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)

REPLY COMMENTS OF THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE ALJ'S RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RPS PROGRAM

Pursuant to the Administrative Law Judge's July 12, 2011 Ruling Requesting Comments on the Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, the Coalition of California Utility Employees ("CUE") offers these reply comments.[1]

I. IMPORTS FROM GENERATORS NOT HAVING A FIRST POINT OF INTERCONNECTION TO A CALIFORNIA BALANCING AUTHORITY

As we said in our initial comments, the most important open issue in the matrix (page 5), which is also reflected in questions 4, 5 and 16, relates to energy from a generator that does not have a first point of interconnection with a California balancing authority. The questions relate to scheduling this energy, while the matrix phrases the question as "over what period of time may the facility's meter data be netted against the final adjusted E-tags from the contract? Hourly? Monthly?"

This question was vigorously debated, contested and lobbied during the development of SB 2 (1x). In the debate, monthly and annual netting was understood to be a hallmark of the firmed and shaped product. Because netting was over these longer periods of time, actual deliveries are made by substituting energy from another source to meet the hourly scheduling requirements of the

[1] The usual caveat: The fact that CUE does not specifically respond to the comments of other parties does not imply that we agree or disagree with those parties.

California ISO and other balancing authorities. The Legislature clearly understood that firmed and shaped products had the less value to ratepayers than real time (hourly or subhourly) products. Because the California ISO requires firm hourly schedules, netting over longer periods requires some other energy to be substituted. "Substituting electricity from another source" is prohibited for bucket 1 products. With substitution, California ratepayers may get only "a piece of paper and a lump of coal." Consequently, the Legislature changed the prevailing practice, which had treated firmed and shaped products netted monthly or yearly as equal in value to hourly deliveries. It separated real time hourly schedules from non-real time monthly netting. Both are allowed, but the latter only up to certain limits. That is the whole point of 399.16(b).

The Legislature created only one exception to the "without substituting electricity from another source" prohibition. According to the words of the statute, if a generator not having a first point of interconnection to a California balancing authority schedules its output into a California balancing authority using "an hourly or subhourly import schedule," energy from a non-renewable resource may be used, but only "to provide ***real-time*** ancillary services to maintain an hourly or subhourly import schedule," and that ancillary service energy does not count as renewable. The Legislature recognized the current practice of using real-time, non-renewable energy to firm hourly or subhourly imports and authorized this practice because the portion of the import that was renewable energy was electrically equivalent to renewable generation from a facility whose first point of interconnection was with the California balancing authority. Although there were many proposals to allow netting imports over periods longer than one hour, such as 24 hours, monthly and even annually, the Legislature rejected those proposals and specifically prohibited "substituting electricity from another source" in bucket 1. The only exception to this prohibition is to maintain hourly or subhourly import schedules, and even then, "only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category [bucket 1]."

The Legislature did not entirely reject the idea of firming and shaping imported energy over periods longer than one hour, it simply categorized them as "[f]irmed and shaped eligible renewable energy resource products providing incremental electricity and scheduled into a California balancing authority."[2] That is, bucket 2.

Despite the explicit words of Section 399.16(b)(1)(A), several parties are trying to render that Section meaningless. These parties would ignore the statute and have ***monthly*** netting of metered data and E-Tags.[3] They would allow the very firmed and shaped transactions for which the Legislature created bucket 2, to be counted as bucket 1. They would render 3 years of vigorous debate and resolution by the Legislature useless. They ignore the plain words of the statute, hoping for a second (and third, fourth and fifth!) bite at the apple.

No party claims the data does not exist to compare hourly metered data from the generator with E-Tags showing transmission of that energy from the generator to the California recipient. No party claims it is impossible to comply with the statute. The only claim is that comparing hourly meter data to E-Tags is not yet ***automated***. Yet none of these parties claims that the Legislature did not mean what Section 399.16(b)(1)(A) says. None of these parties claims that the Legislature created a "must be automated" exception to the very specific prohibition on substituting other energy in bucket 1. Just because it may take a little more work to document that there was no substitution does not change the clear, explicit requirement of the statute.

Indeed, there is no requirement that any party enter into any future transaction whose compliance it cannot or does not wish to fully document. If PG&E or SDG&E does not want to do the work, it need not sign the contract. There are an overwhelming number of bucket 1 opportunities – projects whose first point of interconnection is with the California ISO for which this issue would never arise.

---

[2] Section 399.16(B)(2).

[3] For example, PG&E at pp. 11-12; SDG&E at pp. 6-9; LADWP at pp. 6-9.

In addition, Powerex,[4] Transwest Express[5] and Iberdrola[6] explain exactly how the verification that there has been no substitution of electricity would take place. It simply is not that hard. Iberdrola correctly observes that, "[t]he development of automated solutions for verification should not prevent the CPUC from implementing product categories and using the interim verification methods described above."[7]

The Commission should implement the bucket 1 requirements as prescribed in the statute. It should reject utility attempts to undermine the statute with lazy accounting.

II. RENEWABLE ENERGY CREDITS ORIGINATING FROM FACILITIES CONNECTED TO A CALIFORNIA BALANCING AUTHORITY

One important topic on which there is substantial disagreement is whether Section 399.16(b)(1) includes any transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated, such as 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.

TURN answered this question best:

> The statute explicitly states that "unbundled renewable energy credits" are included in the §399.16(b)(3) product category. This explicit reference means that <u>any transaction</u> in which the retail seller procures an unbundled REC counts towards this category regardless of whether the underlying generation resource is directly connected to a CBA, schedules energy directly into a CBA, or provides firmed and shaped energy to a CBA.[8]

Under this analysis, in the context of net metering, the utility is effectively procuring both the energy and the REC, so the REC is not unbundled and belongs

---

[4] Pp. 2-5. Powerex is expertly qualified on this subject, and its comments on the mechanics of verifying compliance should be given great weight.
[5] Pp. 6-10.
[6] Pp. 5-8.
[7] P. 8.
[8] TURN, p. 5. See also, LSA, pp. 2-3.

in bucket 1. If the REC is transferred by the utility or any other party, it is then unbundled from the energy and is a bucket 3 unbundled REC.

There is really no other interpretation of the statute that does justice to its words and the Legislature's intent. The Legislature clearly understood that when a REC and the energy are separated, that is an "unbundled REC" that falls into bucket 3. The Legislature knew what an unbundled REC was and classified it as bucket 3.

III. CONCLUSION

CUE looks forward to continuing to work with the Commission and other parties to successfully implement SB 2 (1x).

Dated: August 19, 2011

Respectfully submitted,

/s/

Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
Telephone: (650) 589-1660
Facsimile: (650) 589-5062
mdjoseph@adamsbroadwell.com

Attorneys for the Coalition of
California Utility Employees

VERIFICATION

I, Marc D. Joseph, am an attorney of record for the Coalition of California Utility Employees in this proceeding. No officer of CUE is located in this County where I have my office. I am authorized to make this verification on the organization's behalf. I have read this document. The statements in this document are true of my own knowledge, except for those matters which are 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 August 19, 2011, at South San Francisco, California.

/s/
Marc D. Joseph
Attorney for the Coalition
of California Utility Employees