BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON PORTFOLIO CONTENT CATEGORIES

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One of the significant initial challenges the Commission confronts as it implements the provisions of Senate Bill 2 of the First Extraordinary Session of the 2011-2012 legislative session (SB 2X) is the further definition of the portfolio content categories of section 22 of SB 2X. Because the bill also specifies the minimum or maximum procurement levels for each of three portfolio content categories, most of the parties responding to the *Administrative Law Judge's Ruling Setting Prehearing Conference* issued on May 23, 2011, placed the portfolio content categories among the highest priority topics to be addressed in the initial months of this proceeding. Until the retail sellers know ***what products*** and ***how much of each product*** they can procure, progress toward the goals of SB 2X will be thwarted.

In response to the urgency the parties assign to this issue, the *Administrative Law Judge's Ruling Requesting Comments on the Implementation of new Portfolio Content Categories for the Renewables Portfolio Standard Program,* issued on July 12, asks for comments on 24 questions designed to elicit the information the Commission needs for a decision on the portfolio content categories. The Independent Energy Producers Association (IEP) respectfully submits its response to these questions in these comments. In addition, IEP

has discussed these issues with representatives of the utilities, generator trade associations, individual generation companies, consumer groups, and labor organizations. These parties have prepared a matrix summarizing the points of consensus, and that matrix is attached to these comments.

1. Section 399.16(b)(1) describes "eligible renewable energy resource electricity products" that meet certain criteria. "Electricity products" is not defined in the statute. Should this term be interpreted as meaning "RPS procurement transactions"?

Yes. For purposes of the portfolio content categories, "eligible renewable energy resource electricity products" should be interpreted as "transactions for procuring eligible renewable energy or RECs." SB 2X's provisions on portfolio content categories refers to different types of transactions as "products." The instruments for retail sellers' compliance with the Renewables Portfolio Standard (RPS) goals of SB 2X are the renewable attributes of the kilowatt-hours produced from eligible renewable generating facilities, which may be sold in bundles with identical amounts of energy or sold separately from the associated energy as Renewable Energy Credits (RECs). Retail sellers meet their RPS obligation by retiring the RECs that represent the renewable attributes of eligible generation. Section 399.16(b) describes the general characteristics of three categories of transactions that can be used to procure RPS compliance instruments. However, as discussed in the next response, other provisions of SB 2X do not allow for a blanket substitution of the phrase, "transactions for procuring eligible renewable energy or RECs," for the statutory phrase.

2. Should the first sentence of § 399.16(b)(1)(A) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has a first point of interconnection with a California balancing authority, or has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or the electricity produced by the RPS-eligible generation facility is scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."

Yes. This interpretation is consistent with the intent of the legislature. The suggested interpretation recognizes that facilities (not products) are interconnected to the transmission or distribution systems and that electricity (or, more precisely, electric energy) is scheduled into a CBA or other delivery point.

3. Please provide a comprehensive list of all "California balancing authorit[ies]" as defined in new § 399.12(d).

Currently, the California balancing authorities (CBAs) "with control over a balancing authority area primarily located in" California and that are "responsible for the operation of the transmission grid within [their] metered boundaries" are the California Independent System Operator Corporation, Los Angeles Department of Water and Power, Balancing Authority of Northern California (Sacramento Municipal Utility District), Imperial Irrigation District, and Turlock Irrigation District. However, the number and configuration of CBAs may change as new CBAs are formed.

4. How should the phrase in new § 399.16(b)(1)(A) ". . . scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted? Please provide relevant examples.

This phrase refers to "real-time" or "simultaneous" deliveries of eligible renewable energy from outside of the area of a CBA into an area of a CBA. The energy would be scheduled into a CBA within the same scheduling interval as it is generated, and eligible energy produced at the renewable generation facility within the scheduling interval (hour or subhour) would match the quantities delivered to the CBA, subject to the use of "real-time ancillary services required to maintain an hourly or subhourly import schedule" referred to in the same paragraph (and discussed below).

5. Does the inclusion of transactions characterized in #4, above, subsume or resolve the work done by Energy Division staff and the parties in response to Ordering Paragraph 26 of Decision (D.) 10-03-021, regarding transactions using firm transmission?

The portfolio content classifications of SB 2X should ease the Energy Division's administrative burden. As a general rule, individual transactions will be categorized based on their temporal characteristics, *i.e.,* when the energy portion of a transaction is actually scheduled into a CBA (*e.g.,* within the hour, outside of the hour but within the calendar year, or outside of the calendar year). Much of the work done in response to Ordering Paragraph 26 of D.10-03-021 was focused on real-time deliveries using firm transmission, *i.e.,* the form or means of delivery. However, the statutory language is not on its face restricted to transactions using firm transmission, and transactions that do not depend on firm transmission rights or reservations could nevertheless meet the statutory definition when deliveries can be made within the same scheduling period that the energy is generated. For example, eligible renewable energy could be generated and delivered within the same scheduling period by using available nonfirm or interruptible transmission. However, the energy would count for RPS purposes only to the extent that deliveries are not interrupted or displaced due to limited transmission capacity.

6. How would transactions characterized in #4, above, be tracked and verified? Please address the roles and responsibilities of both the CEC and the Commission.

The CEC is charged with certifying that qualifying generators are eligible to produce renewable energy to meet RPS requirements.

For the Commission's jurisdictional entities (*e.g.,* investor-owned utilities and energy service providers) and for the CEC's jurisdictional entities (*i.e.,* publicly owned utilities), transactions can be tracked from the CEC-certified renewable energy source to the CBA delivery point using transmission schedules. At the workshop on April 22, 2010, Iberdrola provided an example of how schedules can be used to track a transaction. An e-tag can provide after-the-fact

verification of the transaction. The Commission could also verify the transaction by requiring a source-to-sink transmission schedule for each such transaction (which may not be practical) or by auditing selected transactions. The table below list the sources of information available to help validate eligible transactions:

Information Available to Validate RPS Eligible Transactions

Eligibility of Resource: (*e.g.,* Resource Type, Interconnection, Time of Delivery)	Transmission Path From Source to Sink	
1. WREGIS Certificate	1. NERC E-tag – shows transmission path from source to sink; 2. Transmission Schedule – shows transfer rights from source to sink; 3. For Dynamic Transfer, Agreement with the source BA To Dynamically Transfer to a CBA	

7. Please provide relevant examples of the situation described in the second sentence of § 399.16(b)(1)(A):

> *"the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California balancing authority. . ."*

How should the subsequent qualifying phrase, "but only the fraction of the schedule actually generated by the eligible renewable energy resources shall count toward this portfolio content category" be interpreted in light of your response? Please provide relevant examples.

Ancillary services may be provided from another source to take advantage of available transmission capacity, to balance the transmission system, or to meet contractual obligations. For example, wind Generator X may have an agreement to deliver 100 MWh at a particular delivery point and for a particular hour, and accordingly it secures a transmission reservation for 100 MWh at that delivery point and for that hour. Because of wind variability, Generator X is only able to generate 70 MWh for that hour, and it uses 30 MWh of system energy to complete its delivery. The mixture of system energy and RPS-eligible energy does not disqualify the delivery for RPS purposes, but only the 70 MWh generated from the RPS-eligible

source should count toward the retail seller's procurement obligation.

If the ancillary services are provided by another RPS-eligible generator and the transaction includes the renewable attributes of the ancillary service energy, then the entire transaction (100 MWh in the example above), if verified, should count toward the retail seller's procurement obligation.

8. Should § 399.16(b)(1)(B) be interpreted as meaning:
"The RPS-eligible generation facility producing the electricity has an agreement to dynamically transfer electricity to a California balancing authority."

Yes. The owner or operator of the RPS-eligible facility, not the product, will be the entity having an agreement for dynamically transferring power from eligible renewable resources to a CBA.

9. The phrase "unbundled renewable energy credit" (REC) is not defined in the statute. Should it be interpreted as meaning:

> *"a renewable energy credit [as defined in new § 399.12(h)] that is procured separately from the RPS-eligible energy with which the REC is associated"?*

Yes. "Unbundled" means that the REC is sold separately from the energy it is associated with and any other energy.

10. "Unbundled renewable energy credits" are a type of transaction meeting the criteria of § 399.16(b)(3). Does § 399.16(b)(1) include any transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated (for example, a transaction in which an RPS-eligible generator having a first point of interconnection with a California balancing authority sells unbundled RECs to a California retail seller)? Why or why not?
If your response is that unbundled REC transactions are or may be included in § 399.16(b)(1), please also address how a particular transaction can be characterized and verified as belonging in a particular portfolio content category.

As discussed in the response to Questions 2 and 8, § 399.16(b)(1) describes four "products": (1) facilities that have a first point of interconnection with a CBA); (2) facilities that have a first point of interconnection with distribution facilities used to serve end users within a CBA; (3) electricity that can be scheduled into a CBA without substituting electricity from

another source; and (4) facilities that have an agreement to dynamically transfer electricity to a CBA. Because § 399.16(b)(1)(A) includes facilities having a first point of interconnection with a CBA or with a distribution system within a CBA area, transactions for the renewable attributes of energy produced from those facilities, including transactions for unbundled RECs or for bundled renewable energy and RECs produced by these facilities, are among the products described in § 399.16(b)(1). For these facilities, regardless of whether the facility's output is sold as a bundle of energy and RECs or in a REC-only transaction,[1] the physical characteristics are identical; that is, the energy produced by the facility is most likely consumed within the CBA, and the REC, which § 399.12(h) defines as a "certificate of proof" that a unit of renewable electricity was generated and delivered by an eligible resource, is transferred to an obligated retail seller for use in the RPS compliance accounts.

Moreover, facilities interconnected with a CBA or with a distribution system within a CBA's area provide the "unique benefits" listed in § 399.11(b) regardless of whether they are selling the RECs associated with the output of their plants in a bundled transaction or in a separate sales of RECs. Thus, the policies that SB 2X cites as the reasons for the statute align with the idea that transactions involving facilities that interconnect with a CBA or with a distribution system within a CBA fall into the first category of § 399.16(b). The fact the same facility can simultaneously sell RECs as part of a bundled transaction and as a separate REC-only transaction underscores the point that there is no physical difference between the

[1] Section 399.16(b)(3) refers specifically to "unbundled renewable energy credits," but the products in this category are limited to those "that do not qualify under the criteria of paragraph (1) or (2)." A logical interpretation is to read paragraph (3) to refer to products that do not qualify under paragraphs (1) or (2), which may include fractions of transactions and RECs that do not qualify under the other categories. Reading this paragraph as if it said, "Unbundled renewable energy credits and eligible renewable energy resource products, or any fraction of the energy generated, that do not qualify under the criteria of paragraph (1) or (2)." is a strained interpretation of the statutory language.

transactions and no reason for the statute to treat them differently. Consistent with the physical (interconnection) criteria of § 399.16(b)(1)(A), the products (or transactions, as discussed above) provided by these facilities should be eligible to be classified the same, as § 399.16(b)(1) products.

11. Section 399.16(b)(3) includes "[e]ligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)."

Should the phrase, "or any fraction of the electricity generated" be interpreted as meaning "any fraction of the electricity generated by the eligible renewable energy resource"?

What metrics should be used to account for "any fraction of the electricity generated?" Please address the time period that may be encompassed in your response.

How would the procurement of "any fraction of the electricity generated" be documented? Please address the roles of the Western Renewable Energy Generation Information System (WREGIS), the CEC, and this Commission.

"Fraction of the electricity generated" should be construed to mean "fraction of the electricity generated by the eligible renewable energy resource." For facilities that meet the interconnection requirements of § 399.16(b)(1), all of the facility's eligible output will qualify under paragraph (1). For resources that are not interconnected to a CBA or a distribution system within a CBA, the fraction of an eligible renewable generator's output that does not qualify under paragraph (1) or (2) can be determined from data from the facility's meter (when was the energy produced and how much was produced?), transmission schedules, and e-tags (how much energy was delivered to a CBA and when? what real-time ancillary services were used to maintain the import schedule?). The relevant timeframe for paragraph (1) transactions is the scheduling interval (typically one hour), and the relevant timeframe for paragraph (2) transactions is the calendar year when the energy is generated, as discussed below.

12. "Firmed" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.

IEP will address this question in its comments on the next question.

13. "Shaped" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.

IEP is unaware of any precise definition for these terms, but they are widely used and generally accepted to refer to techniques to match a variable energy resource with a fixed contractual obligation or transmission reservation. The current version of the CEC's Guidebook on RPS eligibility states, "Firming and shaping refers to the process by which resources with variable delivery schedules may be backed up or supplemented with delivery from another source to meet customer load.[2] The terms are usually used to refer to arrangements that may, at least at times, separate the energy generated by an eligible renewable resource from the associated RECs. For example, a wind resource may have an average production of 100 MWh and an associated transmission reservation or contractual obligation to deliver 100 MWh at a specified delivery point. The wind resource's actual production will vary around 100 MWh. When the actual production is 70 MWh, the seller may purchase or supply 30 MWh from another resource to make use of the full transmission reservation. When actual production is 130 MWh, another resource will be backed down so that the full production of energy can be delivered. In the first case, only 70 MWh can be credited toward RPS procurement obligations, unless RECs from other eligible generation can be tagged to the supplemental 30 MWh. In the second case, 100 MWh is immediately available to meet RPS obligations, and the RECs from the supplemental 30 MWh may be retained until they can be associated with other energy for delivery to the delivery point, ideally during a time of undergeneration from the same facility.

Some parties use the term "firmed" to refer to the use of energy from another source to supplement the output from a variable energy resource during a period of

[2] CEC, *Renewables Portfolio Standard Eligibility* (4th ed., Jan. 2011) p. 37.

undergeneration and "shaped" to refer to the backing down of other generation during a time of overgeneration. Other parties use the two terms together to refer to a situation in which RECs are sometimes delinked from the associated energy and delivered at a time other than the scheduling interval when the energy is generated.

14. "Incremental electricity" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please also address:

how a particular transaction can be characterized as providing incremental electricity;

whether there are or should be any more particular relationships between the generation of the RPS-eligible electricity and the scheduling of the "firmed and shaped" incremental electricity into a California balancing authority (for example, the electricity must be scheduled into a California balancing authority within one month of its generation; or, the energy that is delivered must come from generators in the same balancing authority area as the RPS-eligible generation).

whether the definition proposed is based on contract terms or on the characteristics of the electricity that is ultimately delivered into a California balancing authority. Please provide relevant examples.

The purpose of adding the word "incremental" in section 399.16(b)(2) was to avoid a regime in which RECs could be tagged to existing import obligations currently in the utilities' portfolio and counted for purposes of RPS compliance. The purpose seemed to be to provide an added benefit that is not available from external unbundled RECs—the delivery of additional energy to California.

However, it is extremely difficult to derive a definition that reflects this purpose. SB 2X does not answer the basic question—*incremental to what?* "Incremental" could be defined in relation to at least three different measures: (1) incremental to existing deliveries or other historical baseline; (2) incremental to forecasted deliveries through 2020; or (3) incremental to retail sellers' current contractual obligations. Each of these potential measures has its problems. Definitions that attempt to define "incremental" against current or historical deliveries confront highly variable conditions from year to year. Even if demand remains unchanged, the level of deliveries into CBAs will vary depending on market conditions, rainfall

in California and the Northwest, weather, and other factors that make it impractical to specify what "typical" deliveries are for the purpose of identifying "incremental" deliveries. For similar reasons, forecasting expected deliveries in future years to determine which deliveries are "incremental" presents even greater challenges. Defining "incremental" as additional deliveries not called for under the retail sellers' current contracts means that some deliveries associated with contracts that are routinely executed to replace expiring arrangements will be defined as incremental, a problem that increases as time goes on and more existing contracts expire.

On balance, IEP recommends the third approach, defining incremental deliveries against the retail sellers' current import levels and contractual commitments, primarily because this approach offers a clear, practical way to identify incremental deliveries without creating an excessive administrative burden. Consistent with several other provisions of SB 2X, and after considerable discussion, IEP recommends a definition of "incremental" that has the following elements:

ffi Firmed and shaped transactions are bundled transactions in which the energy cannot be scheduled into a CBA within the scheduling interval (hour) when the energy and associated REC were generated.[3] The commitment to

[3] This requirement echoes the discussion of delivery requirements for firmed and shaped resources in the CEC's Guidebook:

> To count generation from out-of-state facilities for RPS compliance, the RPS-certified facility must enter a power purchase agreement with a retail seller, procurement entity, or third party. The power purchase agreement must include both the RECs and electricity generated by the facility as a bundled commodity, and a matching quantity of electricity must be delivered to an in-state market hub (also referred to as "zone") or in-state point of delivery (also referred to as "node") located within California. The retail seller or procurement entity and seller may negotiate which party is responsible for securing transmission, as necessary, at any point along the delivery path as long as the energy is delivered into California.

(footnote continued)

purchase the bundled product must be tied to a specific contract to provide firming and shaping services, and the total delivered product must be provided at a fixed price for at least part of the duration of the purchase commitment, as discussed below.

- The REC portion of a firmed and shaped transaction must be tagged to energy schedule into a CBA within the calendar year when the associated energy is generated.
- To be "incremental," the firmed and shaped transaction must be priced in a way that does not track electricity or natural gas prices:
  - For transactions of five years' duration or longer, the total product—energy and RECs, including firming and shaping services—must be provided at a fixed price for at least five years. The fixed price may extend more than five years.
  - For transactions of less than five years, the product must be provided at a fixed price for the term of the renewable energy contract.
  - The fixed price may include escalators that are not tied to energy-prices. For example, a 2 percent annual escalator or a CPI adjustment would be permitted. Transmission and integration charges are not included in the fixed-price requirement and may move up or down based on approved tariffs.

CEC, *Renewables Portfolio Standard Eligibility* (4th ed., Jan. 2011) p. 38 (footnote omitted). The CEC also clarified that it is "acceptable for an RPS-certified facility to sell power to a retail seller, procurement entity, or third party, pursuant to a PPA, provided all such parties are registered as account holders with WREGIS as part of RPS compliance." CEC, *Renewables Portfolio Standard Eligibility* (4th ed., Jan. 2011) p. 38 fn.62.

15. Should § 399.16(b)(2) be interpreted to refer only to energy generated outside the boundaries of a California balancing authority, or may it refer also to energy generated within the boundaries of a California balancing authority? Please provide relevant examples.

Should this section be interpreted as applying only to transactions where the RPS-eligible generation is intermittent? Is the location of the generator within or outside of a California balancing authority area relevant to your response?

At the outset, it is important to clarify that the areas or boundaries of a balancing authority are defined electrically, not geographically. Generally speaking, generators that are located within the electrical boundaries of a CBA will not need to schedule energy into a CBA. Thus, in most cases § 399.16(b)(2) will apply only to generators located outside the electrical boundaries of a CBA. Some exceptions may exist. A generator located within the assumed geographical boundaries of a CBA but not electrically interconnected with the CBA may need to schedule deliveries into a CBA. In addition, energy from a generator located within the electrical boundaries of a CBA for delivery to another CBA may need to be scheduled into the second balancing authority.

Although intermittent resources are the most likely facilities to use firmed and shaped transactions, other types of eligible renewable resources may also find it necessary to use firmed and shaped transactions at times, for example during outages or when fuel is either abundant or scarce.

16. Should the requirement in § 399.16(b)(1)(A) that the generation must be "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted to mean that no firmed and shaped electricity, as set forth in § 399.16(b)(2), may be considered as meeting the requirements of § 399.16(b)(1)(A)? Please provide relevant examples.

Permissible use of "real-time ancillary services required to maintain an hourly or subhourly import schedule" under § 399.16(b)(1)(A) is conceptually similar to firming and shaping services for transactions under § 399.16(b)(2). The distinction between the two is

temporal. While the ancillary services in § 399.16(b)(1)(A) support deliveries of eligible renewable energy within the hourly or subhourly scheduling interval, firmed and shaped services provide the same support for deliveries of eligible renewable energy in periods that extend beyond the scheduling period. Thus, although the same resources may provide ancillary services within the scheduling interval and firming and shaping outside of the scheduling interval, the two categories are discrete. What distinguishes these two services is the period in which the REC is associated with energy for delivery to a CBA.

17. Section 399.16(d) provides that:
"Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if [certain] conditions are met. . ."

How should the phrase "ownership agreement" be interpreted in this context? Please provide relevant examples.

How should the phrase "count in full" be interpreted? Include consideration of: a) The requirements in D.07-05-028 (implementing current § 399.14(b)6) that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;
b) The requirement in new § 399.13(b)7 for minimum procurement from contracts of at least 10 years' duration;
b) The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years' duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods.

"Ownership agreement" appears to refer to arrangements for retail sellers to meet their RPS obligations by taking ownership of eligible renewable energy facilities.

"Count in full" means that the eligible renewable energy or RECs conveyed to a retail seller under contracts or power purchase agreements executed before June 1, 2010 will count toward the retail seller's RPS obligation and will not be disqualified by application of the percentages prescribed in § 399.16(c). The percentages of § 399.16(c) apply to purchases under contracts executed after June 1, 2010.

The Commission implemented current § 399.14(b)6) in D.07-05-028, and the provisions of that decision set a specific compliance requirement that took effect for the 2007 compliance year and remains in effect until the effective date of SB 2X. IEP has no information that suggests that the output of any eligible facilities has been disqualified by this provision.

New § 399.14(b)(6) raises the prospect that some of the output from eligible renewable facilities with contracts of less than 10 years in duration and that were signed before June 1, 2010 might not count for RPS compliance purposes, which seems to create a conflict with the "count in full" language of § 399.16(d). IEP recommends resolving this conflict by favoring the clear language of § 399.16(d). Most of the investor-owned utilities' RPS procurement has been through power purchase agreements of at least 10 years in duration, and it appears that the legislature intended to remove any questions about whether a contract counted or not by declaring a blanket rule that older contracts would count in full and new contracts would be potentially subject to new restrictions added by SB 2X.

18. Please discuss the relationship between the instruction in § 399.16(d), set forth above, and the rules for the use of tradable RECs (TRECs) set out in D.10-03-021 (as modified by D.11-01-025), and in D.11-01-026 (for example, temporary limits on TRECs usage; application of the temporary TREC limits to previously signed contracts).

As a practical matter, the California Energy Commission's provisions on RECs and the requirement of delivery in the earlier RPS statute resulted in few, if any, transactions for RECs only, apart from any energy purchase. The legislature seemed to be attempting to clear up the status of any such transactions or similar transactions with its statement that the output of facilities performing under contracts signed before June 1, 2010 would count in full, and that new provisions would apply to contracts signed after that date.

19. When should the portfolio content limitations set forth in § 399.16(d) go into effect (for example, January 1, 2011; or the effective date of SB 2 (1x); or the date of the Commission decision implementing § 399.16)?

The portfolio content limitations of SB 2X cannot take effect until the bill itself becomes effective on the 91st day after the close of the First Extraordinary Session. However, the Commission can use its broad constitutional and statutory authority to implement provisions identical to those set forth in SB 2X for the entities subject to its jurisdiction to the extent that the Commission's actions do not conflict with the requirements of the existing RPS statute.

20. SB 2 (1x) amends Pub. Res. Code § 25741 to, among other things, eliminate the current requirement that RPS-eligible energy must be "delivered" to end-use retail customers in California. The requirement for delivery is implemented by the CEC in its Renewables Portfolio Standard Eligibility Guidebook (RPS Eligibility Guidebook) (3d ed. December 19, 2007). It is also incorporated into the characterization of a REC in D.08-08-028.

At what point in time should the Commission consider the "delivery" requirement ended (e.g., on the effective date of SB 2 (1x); or as of January 1, 2011; or on the effective date of the CEC's revisions to the RPS Eligibility Guidebook reflecting the repeal)?

Does the "delivery" requirement end at that time for generation under RPS contracts of utilities that were already approved by the Commission? Only for generation under contracts signed by utilities after the end of the delivery requirement?

How should the plan you propose be applied to ESPs? to CCAs?

As described in the response to the preceding question, SB 2X's elimination of the delivery requirement cannot take effect until the bill itself becomes effective on the 91st day after the close of the First Extraordinary Session, but the Commission can use its broad constitutional and statutory authority to implement provisions identical to those set forth in SB 2X for the entities subject to its jurisdiction to the extent that the Commission's actions do not conflict with the requirements of the existing RPS statute. Note also that the references to scheduling into a CBA in new § 399.16(b)(1)(A) and § 399.16(b)(2) are similar to a delivery requirement for certain types of transactions. In short, the energy portion of RPS transactions with facilities that are not interconnected to a CBA or a distribution system within a CBA is still required to be delivered, *i.e.,* scheduled, into a CBA.

Eliminating the delivery requirement involves not just the effectiveness of SB 2X. In addition, the CEC must revise its RPS Guidebook to clarify that delivery is no longer required for RPS eligibility.

When the delivery requirement ends, it also ceases for contracts already approved by the Commission. However, the terms of the contracts remain in effect until the contract terminates or the parties agree to amend the contract. In most cases, IEP expects that the commercial arrangements under these contracts, including the delivery arrangements, will continue for the duration of the contract.

21. What documentation or descriptions should be required in an advice letter to enable Energy Division staff to confirm the portfolio content category of transactions submitted by utilities for Commission approval?

Because IEP, like the general public, sees only the redacted version of advice letters and resolutions, IEP is not fully aware of what documentation the utilities submit now in support of their advice letters. IEP assumes that a utility will provide sufficient information and documentation to support its requested portfolio content category. Depending on the type of transaction, the documentation could include firm transportation agreements, contracts for ancillary services or firm and shaping services, information on the interconnection with the eligible renewable energy resource selling to the utility, or a dynamic transfer agreement, in addition to the contracts between the seller and the utility.

22. Is any post-contracting verification of the portfolio content category needed to track and determine compliance with RPS procurement obligations for utilities? for ESPs? for CCAs? If yes, is the CEC responsible for undertaking it? is this Commission?
What information would be required for such verification?
Would any changes be needed to WREGIS to accommodate your proposal?

Depending on the nature of the transaction, the verification information could include metered output data from the generator, NERC e-tags, and WREGIS REC identification numbers.

23. Reviewing your proposals above, please describe the value to the buyer, the seller, and ratepayers of transactions in each portfolio content category. Identify the direct and indirect costs that would be associated with transactions in each category.

The overall value of the RPS program is reflected in the benefits listed in new § 399.11(b), although different products will provide the individual benefits in different proportions. In addition, the aggregate value of individual products is part of the distinctions drawn between product content categories in § 399.16(b). In general, Category 1 products provide energy, RECs, and reliability value; Category 2 products provide energy and RECs; and Category 3 provides RECs. Some additional specific values and costs of each content category are summarized in table:

	Category 1 (§ 399.16(b)(1)	**Category 2 (§ 399.16(b)(2)**	**Category 3 (§ 399.16(b)(3)**
Value to Buyers	Fewer transmission constraints or issues for generation connected to CBA	Lower prices from best resources; efficient use of import capacity	Lower price, flexible, can be traded readily
Value to Sellers	Procurement from category is not limited	Can develop best sites and resources in the West; flexibility of delivery; able to make most efficient use of import capacity.	Ease of arrangements
Value to Ratepayers	Provides both renewable energy and environmental attributes; promotes local economic development; displaces fossil fuel generation in state;	Provides both renewable energy and environmental attributes; promotes stable retail rates	Reduces regional GHG emissions; promotes stable retail rates

	reduces air pollution in state; reduces GHG emissions; promotes stable retail rates; may provide Resource Adequacy capacity; helps maintain grid reliability; provides local jobs		
Direct Costs	Cost of power under power purchase agreements	Cost of delivered power under power purchase agreements	Cost of REC
Indirect Costs	Renewables integration costs; land use issues	Possible regional integration costs	Can't be banked; few direct local benefits

24. The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid- October 2011, at the earliest, and the end of 2011, at the latest. Please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?

The Commission has already identified the most urgent steps that need to be taken to implement SB 2X at the earliest opportunity. Parties generally agreed that the portfolio content requirements (the subject of these comments) and new procurement targets and compliance requirements (the subject of comments due August 30) should be addressed and resolved as early as possible.

The Commission should strive to be in position to implement SB 2X as soon as it becomes effective. Any lag between the effect date of the legislation and the Commission's implementation will produce only uncertainty and paralysis. Timely action by the Commission will help maintain the momentum for achieving RPS goals that California has built up over the last decade.

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

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg

By */s/ Brian T. Cragg*
Brian T. Cragg
Attorneys for the Independent Energy
Producers Association

VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Comments of the Independent Energy Producers Association on Portfolio Content Categories," dated August 8, 2011. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

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

/s/ Brian T. Cragg
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RPS Product Matrix | REFERENCE PROPOSAL OUTLINING AREAS OF BROAD CONSENSUS AND OPEN ISSUES

Note: The following table was produced by a broad group of stakeholders in order to develop a common conceptual framework for discussing the RPS Product Content Requirements, identifying where stakeholder consensus exists, and allowing individual comments to focus on the identified open issues in the last column. The following stakeholders participated in discussions regarding this table and its refinement based on those discussions: Coalition of California Utility Employees; Division of Ratepayer Advocates; enXco; First Solar; Iberdrola; Independent Energy Producers Association; Large-Scale Solar Association; NextEra; Pacific Gas and Electric Company; San Diego Gas and Electric Company; Southern California Edison; Sunpower; The Utility Reform Network; and the Union of Concerned Scientists.

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
What Procurement is Affected?	*399.16(c)* *"eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010"*	"bundled purchase" means the purchase of RPS-eligible energy plus the associated Renewable Energy Credit (REC) "unbundled REC" means the REC associated with the RPS-eligible energy separate from the associated energy	(1) Contract amendments or modifications occurring after June 1, 2010 unless such amendment or modification is grandfathered under the provisions set forth in 399.16(d)(3); (2) New contracts with existing facilities (i.e., recontracting) after June 1, 2010, unless such contract is grandfathered under the provisions set forth in 399.16(d)(3); (3) Any contract executed under an approved IOU Photovoltaic PPA program after June 1, 2010; (4) Engineering, Procurement and Construction or Build Own Transfer	

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
			contracts for renewable utility owned generation (UOG) executed after June 1, 2010; (5) Any Feed in Tariff contract (ie., AB 1969, SB 32, Renewable Auction Mechanism, etc.) executed after June 1, 2010; (6) Any enrollment in the IOU net energy metering (NEM) program for surplus distributed generation (i.e., including but not limited to participants in California Solar Initiative and Self-Generation Incentive Program) after June 1, 2010. (7) Bilaterally-negotiated transactions after June 1, 2010; (8) Any new renewable energy resource contract executed after June 1, 2010, including purchases of unbundled RECs associated with generation under any of the above contract structures.	

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
Bucket #1(a)	*399.16(b)(1)(A): [addressing point of interconnection of facility]* "*Have a first point of interconnection with a California balancing authority*"	Facility must be an eligible renewable energy resource located within the WECC and Facility must be directly interconnected to a California Balancing Authority (CBA). CBAs include CAISO, LADWP, TID, IID, and Balancing Authority of Northern California (formerly SMUD). ! Any transaction for a product from an eligible renewable generator physically connected to any CBA ! Any transaction for a product from an eligible renewable generator located outside of a CBA, but which directly interconnects to a CBA through a gen-tie. ! "gen-tie" means an electrical conductor directly connecting the generation unit to a CBA	! Bundled procurement from eligible renewable generator physically connected to any CBA, including utility-owned generation (UOG) ! NEM surplus sales	! Should the CPUC establish a standard in advance for identifying future or additional CBAs now, or should that process wait until there is some change in the current CBA lineup?
Bucket #1(b)	*399.16(b)(1)(A): [addressing point of interconnection of facility]*	Facility must be an eligible renewable energy resource located within the WECC and Facility must be directly interconnected to the distribution system	! Bundled procurement from distributed generation facility interconnected at distribution level of any CBA, including UOG	! Do RECs associated with generation within a CBA area that serves load "behind-the-meter" (ie.,

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
	"[*H*]*ave a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area…*"	located within a CBA's area. ! Any transaction for a product from an eligible renewable generator physically connected to distribution facilities serving end use customers in a CBA. ! Any transaction for a product from an eligible renewable generator located outside of a CBA, but which directly interconnects to a CBA's distribution facilities through a gen-tie. ! "gen-tie" means an electrical conductor directly connecting the generation unit to a CBA	! NEM surplus sales	CSI/NEM or industrial RPS generation serving on-site load) qualify as Bucket 1 if they are sold (unbundled) to a (1) the retail seller that is also buying the energy, or (2) another RPS-obligated retail seller? ! In general, should the "bucket" attribute of a REC remain with the REC until it is retired for compliance, no matter how many times it is traded as an unbundled product in the secondary market? If so, how can the bucket attribute of a REC best be tracked?

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
Bucket #1(c)	***[399.16(b)(1)(A): re specific types of commercial transactions]*** *"... or are* ***scheduled*** *from the eligible renewable energy resource into a California balancing authority* ***without substituting electricity from another source****. The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the*	! Energy must be scheduled to a CBA from an eligible renewable energy resource ("ERR") located within the WECC and documented using E-tag information for generator source and delivery sink. ! Schedule into the CBA may be day-ahead, hourly, or sub-hourly. ! No specific transmission rights are required. ! Only the lesser of ERR metered-data and the final adjusted E-tags is eligible as "Bucket 1(c)". ! Import schedules may be firmed within the hour through the use of ancillary services markets, including intra-hour balancing services.	! Generator located in the Pacific Northwest schedules 100 MWh into CAISO over time period X. In that time period, generator meter data shows generation of 90 MWh, and final adjusted E-Tags show delivery of 100 MWh. Retail seller will receive 90 MWh of Bucket 1(c) credit from this resource over this time period. ! Over time period Y, Generator scheduled 100 MWh, but 110 MWh is actually generated; 100 MWh would be reflected on the E-tag and is counted for "Bucket # 1(c)."	! Over what period of time may the facility's meter data be netted against the final adjusted E-tags from the contract? Hourly? Monthly? ! What additional technology, data, or systems, if any, are needed to track, compute, and produce for verification these comparisons of meter data with final adjusted E-tags? How does the answer to this question impact the feasibility or reasonableness of any particular netting period, as discussed in the bullet above?

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
	eligible renewable energy resource shall count toward this portfolio content category."			

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
Bucket #1(d)	**399.16(b)(1)(B):** **[re dynamically scheduled transactions]** "*Have an agreement to dynamically transfer electricity to a California balancing authority.*"	! Any transaction in which the energy from an ERR located within the WECC is dynamically transferred into a CBA; ! Able to show agreement between generator and CBA (and, if necessary for a pseudo-tie, with the host BA) that allows for the CBA to dynamically transfer the electrical output from the eligible renewable resource to serve CBA load.	! Qualifying interconnection agreements include pseudo-tie agreements and dynamic scheduling agreements (or functional equivalent). ! Bundled deliveries pursuant to a dynamic transfer agreement (or functional equivalent).	
Bucket #2 ***"FIRMED AND SHAPED TRANSACTIONS"***	**Section 399.16(b)(2):** "***Firmed and shaped*** *eligible renewable energy resource electricity products providing* ***incremental electricity*** *and scheduled into a California balancing authority.*"	! Electricity products must derive from eligible renewable energy resources located with the WECC. ! REC must be "E-tagged" to energy scheduled for delivery to a CBA; ! Energy to which the REC is "E-tagged" must be "incremental" ! Energy to which the REC is "E-tagged" must have been delivered to the CBA within the same calendar year of the	! Retail seller buys bundled product of energy and RECs from an ERR not located in a CBA. Energy is immediately sold off locally. Retail seller tags the RECs from the RPS PPA to the E-tags for the imported incremental energy within the same calendar year that the RECs were generated. ! Procurement of bundled product from ERR outside of a CBA. ERR intends generally to qualify as	! What is the definition of "incremental electricity?" ! Are there any additional attributes or contract structures that must be included to qualify procurement as a "firmed and shaped" product (i.e., concurrent procurement, fixed price agreement, etc)? ! Should there be a grace

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
		creation of the REC within WREGIS.	Bucket #1(c) by scheduling imports directly into a CBA. However, ERR cannot transmit its full contract quantity into a CBA within the time period specified for Bucket #1(c). In the same time period, ERR delivers a firm schedule for import into the CBA using some substitute energy. The "stranded" RECs are tagged to the substitute energy within the same calendar year and qualify as Bucket #2.	period beyond the calendar year during which the tagging process may be "trued up?" ! Must the term of the firming and shaping agreement described in the first illustrative contract structure match the term of the RPS PPA producing the RECs? ! What other contract structures or variations on the consensus contract structures qualify as bucket #2?
"Bucket #3" ***All Other RPS Products***	**[Section 399.16(b)(3):]** *"Eligible renewable energy resource electricity products, or any fraction of the electricity generated,*	! Any certificate registered within the Western Renewable Generator Information System (WREGIS) that does not qualify as Bucket 1 or Bucket 2. ! No energy and/or capacity need be associated with this type of	! Retail seller procures unbundled RECs from an ERR located within WECC, but not in a CBA. Retail seller does not "tag" these RECs to any energy. ! Energy to which a REC generated by a non-CBA facility is tagged is	

Issue or RPS Portfolio Content Category Requiring Interpretation	New Statutory Language (from SB 2 (1X))	Consensus RPS Product Description	Consensus Illustrative Contract / Interconnection Structures	Open Issues (No Consensus)
	including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)."	transaction.	imported outside the same calendar year or is not "incremental."	