking approval of the power purchase agreement to provide a description of the transaction. This practice should be continued, with the burden placed on the utility to provide a sufficiently detailed explanation of the transaction to show how the transaction should be categorized. Requiring additional documentation would be problematic, in that the utility may not have access to documents such as the firming and shaping agreement.

Past practice has been to provide the utility with a copy of the firming and shaping agreement with the commercial terms redacted. However, there has historically been no requirement that the utility provide such documentation to the Commission, nor is it necessary now.

Verification of post-contract deliveries, consistent with current practice, should provide sufficient insurance that power was actually being procured consistent with the claimed categorization. E-Tags could be used to document the source and the delivery to a California balancing authority. For transactions within the first portfolio content category, E-Tags would show the source of the energy (which would be required to be an eligible renewable energy resource), and would show that the energy was scheduled and delivered to a California balancing authority area. For transactions in the second portfolio content category, E-Tags would also show the delivery of incremental energy to a California balancing authority area.

L. Response to Question 23

As noted above, procurement from eligible renewable energy resources located outside of California balancing authority areas will provide numerous benefits, including a reduction in RPS compliance costs, mitigation of price volatility, and a reduction in the aggregate variability of output of wind and solar resources, thereby mitigating the operational challenges posed by wind and solar generation. Delivery through dynamic transfer arrangements, via firm transmission even in the absence of dynamic transfer arrangements, or through firmed and shaped transactions all provide significant benefits to California utilities and the California ratepayer.

Deliveries through dynamic transfer arrangements allow generation to be received into the CAISO control area as if that generation was located within California, thereby providing the benefits of in-state generation with the additional benefits of out-of-state generation noted above.

Similarly, scheduling and delivering energy real-time via firm transmission, even without a dynamic transfer arrangement, provides similar benefits, with an added benefit that the CAISO does not bear the obligation of providing ancillary services. Both dynamic transfer arrangements and real-time deliveries via firm transmission should be included in the first portfolio content category.

Though firmed and shaped transactions are subject to procurement limits in SB 2 (1x), and were initially excluded from the definition of bundled transactions in D.10-03-021, there are numerous benefits provided by firmed and shaped transactions as well. Firmed and shaped transactions allow for more efficient use of the transmission system. The resulting reduction in transmission costs can mean lower procurement costs for utilities and their ratepayers. Firmed and shaped transactions also provide incremental energy to California which has been balanced outside the CAISO and is compliant with the Emissions Performance Standard. Nor are the environmental benefits of the renewable generation lost as a result of firming and shaping the output. Even if the product delivered to California was generated by a source other than an eligible renewable energy resource, those deliveries must be equal to generation from the eligible renewable energy resource. At the time the eligible renewable energy resource generates the energy that will later be firmed and shaped, it will replace other sources of generation. In WECC, the generation is most likely offsetting fossil-fuel fired generation, including coal. In fact, depending on the generation mix where the renewable facility is located, it may reduce greenhouse gas and other hazardous emissions by a greater amount than a facility located in California. And given the nature of greenhouse gas emissions, reductions do not have to occur in California to provide benefits to Californians.

Given the numerous benefits that generation located outside of a California balancing authority area can provide under any of the three delivery options discussed above, BP Wind urges the Commission to carefully consider how it can best ensure that such generation can participate fully and fairly in California's achievement of its RPS goal.

DATED: August 8, 2011

/s/ Seth D. Hilton

Seth D. Hilton

STOEL RIVES LLP

555 Montgomery Street, Suite 1288

San Francisco, CA 94111

Telephone: (415) 617-8913

Email: sdhilton@stoel.com

Attorneys for BP Wind Energy North
America Inc.

VERIFICATION

I am the attorney for BP Wind Energy North America Inc. (“BP Wind Energy”), and am authorized to make this verification on BP Wind Energy’s behalf. BP Wind Energy is unable to verify the foregoing document in person as BP Wind Energy is located outside of the County of San Francisco, where my office is located. I have read the foregoing **COMMENTS OF BP WIND ENERGY NORTH AMERICA INC. ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLE PORTFOLIO STANDARD PROGRAM** and am informed and believe, and on that ground allege, that the matters stated are true and correct to the best of my knowledge.

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

Executed this 8th day of August, 2011, at San Francisco, California.

/s/ Seth D. Hilton

Seth D. Hilton
STOEL RIVES LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Email: sdhilton@stoel.com

Attorneys for BP Wind Energy North
America Inc.