

**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 DAVENPORT NEWBERRY HOLDINGS LLC
ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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Pursuant to the Administrative Law Judge’s Ruling Requesting Comments on
Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard
Program issued on July 12, 2011 (“ALJ Ruling”), Davenport Newberry Holdings LLC
 (“Newberry”) submits these reply comments.

**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.”**

The unanimous consensus opinion expressed in parties’ opening comments is “yes.”¹

The first sentence of section 399.16(b)(1)(A) should be interpreted as described in the question.

The Commission should accept the consensus opinion.

**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.**

¹ See Response to Question 2 in Opening Comments of Arizona Public Service Company, Calpine Corporation, Division of Ratepayer Advocates, Evolution Markets, Green Power Institute, Iberdrola Renewables, Inc., Independent Energy Producers Association, LS Power Associates, L.P., Northwest Energy Systems Company, NV Energy, Inc., Ormat Technologies, Inc., Pacific Gas and Electric Company, Powerex Corporation, San Diego & Gas Electric Company, Shell Energy North American (US), L.P., Southern California Edison Company, and Western Power Trading Forum.

BP Wind Energy North America Inc. succinctly and correctly answers this question:

The language of Section 399.16(b)(A) referenced in this question... should be interpreted to include any energy that is scheduled and delivered real-time into a California balancing authority area on a firm basis.²

For the reasons set forth in its Opening Comments, Newberry agrees with this interpretation. Many other parties expand on this simple and straightforward answer to form a broader interpretation of the phrase. In all events, the unanimous opinion is that section 399.16(b)(1)(A) should, at a minimum, be construed to include transactions involving the sale to a California purchaser of physical power and the Green Attributes associated with the generation that an out-of-state RPS-eligible generation facility has scheduled for delivery, and then directly delivers through the use of contractual rights to firm transmission capacity, to a contractually-designated Delivery Point located within a California balancing authority.³

The commenters further agree that such an integrated sales transaction (whose only two participants are the out-of-state RPS generator and the California purchaser) does not require or involve the “substitut[ion] of electricity from another source.” The Seller’s use of its own firm transmission capacity rights negates the need for any third-party intermediary to effectuate a “delivery” into California; the Seller’s use of its firm transmission capacity rights enables the California purchaser to procure power and Green Attributes in one direct and fully integrated transaction.

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.

² See Response to Question 4 in Opening Comments of BP Wind Energy North America Inc.

³ See Response to Question 4 in Opening Comments of BP Wind Energy North America Inc., Calpine Corporation, Division of Ratepayer Advocates, Duke Energy Corporation, enXco Development Corporation, Evolution Markets, Green Power Institute, Iberdrola Renewables, Inc., Independent Energy Producers Association, LS Power Associates, L.P., Northwest Energy Systems Company, NV Energy, Inc., Pacific Gas and Electric Company, Shell Energy North American (US), L.P., San Diego & Gas Electric Company, Southern California Edison Company, The Utility Reform Network, and Western Power Trading Forum.

All comments responsive to this question, including Newberry, explained that NERC E-tags provide *auditable* information enabling the tracking and verification of RPS-eligible generation and associated Green Attributes that have been delivered to California.⁴ Furthermore, Newberry supports the Commission's use of the accounting mechanism outlined by Iberdrola to insure that power delivered to a California purchaser during a period the RPS generator is not operating not be awarded RPS status:

[A] comparison may be made of hourly metered output from the RPS-eligible facility and the corresponding hourly energy schedules. The lesser of the two quantities would equal the volume of energy that will qualify for this product content category on an hourly basis.⁵

No party in its comments suggested that existing procedures and protocols are incapable of providing the requisite auditable verification that the California purchaser contracting to purchase Green Attributes from an out-of-state RPS resource is in fact purchasing the Green Attributes associated with generation directly from the RPS resource. Thus, the Commission should accept the consensus opinion, that the use of NERC E-tags, especially when coupled with Iberdrola's accounting proposal, provides the requisite auditable tracking and verification sufficient for the Commission's purposes.

Though comments focused only on the specific mechanics of verification, the Commission should also be cognizant that beyond the audit trail established by NERC E-tags, the current form of California pro forma RPS PPAs contain commercial provisions designed to ensure that the California purchaser procures verified Green Attributes in transactions characterized in #4 above. Various provisions obligate the out-of-state RPS generator to comply

⁴ See Response to Question 4 in Opening Comments of BP Wind Energy North America Inc., Calpine Corporation, Division of Ratepayer Advocates, Duke Energy Corporation, enXco Development Corporation, Evolution Markets, Green Power Institute, Iberdrola Renewables, Inc., Independent Energy Producers Association, LS Power Associates, L.P., Northwest Energy Systems Company, NV Energy, Inc., Pacific Gas and Electric Company, Shell Energy North American (US), L.P., San Diego & Gas Electric Company, Southern California Edison Company, The Utility Reform Network, and Western Power Trading Forum,

⁵ See Response to Question 6 in Opening Comments of Iberdrola Renewables, Inc.

fully with any WREGIS or WECC requirements necessary for the out-of-state RPS generator to be able to convey the Green Attributes associated with its generation to the California purchaser.⁶

The comments filed by multiple parties and the Reference Proposal developed by the “Consensus Parties” reaffirm that any possible issues regarding the actual delivery of the RPS power and the validity of the Green Attributes associated with the generation are commercial and operational.⁷ The current form of Commission-approved pro forma RPS PPAs or minor revisions to these contracts can resolve these commercial and operational issues. No policy concerns warrant the summary exclusion of these integrated RPS transactions from section 399.16(b)(1)(A) Category 1 status.

Respectfully submitted,

/s/

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⁶ See, e.g., Section 3.1(g) of PG&E 2011 pro forma RPS PPA. A copy is available at: http://www.pge.com/includes/docs/word_xls/b2b/wholesaleelectricssuppliersolicitation/RPS2011/Attachment_H1_PGE_RPS_PPA_05112011.doc

⁷ See, e.g., Opening Comments of PG&E, Appendix A.

